NPAIHB POLICY BRIEF

SCHIP Reauthorization

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SCHIP Reauthorization and Indian Health Provisions

Portland, OR – In late September Congress approved a State Children's Health Insurance Program (SCHIP) package that would provide $60 billion for children's health coverage from FY 2008 – FY 2009. The SCHIP legislation expired on September 30, 2007, although the continuing resolution that recently passed by Congress, and signed by the President, extends the program until November 16, 2007.

On Wednesday, October 3rd, President Bush vetoed that SCHIP reauthorization package, which sets the stage for a Congressional show down. Congress will need a two-thirds vote in each chamber to over-ride the veto. The Senate has the 67 votes it needs for a veto over-ride, while the House will need at least 24 more votes to reach the 291 required for its over-ride. The Senate voted 67-29 to pass the SCHIP bill, while the House voted 265-159. It is expected that the House will try an over-ride vote in approximately two weeks. The SCHIP package is a $35 billion expansion over the current program and $30 billion more than what the White House wanted. The Administration has continuously objected to Congressional discussions about such an increase in the SCHIP program.

SCHIP is a Social Security Act program that is jointly financed by Federal and State governments and administered by the States. The program provides a capped amount of funds to States on a matching basis. SCHIP is intended for families who earn too much to qualify for Medicaid and can not afford private health insurance. States have different eligibility rules, but in most states, uninsured children under the age of 19, whose families earn up to $36,200 a year (for a family of four) are eligible. For little or no cost, SCHIP covers doctor visits, immunizations, hospitalizations, and emergency room visits.

House Republicans from the Northwest voting for the bill included Cathy McMorris (WA), Mike Simpson (ID), and Dave Reichert (WA). Those that voted against the bill were Doc Hastings (WA), William Sali (ID), and Greg Walden (OR). All Northwest Democrat members voted in favor of the SCHIP legislation.

It's unfortunate that the President vetoed the SCHIP bill (H.R. 976) since it contained several Indian specific provisions that would have greatly benefited IHS and Tribally operated health programs.

- **Sec. 201 – Grants and Enhanced Administrative Funding for Outreach and Enrollment**. Provides $100 million for grants and administrative funding for outreach and enrollment of eligible children into the SCHIP program. Section 201(b)(2) provides a 10 percent set-aside of the funding for Indian Health Service (IHS) and urban Indian organizations receiving funds under Title V of the Indian Health Care Improvement Act (25 U.S.C. §1651 et seq).

    - Section 201 also provides for an additional 10 percent aimed at increasing enrollment of eligible American Indian and Alaska Native children. Priority of grants will be given to those entities that propose to target geographic areas with high rates of eligible children and under enrollment, children that reside in rural areas, racial and ethnic minorities, high health disparities populations, including cultural and linguistic barriers.
    - The remaining 80 percent of funds appropriated would support outreach grants to states, local governments, tribes/tribal consortia, urban Indian organizations, schools, faith-based organizations, and "safety net organizations" that have access to SCHIP-eligible populations.

- **Sec. 202 – Increased Outreach and Enrollment of Indians.** The provision would encourage States to take steps to provide for enrollment of Indians residing on or near a reservation in Medicaid and CHIP.

    - This also removes the 10 percent cap on expenditure of federal funds for outreach and enrollment activities to families of Indian children likely to be eligible for child health assistance. (Similar provision in the Indian Health Care Improvement Act)

- **Sec. 211(b) – Clarification of Requirements Relating to Presentation of Satisfactory Documentary Evidence of Citizenship or Nationality.** This section would allow a document issued by federally recognized Indian Tribes that evidences membership or enrollment in, or in affiliation with, with a Tribe to be accepted as proof of the individual's citizenship, nationality, and identity for the purposes of Medicaid and SCHIP eligibility and re-determination. The provision would require the HHS Secretary to promulgate regulations after hearing Tribal consultation where Tribes have an international border and allow Tribal membership by non-U.S. citizens. Until such regulations would be promulgated, a Tribally issued document would continue to be sufficient as proof of U.S. citizenship.

