Congressional Research Service

Memorandum

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TO: House Committee on Energy and Commerce
Attention: Brandon Clark

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SUBJECT: Section 114 of H.R. 976, the Children's Health Insurance Program Reauthorization Act of 2007

This memorandum is in response to your request for an analysis of Section 114 of H.R. 976, the Children's Health Insurance Program Reauthorization Act of 2007. Specifically you asked us to clarify the application of Section 114 to the state of New York with regard to (1) whether New York would be eligible for the exception to the limitation on the SCHIP matching under Section 114, (2) how much income a family of four in New York could earn and still have the children qualify for SCHIP if New York were to qualify for the exception in Section 114, and (3) whether Section 114 would affect current SCHIP provisions under which states have used income disregards to raise the effective income eligibility threshold for their SCHIP programs.[1]

Other staffers may ask for this information, which we will provide.

Background

The State Children's Health Insurance Program (SCHIP)[2] offers federal matching funds to states and territories to provide health insurance to certain low-income children. States have considerable flexibility in designing their programs, although specific requirements apply with regard to eligibility, benefits and beneficiary cost-sharing. States must submit a state plan to the Secretary of the Department of Health and Human Services (Secretary) for approval that "sets forth how the State intends to use the funds provided under this title to

[1] H.R. 976 was passed by both houses of Congress, but vetoed by President Bush.

[2] Title XXI of the Social Security Act, 42 U.S.C. §§ 1397aa *et seq.* All 50 states, the District of Columbia, and five territories have SCHIP programs.

provide child health assistance to needy children consistent with the provisions of this title."[3] Of particular relevance to this analysis are the SCHIP provisions relating to income. Section 2102(b)(1) of the Social Security Act states that a state plan "shall include a description of the standards used to determine the eligibility of targeted low income children for child health assistance under the plan. Such standards may include (to the extent consistent with this title) those relating to...income and resources (including any standards relating to spenddowns and disposition of resources)."[4]

The statute defines "targeted low-income children" as children with family income at or below 200% of poverty or up to 50 percentage points above pre-SCHIP Medicaid thresholds.[5] Thus, under current law, a state's income eligibility threshold for SCHIP is the higher of 200% of the federal poverty line (FPL) or its Medicaid income eligibility threshold for children prior to SCHIP's enactment plus 50 percentage points.[6] For states that had pre-SCHIP Medicaid income eligibility thresholds at or below 150% FPL, the income eligibility threshold for SCHIP is 200% FPL. For states that had pre-SCHIP Medicaid income eligibility thresholds above 150% FPL, the income eligibility threshold for SCHIP exceeds 200% FPL. However, by using existing flexibility to define what counts as "income," any state can raise its *effective* income eligibility limit for SCHIP above 200% of poverty or 50 percentage points above pre-SCHIP Medicaid thresholds.[7]

There are two types of income disregards that have been used by states. The first type excludes particular dollar amounts or types of income (or certain expenses, such as child care expenses). Nearly every state uses such disregards in SCHIP, which often mirror the disregards in states' Medicaid programs. Although an individual's *gross* family income may be above the state's commonly reported income eligibility limit for SCHIP, the person may qualify because his or her *net* family income (i.e., gross family income minus any disregards) falls below that limit. The second type of income disregard excludes an entire block of income. For example, New Jersey's SCHIP program covers children with *gross* family income up to 350% FPL by excluding all family income between 200% and 350% FPL (thereby reducing *net* family income to 200% FPL).[8]

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[3] Section 2101 of the Social Security Act, 42 U.S.C. § 1397aa(a).

[4] 42 U.S.C. § 1397bb(b)(1).

[5] §2110(b) and §2110(c)(4) of the Social Security Act, 42 U.S.C. § 1397jj(b) and § 1397jj(c)(4). For states that use their pre-SCHIP Medicaid income eligibility threshold plus 50 percentage points, the pre-SCHIP Medicaid eligibility threshold (1) is as of March 31, 1997, or June 1, 1997, and (2) may differ for infants under age 1, children age 1-5, and children age 6-18.

[6] Apart from these general rules, states may also use the waiver authority under Section 1115 of the Social Security Act to establish income eligibility thresholds under SCHIP.

[7] SCHIP regulations provide broad discretion in defining "income" and "family." Specifically, these regulations state that "family income" means income as determined by the state for a family as defined by the state (see 42 C.F.R. § 457.10; definitions and use of terms). The federal government must approve these state-defined terms.

