



RSC Policy Brief: SCHIP Crowd-Out

May 19, 2008

In light of potential actions by Congressional Democrats to overturn Administration guidelines intended to clarify the mission of the State Children's Health Insurance Program (SCHIP), the RSC has prepared the following policy brief providing background on the issue.

Background: The State Children's Health Insurance Program, established under the Balanced Budget Act (BBA) of 1997, is a state-federal partnership originally designed to provide low-income children with health insurance—specifically, those children under age 19 from families with incomes under 200 percent of the federal poverty level (FPL), or approximately \$40,000 for a family of four. States may implement SCHIP by expanding Medicaid and/or creating a new state SCHIP program. SCHIP received nearly \$40 billion in funding over ten years as part of BBA, and legislation recently passed by Congress in December (P.L. 110-173) extended the program through March 2009, while providing additional SCHIP funds for states.

One concern of many conservatives regarding the SCHIP program relates to crowd-out—a phenomenon whereby individuals who had previously held private health insurance drop that coverage in order to enroll in a public program. The Congressional Budget Office (CBO) analysis of H.R. 3963, a five-year SCHIP reauthorization which the President vetoed (and the House failed to override), found that of the 5.8 million children who would obtain Medicaid or SCHIP coverage under the legislation, more than one-third, or 2 million, would do so by dropping private health insurance coverage.

Administration Guidance: In order to prevent policies that encourage crowd-out, and ensure that SCHIP funds are more effectively allocated to the low-income beneficiaries for whom the program was created, the Centers for Medicare and Medicaid Services (CMS), on August 17, 2007, issued guidance to state health officials about the way CMS would evaluate proposals by states to expand their SCHIP programs to include families with incomes above 250% of the

federal poverty level (FPL). Specifically, CMS included several steps which states should take before contemplating expansions above 250% of FPL:

- Cost sharing requirements for state plans similar to those for private plans;
- A one-year period of uninsurance for beneficiaries prior to receiving SCHIP coverage, to ensure that individuals and families are not dropping private coverage in order to receive benefits on government rolls;
- Monitoring of child beneficiaries' eligibility for coverage provided by non-custodial parents;
- Assurance that states have enrolled at least 95% of children in families below 200% of FPL who are eligible for coverage under SCHIP or Medicaid;
- Data that private insurance coverage for targeted populations has not declined more than two percentage points in the past five years; and
- Regular monthly reporting of enrollment data monitoring crowd-out in state plans.

The guidance intended to maximize the use of state and federal SCHIP funding by ensuring that scarce resources are targeted at the populations for whom the program was originally created, and that government funds for health insurance are not merely replacing private dollars. CMS later used the policies embodied in the August letter to reject New York's application to extend SCHIP to children in families making up to 400% FPL—or nearly \$85,000 per year. New York and other states are suing the federal government to overturn CMS' decision and allow further expansion of government-funded health insurance.

On May 7, 2008, CMS issued another letter to state health officials providing further clarification on the August 17, 2007 guidance. The letter indicated that CMS would work with states to evaluate whether the states have effectively enrolled 95% of eligible children below 200% FPL before expanding their programs up the income scale. It also noted that CMS does not expect states to apply the anti-crowd-out provisions—including the one-year waiting period for SCHIP coverage and cost-sharing requirements comparable to private insurance plans—for unborn children or children with family incomes below 250% FPL—approximately \$53,000 for a family of four. Most importantly, the letter noted that changes made to state procedures need not be applied to current enrollees—meaning that *no child need be dropped off the SCHIP rolls as a result of CMS' August 17, 2007 letter*.

Recent Legislative Developments: On May 15, 2008, the House Energy and Commerce Committee held a legislative hearing on H.R. 5998, introduced by Reps. Frank Pallone (D-NJ) and Carol Shea-Porter (D-NH). The legislation would prohibit the Administration from implementing its August 17, 2007 guidance letter to states regarding SCHIP crowd-out. Press reports indicate that during the hearing, advocates of the legislation argued first that it would negatively impact enrollment in the SCHIP program, and second that the Government Accountability Office (GAO) and other experts have concluded that CMS violated the Congressional Review Act by promulgating its policy as a “guidance letter,” rather than issuing a formal rule using notice-and-comment procedures. In response, Health Subcommittee Ranking Member Nathan Deal (R-GA) noted that the guidance process allowed for more flexibility in responding to any concerns raised by states than would a formal rule.

On the same day, an amendment by Sen. Frank Lautenberg (D-NJ) to nullify the August 17 letter was attached to the wartime supplemental spending bill at a Senate Appropriations Committee markup. This SCHIP provision was added to legislative provisions overriding seven Medicaid anti-fraud regulations issued by CMS, which were also attached to the House version (HR 2642) of the supplemental spending bill.

Conclusion: Most conservatives support enrollment and funding of the SCHIP program *for the populations for whom the SCHIP program was created*. That is why in December the House passed, by a 411—3 vote, legislation reauthorizing and extending the SCHIP program through March 2009. That legislation included an additional \$800 million in funding for states to ensure that all currently eligible children will continue to have access to state-based SCHIP coverage.

However, many conservatives retain concerns about the significant expansions of SCHIP contemplated by House Democrats and their impact on reducing private health insurance coverage while increasing reliance on a government-funded program. In this vein, the Administration’s guidance to states remains consistent with the goal of ensuring that SCHIP remains targeted toward the low-income populations for which it was designed. Therefore, many conservatives will support the reasonable attempts by CMS to bolster the integrity of the SCHIP program while retaining state plans’ flexibility, and question efforts by Congressional Democrats—and states like New York—to encourage further expansion of government-funded health insurance financed by federal taxpayers.

For further information on this issue see:

- [*August 2007 CMS Letter to State Health Officials on Crowd-Out*](#)
- [*May 2008 CMS Letter to State Health Officials on Crowd-Out*](#)
- [*RSC Policy Brief: SCHIP Proposals in FY09 Budget*](#)
- [*RSC Policy Brief: Q&A on SCHIP Legislation \(HR 3963\)*](#)

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