



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 36

October 31, 2007

### **H.R. 3963 – The Children's Health Insurance Program Reauthorization Act of 2007**

Calendar No. 450

*H.R. 3963 was read twice and placed on the calendar under the provisions of Rule XIV.*

#### **Noteworthy**

- H.R. 3963, the Children's Health Insurance Program Reauthorization Act of 2007, will revise and expand the State Children's Health Insurance Program (SCHIP). H.R. 3963 makes changes to the previous SCHIP reauthorization bill, H.R. 976, which was vetoed by President Bush. The program is currently funded through a continuing resolution which will expire on November 16, 2007.
- H.R. 3963 has not gone through the committee process. At press time, Senator Reid was expected to fill the amendment tree and not allow any Republican amendments to be considered.
- H.R. 3963 makes revisions in an attempt to address a number of issues regarding H.R. 976. These revisions include providing a stricter limitation on states' ability to provide coverage to families earning over 300 percent of the Federal Poverty Level (FPL); implementing additional measures to reduce crowd-out; focusing efforts on enrolling low-income children; phasing out childless adults more quickly; and strengthening citizenship documentation requirements.
- H.R. 3963 covers the same total number of children, 34.1 million, as H.R. 976. The coverage does shift slightly between SCHIP and Medicaid. Under H.R. 3963, 400,000 more children are covered under Medicaid, which corresponds to 400,000 fewer children covered under the SCHIP program. Additionally, 100,000 fewer children are covered from newly-eligible populations. Total crowd-out remains unchanged at 2 million.
- CBO estimates that H.R. 3963 costs slightly more (\$35.4 billion as compared to \$34.9

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billion) over FYs 2008-2012. The number of children covered does not change despite the additional \$500 million allocated over that period. The total spending over the 10-year window remains unchanged at \$71.5 billion, although a significant funding shortfall remains over this period.

- CBO has indicated that a long-term spending point of order lies against H.R. 3963. CBO estimates that the changes in direct spending and revenues under H.R. 3963 would cause an increase in the on-budget deficit greater than \$5 billion in at least one of the 10-year periods between 2018 and 2057. This point of order would be subject to a 60-vote threshold.
- H.R. 3963 passed the House by a vote of 265-142 on October 25, 2007.<sup>1</sup> The prior SCHIP bill, H.R. 976, passed the Senate by a vote of 68-31 (Vote No. 307). The veto override attempt in the House failed by a vote of 273-156.
- The Administration issued a Statement of Administration Policy stating that the President will again veto the legislation if presented in its current form because it does not sufficiently address the concerns that led to the original veto.

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## **Background**

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H.R. 3963, the Children's Health Insurance Program Reauthorization Act of 2007, will revise and expand the State Children's Health Insurance Program (SCHIP). SCHIP was created to provide health care to children whose families earned too much to qualify for Medicaid, but not enough to afford private health insurance. The program is currently funded through a continuing resolution which will expire on November 16, 2007.

H.R. 3963 makes changes to the previous SCHIP reauthorization bill, H.R. 976, which was vetoed by President Bush on October 3, 2007.

This legislative notice focuses on these changes. For a substantive review of the legislation and the proposed revisions to the SCHIP program, please see the RPC legislative notice for H.R. 976, released on September 26.<sup>2</sup>

H.R. 3963 makes revisions in an attempt to address a number of issues regarding H.R. 976. These revisions include providing a stricter limitation on states' ability to provide coverage to families earning over 300 percent of federal poverty level (FPL); implementing additional measures to reduce crowd-out; focusing efforts on enrolling low-income children; phasing out childless adults more quickly; and strengthening citizenship documentation requirements.

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<sup>1</sup> The bill did not receive the two-thirds majority necessary to override an anticipated veto.

<sup>2</sup> Available at: [http://rpc.senate.gov/\\_files/L31HR976SCHIP092607AC.pdf](http://rpc.senate.gov/_files/L31HR976SCHIP092607AC.pdf).

According to the Congressional Budget Office (CBO), the revised legislation covers the same total number of children, 34.1 million, as H.R. 976. The coverage does shift slightly between SCHIP and Medicaid. Under H.R. 3963, 400,000 more children are covered under Medicaid, which corresponds to 400,000 fewer children covered under the SCHIP program. Additionally, 100,000 fewer children are covered from newly-eligible populations. Total crowd-out remains unchanged at 2 million.<sup>3</sup>

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## Noteworthy Changes from H.R. 976

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Use of bonus payments for enrollment of low-income children: Section 104 is revised to provide that bonus payments made under the section can only be used to reduce the number of low-income children who do not have health insurance in the state. States will only receive a bonus for increasing the enrollment of children in Medicaid, not SCHIP as under H.R. 976. The payment formula for bonuses under the section is also revised slightly. This includes increasing by 2.5 percent the bonus payment for enrolling low-income children in Medicaid.