[8] The New Jersey state SCHIP plan containing this "block of income" disregard was approved by the Department of Health and Human Services on August 3, 1999. See "New Jersey Title XXI Program & Title XXI Amendment Fact Sheet," available at [http://www.cms.hhs.gov/LowCostHealthInsFamChild/SCHIPASPI/list.asp].

Description of Section 114 of H.R. 976

Section 114 of H.R. 976 provides as follows:

SEC. 114. LIMITATION ON MATCHING RATE FOR STATES THAT PROPOSE TO COVER CHILDREN WITH EFFECTIVE FAMILY INCOME THAT EXCEEDS 300 PERCENT OF THE POVERTY LINE.

(a) FMAP Applied to Expenditures- Section 2105(c) (42 U.S.C. 1397ee(c)) is amended by adding at the end the following new paragraph:

`(8) LIMITATION ON MATCHING RATE FOR EXPENDITURES FOR CHILD HEALTH ASSISTANCE PROVIDED TO CHILDREN WHOSE EFFECTIVE FAMILY INCOME EXCEEDS 300 PERCENT OF THE POVERTY LINE-

`(A) FMAP APPLIED TO EXPENDITURES- Except as provided in subparagraph (B), for fiscal years beginning with fiscal year 2008, the Federal medical assistance percentage (as determined under section 1905(b) without regard to clause (4) of such section) shall be substituted for the enhanced FMAP under subsection (a)(1) with respect to any expenditures for providing child health assistance or health benefits coverage for a targeted low-income child whose effective family income would exceed 300 percent of the poverty line but for the application of a general exclusion of a block of income that is not determined by type of expense or type of income.

`(B) EXCEPTION- Subparagraph (A) shall not apply to any State that, on the date of enactment of the Children's Health Insurance Program Reauthorization Act of 2007, has an approved State plan amendment or waiver to provide, or has enacted a State law to submit a State plan amendment to provide, expenditures described in such subparagraph under the State child health plan.'.

(b) Rule of Construction- Nothing in the amendments made by this section shall be construed as--

(1) changing any income eligibility level for children under title XXI of the Social Security Act; or

(2) changing the flexibility provided States under such title to establish the income eligibility level for targeted low-income children under a State child health plan and the methodologies used by the State to determine income or assets under such plan.

This provision provides that for states that want to expand SCHIP coverage beyond 300% of poverty that, if such an expansion is approved by the Secretary, the states will receive only the regular Medicaid matching rate (the Federal Medical Assistance Percentage, FMAP) rather than the enhanced matching rate that is typically available through SCHIP. An exception is provided in Section 114 for states that already provide coverage above 300% of poverty as of the date of enactment of the bill, pursuant to an approved state plan amendment or a waiver, and for states that, as of the date of enactment of the bill, have "enacted a State law to submit a State plan amendment to provide" for expenditures for child health assistance or health benefits coverage for a targeted low-income child whose effective family income exceeds 300% FPL.

New York's Potential Eligibility for an Exception to the Limitation in Sec. 114

The State of New York has enacted a budget bill (2007-2008 Health and Mental Hygiene Budget, S.2108-C/A4308-C) that appears to meet the criteria described above allowing a state to be grandfathered in under the exception to the limitation on FMAP in Section 114 of H.R. 976.[9] New York submitted a state plan amendment (SPA) on April 12, 2007, to "increase the financial eligibility standard for its separate State Children's Health Insurance Program (SCHIP) from the current effective family income eligibility level at or below 250 percent of the FPL to an effective family income eligibility level at or below 400 percent of the FPL."[10] This request for approval of a SPA was rejected on September 7, 2007.[11] So, while it appears that New York could meet the criteria of the exception to the limitation on FMAP imposed by Section 114 of H.R. 976 as a state "that has enacted a State law to submit a State plan amendment" to provide SCHIP effective family income eligibility up to 400% FPL, New York is unable to change its eligibility criteria at the present time since its SPA was not approved by the Secretary. This leaves open the possibility that if the Secretary were to approve New York's SPA after a reconsideration of its determination[12] or at a future time, that the state could be grandfathered in under the exception to the limitation on FMAP under Section 114 for states that cover children with effective family income that exceed 300% FPL.

Proposed SCHIP Income Eligibility Threshold at 400% FPL

Currently, the federal poverty line for a family of four is set at $20,650,[13] so that if New York were permitted to change its SCHIP eligibility criteria to allow it to cover families with an effective income level of up to 400% FPL, it could receive the enhanced FMAP for children whose families have an income level of up to $82,600 per year — both under current law and under the exception in Section 114 of H.R. 976.

