



National Association of State Medicaid Directors  
an affiliate of the American Public Human Services Association

To: State Medicaid Directors  
From: Martha Roherty  
Date: December 20, 2007  
Subject: Year End Health Update

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### **SCHIP REAUTHORIZATION UPDATE**

On December 19, the House passed the Medicare Medicaid SCHIP Extension Act (S. 2499), which included an 18-month extension of SCHIP. S. 2499 passed the Senate by voice vote on December 18. The act will extend funding for SCHIP through March 31, 2009, and allocate \$5 billion for each of FYs 2008 and 2009. In addition, S. 2499 provides \$ 1.6 billion to fund the shortfall states. This bill also allocates necessary funds, not to exceed \$275 million, for states experiencing shortfalls in the first two quarters of FY 2009.

The long-term extension comes after President Bush had earlier vetoed the SCHIP reauthorization bill for the second time this year. Rep. Nancy Pelosi (D-Calif.), the Speaker of the House, has scheduled the veto override vote for January 23, 2008. The SCHIP program has been funding through continuing resolutions since the end of FY 2007.

Earlier this year, on November 1, the Senate passed the Children's Health Insurance Program Reauthorization Act of 2007 (H.R. 3963) by a vote of 64 to 30, one week after the House approved the bill. The President indicated that he would oppose any measure that involved an increase in the federal cigarette tax. In an attempt to delay another veto and failed override attempt, Senate Majority Leader Harry Reid (D-Nev.) and House Speaker Pelosi delayed enrolling the revised bill and sending it to the President. Congressional negotiations took place throughout the month of November and focused on three key issues: prohibiting undocumented immigrants from enrolling, creating programs to help low-income individuals buy private insurance, and constructing a mechanism to force states to demonstrate that they have covered a majority of children from families earning less than 200 percent of the federal poverty level before expanding the program to families with higher incomes.

A document entitled "Tentative CHIP Agreement" was produced by Senate negotiators and outlined a number of key issues. States would be required to show they were either covering 90 percent of children below 200 percent or 250 percent of the federal poverty level or that their coverage rate for children was equal to or better than the 20<sup>th</sup> best-performing state. Eligibility would be capped at 300 percent of the poverty level, and states would not be permitted to disregard expenses such as housing and transportation costs for the purposes of qualifying families. Individuals enrolling in SCHIP would be required to attest to their citizenship, under penalty of perjury, and children and pregnant women would be required to provide a Social Security number and date of birth. Furthermore, under the tentative deal, states currently covering adults would be required to take them out of the program by either December 31, 2009, or by the date their parental coverage waivers expire. Two other issues discussed were whether children should be enrolled into SCHIP under an Express Lane procedure when applying for programs such as food stamps, and whether states can assume children are eligible for SCHIP, rapidly enroll them, and check their qualification at a later time. However, talks broke down after Republicans required the inclusion of federal eligibility limits on the Medicaid beneficiaries.

Congressional leaders are considering bringing up SCHIP again in the summer of 2008.

The text of H.R. 3963 and S. 2499 can be found at <http://thomas.loc.gov>.

The President's Statement of Administration Policy on the bill can be found at <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr3963sap-h.pdf>.

## MORATORIUMS ON CERTAIN MEDICAID REGULATIONS

In 2007, the Centers for Medicaid and Medicare Services proposed a number of regulations that would shift billions of dollars of federal expenses to the states. Congress has acted to delay implementation on a handful of these regulations.

- The first moratoriums passed were for the Graduate Medical Education, Public Provider Cost Limit regulations, which will be delayed until May 25, 2008, and were included in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act (P.L. 110-28).
- The second action Congress took was to delay implementation of the Tamper Resistant Prescription Pads implementation until March 31, 2008. This moratorium was included in the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (P.L. 110-90)
- The final action that Congress took was to pass moratoriums on the Rehabilitation and School-Based Administration and Transportation regulations until June 30, 2008. These provisions were included in the Medicare Medicaid SCHIP Extension Act (S. 2499)

### Medicaid Regulations

Effective Date	Action/Status
<b>Provider Tax</b>	
1/1/08	P.L. 109-432 (Tax Relief and Health Care Act) - Codifies that the maximum amount that a state may receive from a health care-related tax is 6 percent. Temporarily reduces the permissible rate from Jan. 1, 2008 through 2011 to 5.5 percent. On Oct. 1, 2011, the cap reverts back to 6 percent.
<b>GME</b>	
<b>Delayed Until: 5/25/08</b>	P.L. 110-28 includes a one-year moratorium that prohibits CMS from taking further action on the proposal until May 25, 2008.
<b>Public Provider Cost Limit Regulation</b>	
<b>Delayed Until: 5/25/08</b>	Congress acted to delay the effective date to May 25, 2008.
<b>Medicaid Pharmacy Pricing</b>	
<b>delayed</b>	The D.C. U.S. District Court placed an injunction on the implementation until the case can be reviewed.
<b>Rehabilitation Services Option</b>	
<b>Delayed Until: 6/30/08</b>	The Medicare Medicaid SCHIP Extension Act includes a moratorium until June 30, 2008. In addition, the manager's amendment to the Indian Health Care Improvement Act Amendments of 2007 (H.R. 1328) Includes a new definition of "Rehabilitation" "(8) REHABILITATION.—The term 'rehabilitation' means medical and health care services that—(A) are recommended by a physician or licensed practitioner of the healing arts within the scope of their practice under applicable law; (B) are furnished in a facility, home, or other setting in accordance with applicable standards; and (C) have as their purpose any of the following: (i) The maximum attainment of physical, mental, and developmental functioning. (ii) Averting deterioration in physical or mental functional status. (iii) The maintenance of physical or mental health functional status."
<b>Tamper-Resistant Prescription Pads</b>	
<b>Delayed Until: 3/31/08</b>	P.L. 110-90 (TMA, Abstinence Education, and QI Programs Extension Act of 2007)-Provided for a 6 month extension until March 31, 2008.
<b>School-Based Administration and Transportation</b>	
<b>Delayed Until: 6/30/08</b>	The Medicare Medicaid SCHIP Extension Act includes a moratorium until June 30, 2008.
<b>Outpatient Clinic and Upper Payment Limit</b>	
n/a	
<b>Targeted Case Management</b>	
3/3/2008	

On November 7, the National Association of Chain Drug Stores and the National Community Pharmacists Association filed a joint lawsuit in the federal court in the District of Columbia alleging that the new formula for reimbursing pharmacies for generic drugs violates the law. On December 14, the U.S. District Court for the District of Columbia imposed an injunction on the implementation of this rule until the Court has the opportunity to review the case.

In December, both APHSA and its affiliate, the NASMD, and 30 governors sent Congressional leaders letters urging them to take immediate action to prevent the implementation of the pending regulations. Congress has acted on a handful of the regulations, but the moratoriums are scheduled to end in 2008.

Also, Senators Robert Menendez (D-N.J.) and Arlen Specter (R-Pa.) distributed a Dear Colleague letter to urge Congressional action on the August 17, 2007, Dear State Medicaid Director letter that requires states to prove that over 95 percent of children in families that earn less than 200 percent of the federal poverty level are enrolled in the SCHIP program before the cap can be expanded to 250 percent of FPL. The senators asked that a moratorium be placed on the directive while reauthorization of SCHIP continues to be under debate.

The APHSA/NASMD letter can be viewed at [http://www.aphsa.org/Home/doc/delay\\_CMS\\_Regulations.pdf](http://www.aphsa.org/Home/doc/delay_CMS_Regulations.pdf).