Encouraging the use of premium assistance: Section 104 adds a premium assistance subsidy as an additional option that a state can implement in order for a state to qualify for SCHIP performance bonus payments.<sup>4</sup>

Redistribution of unused allotments: Section 106 changes the formula for the redistribution of unused allotments and allows the redistribution of unspent FY 2005 allotments.

Termination of coverage for childless adults: Section 112 requires that childless adults be phased off of the program within one year (by December 31, 2008) by deleting the provision which provided states the option of extending coverage for an additional year. The treatment of parents is unchanged from H.R. 976.

Limitation on payments above 300 percent FPL: Section 114 is revised to prohibit payments to cover children in families with incomes above 300 percent FPL. The section also deletes the provision that could have permitted New York to extend its program to 400 percent FPL. However, the section retains the provision that allows New Jersey, which provides coverage to families up to 350 percent FPL, to continue its program.

The section preserves a Rule of Construction which could allow states to continue to disregard certain types of income, which could have the effect of allowing states to effectively expand their programs to cover families with incomes over 300 percent FPL.<sup>5</sup>

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<sup>3</sup> The full CBO score is available at: <http://www.cbo.gov/ftpdocs/87xx/doc8741/hr976DingellTr10-24-2007.pdf>.

<sup>4</sup> Prior to this change, a state must have implemented four of seven provisions to qualify for SCHIP bonus payments. With the addition of the premium assistance option, a state must implement five of eight provisions.

Addressing crowd-out: Section 116 is amended to require that all states submit a state plan amendment detailing how each state will implement best practices to limit crowd-out. The section previously limited the requirement to states that expanded eligibility.<sup>6</sup>

Citizenship verification: Section 211, which requires that a state submit the name and Social Security number of an applicant to the Social Security Administration (SSA) to determine if the person is a citizen and eligible for benefits, is amended. Instead of reviewing the name and SSN provided on an application for “invalidity,” applications are reviewed to determine if they are “inconsistent with information in records maintained by the Commissioner [of SSA].” This allows the Commissioner of SSA to use additional information, such as records indicating place of birth, to determine whether the applicant is a citizen. If the documentation presented by the applicant is found to be inconsistent, the individual must submit supplemental documentation to satisfy the requirement. \$5 million is appropriated to the Commissioner of Social Security to help fund compliance.<sup>7</sup>

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## **Administration Position**

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The Administration said that it will again veto the legislation if presented in its current form because it does not sufficiently address the concerns that led to the veto of H.R. 976. The Statement of Administration Policy, released October 31, 2007, said, “H.R. 3963 continues to allow states to expand coverage without assuring that poor children have coverage first; continues to provide coverage for some adults through 2012; continues to allow the use of income disregards to increase eligibility levels; continues to move children from private health insurance to government programs; provides insufficient safeguards to assure that funds will not be spent on ineligible individuals; and, remarkably, actually costs more than the earlier bill, notwithstanding supposed improvements in policy.”<sup>8</sup>

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<sup>5</sup> The Congressional Research Service (CRS) noted in a recent report that states use two types of income disregards in formulating their SCHIP programs. The first are disregards which exclude a block of income. These are prohibited under the bill. However, states also use income disregards to exclude a particular dollar amount based on a type of income (e.g., earnings) or expense (e.g., child care). The rule of construction in section 114 allows this second type of income disregard. CRS Report for Congress, “SCHIP: Differences Between H.R. 3963 and the Vetoed H.R. 976,” October 29, 2007.

<sup>6</sup> CBO estimates that crowd-out remains unchanged between H.R. 3963 and H.R. 976 despite the changes between the bills.

<sup>7</sup> CBO found that the change from the original Deficit Reduction Act language would result in an additional 500,000 enrollees in Medicaid in FY 2008 and an additional 200,000 enrollees in subsequent years. CBO letter to Speaker Nancy Pelosi, October 25, 2007. The letter did not address whether the changes from H.R. 976 to H.R. 3963 would have any impact on enrollment.

<sup>8</sup> The full SAP is available at: <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3963sap-h.pdf>.

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## **Cost**

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CBO estimates that H.R. 3963 costs slightly more (\$35.4 billion as compared to \$34.9 billion) over FYs 2008-2012. The number of children covered does not change despite the additional \$500 million allocated over that period. The total spending over the 10-year window remains unchanged at \$71.5 billion, although a significant funding shortfall remains over this period.

CBO has indicated that a long-term spending point of order lies against H.R. 3963. CBO estimates that the changes in direct spending and revenues under H.R. 3963 would cause an increase in the on-budget deficit greater than \$5 billion in at least one of the 10-year periods between 2018 and 2057. This point of order would be subject to a 60-vote threshold.

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## **Possible Amendments**

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At press time it was believed that Majority Leader Reid would fill the amendment tree and not permit amendments to the bill. However, an exception may be permitted for new compromise language to be negotiated with the House and inserted as a managers' package.