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[9] According to a New York state Governor's office press release: "The budget enacts into law the Governor's proposal to expand Child Health Plus (CHPlus) to families with incomes up to 400 percent of the federal poverty level, making coverage accessible to nearly all of the 400,000 currently uninsured children in New York under the age of 19" [http://www.ny.gov/governor/press/0401074.html].

[10] Letter from Kerry Weems, Acting Administrator, Centers for Medicare and Medicaid Services, to Judith Arnold, State of New York Department of Health, September 7, 2007 [http://www.cms.hhs.gov/hillnotifications/Downloads/NY-SPAnumber10.pdf].

[11] Id.

[12] The state of New York may request a reconsideration of the Secretary's determination under procedures set forth at 42 C.F.R. § 457.203.

[13] U.S. Department of Health and Human Services, "The 2007 HHS Poverty Guidelines," [http://aspe.hhs.gov/poverty/07poverty.shtml], from *Federal Register*, vol. 72, no. 15, January 24, 2007, pp. 3147–3148.

Provided below is further background on the FPL and various SCHIP income levels used or proposed by the states. Based on the number of people in the family shown in column A of **Table 1**, column B shows annual incomes associated with the FPL for the 48 contiguous states and the District of Columbia.[14] Column C doubles these amounts, displaying 200% of poverty. Column D shows the income eligibility threshold for children in New Jersey's SCHIP, at 350% FPL, currently the highest in the nation.[15]

Column E of **Table 1** shows 400% FPL. Currently, no state's SCHIP income eligibility threshold is this high. New York's application to expand SCHIP coverage to children in families with income up to 400% FPL was rejected.[16]

Table 1. Annual Family Income At Various Poverty Levels, 2007

A	B	C	D	E
	Federal poverty line (100% of poverty)	**200% of poverty**	**350% of poverty**	**400% of poverty**
Persons in family	**Children[a] with family income below this level are eligible for full-benefit Medicaid**	**All but 8 states have SCHIP eligibility levels for children[a] up to at least this level**	**Only 1 state, New Jersey, has SCHIP eligibility for children[a] at this level**	**No state currently has SCHIP eligibility at this level; New York's application to expand coverage to this level was rejected**
1	$10,210	$20,420	$35,735	$40,840
2	$13,690	$27,380	$47,915	$54,760
3	$17,170	$34,340	$60,095	$68,680
4	$20,650	$41,300	$72,275	$82,600
Each additional person	$3,480	$6,960	$12,180	$13,920

Source: CRS calculations based on U.S. Department of Health and Human Services, "The 2007 HHS Poverty Guidelines," [http://aspe.hhs.gov/poverty/07poverty.shtml], from *Federal Register*, vol. 72, no. 15, January 24, 2007, pp. 3147–3148. See also "Year 2007 Income Guidelines," New Jersey Family Care, [http://www.njfamilycare.org/pages/whatItCosts.html].

a. Excluding noncitizens who are in the country illegally, as well as noncitizens who have been in the country legally for less than five years. States may provide health coverage to these individuals with their own funds.

Note: The federal poverty line and the corresponding numbers in the table are approximately 25% higher in Alaska and approximately 15% higher in Hawaii than the level for the 48 contiguous states and the District of Columbia.

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[14] Id.

[15] For a list of states' current effective income eligibility thresholds for children in SCHIP, see Table 1 of CRS Report RL30473, by Elicia J. Herz et al., *State Children's Health Insurance Program (SCHIP): A Brief Overview* [http://www.congress.gov/erp/rl/pdf/RL30473.pdf].

[16] Letter from Kerry Weems, Acting Administrator, Centers for Medicare and Medicaid Services, to Judith Arnold, State of New York Department of Health, September 7, 2007 [http://www.cms.hhs.gov/hillnotifications/Downloads/NY-SPAnumber10.pdf].

Continued Flexibility to Set Income Eligibility Thresholds and to Define "Income" in SCHIP

Section 114(b)(2) of the legislation contains a "rule of construction"specifying that Section 114 does not change "the flexibility provided States ... to establish the income eligibility level for targeted low-income children [in SCHIP] and the methodologies used by the State to determine income or assets under such plan." Thus, this section would not alter the provisions in current law pertaining to SCHIP income eligibility levels for children or states' flexibility in defining income for SCHIP eligibility determinations. This "rule of construction" is limited to the amendments made by Section 114, and so would not pertain to other provisions of H.R. 976 that would amend current SCHIP provisions.