The last provision is extremely important to Indian Tribes to overturn the harmful regulation that was required in the Deficit Reduction Act (DRA). The DRA amended the Social Security laws to require that an individual must prove their citizenship when enrolling or having their eligibility re-determined in the Medicaid program. It is felt by many Tribal health advocates that the new DRA provision, which became effective July 1, 2006, is responsible for Indian people being dropped from the Medicaid program. Indian people often have difficulty obtaining the required birth certificates and passports for a variety of reasons. The regulations for this DRA provision issued by the Centers for Medicare & Medicaid Services allow some Tribal documents to serve as proof of identity; however do not serve to meet the requirements of citizenship.[1]

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[1] The CMS regulations do allow Tribal documents to serve as proof of Citizenship for only two Tribes, while many Tribes' enrollment requirements are equal to or exceed those allowed in the CMS regulation.

Children's Health Insurance Program (CHIP) Reauthorization Act of 2007
Section-by-Section

Sec. 1. Short Title.
Sec. 2. Purpose.
Sec. 3. General Effective Dates. This section establishes the general effective dates for the legislation.

Title I – Financing

Subtitle A – Funding

Sec. 101. Extension of CHIP. This section establishes annual CHIP allotments for fiscal years 2008 through 2012 and reauthorizes the CHIP program for this time period providing an additional $34.7 billion in block grants as follows:

FY2008: $9.125 billion
FY2009: $10.675 billion
FY2010: $11.850 billion
FY2011: $13.750 billion
FY2012: $3.500 billion

(*Note:* Additional appropriation of $12.5 billion in FY2012 under Sec. 108 (below) will make annual total Federal CHIP funds in FY2012 $16 billion.)

Sec. 102. Allotments for States and Territories for Fiscal Years 2008 through 2012. This section establishes the individual allotments for the States and territories for FY2008 through 2012. In FY2008, State allotments will be based on 110 percent of the highest of 4 factors. For subsequent years, State allotments will be calculated by indexing Federal payments to the State in the previous fiscal year by growth in national health expenditures and child population in the State. States planning an expansion of coverage or benefits will be allowed to rely on projections for the purposes of determining their allotments in certain years. In the event the sum of the State allotments exceeds the national cap, allotments to States will be pro-rated. Territory base allotments in FY2008 will be their highest allotment over the previous 10-year period, adjusted for inflation. After FY2008, territory allotments will be under the same rules as States for growth and not be subject to a cap on total spending as a percentage of national CHIP allotments.

Sec. 103. Child Enrollment Contingency Fund. This section establishes a contingency fund for States that experience a funding short fall as a result of increased enrollment of low-income children. The fund is capped at an amount equal to 20 percent of the annual national allotment.

Sec. 104. CHIP Performance Bonus Payment to Offset Additional Enrollment Costs Resulting from Enrollment and Retention Efforts. This section provides performance bonuses for States that exceed enrollment targets in Medicaid and CHIP to cover children who are eligible but not enrolled. Performance bonuses are funded by an initial $3 billion to which are added unspent State allotments and other unobligated CHIP funding.

Sec. 105. Two-Year Initial Availability of CHIP Allotments. This section establishes a two-year period for States to spend CHIP allotments.

Sec. 106. Redistribution of Unused Allotments to Address State Funding Shortfalls. This section outlines a process for redistributing unspent CHIP allotments to provide to States in shortfall.

Sec. 107. Option for Qualifying States to Receive the Enhanced Portion of the CHIP Matching Rate for Medicaid Coverage of Certain Children. Certain States that had expanded Medicaid eligibility to at least 185 percent of the Federal poverty level prior to the enactment of CHIP may spend the full amount of their allotment on children in families at or above 133 percent of the Federal poverty level.

Sec. 108. One-time Appropriation. This provides a one-time appropriation of $12.5 billion in FY2012 for CHIP allotments.

Sec. 109. Improving Funding for the Territories Under CHIP and Medicaid. Federal matching payments of territories for data reporting and improvements are exempt from the overall cap on spending that exists for payments to territories under Medicaid. The Government Accountability Office (GAO) is directed to report to Congress with recommendations for improving Medicaid and CHIP data collection and funding regarding the territories.

Subtitle B – Focus on Low-Income Children and Pregnant Women

Sec. 111. State Option to Cover Low-Income Pregnant Women under CHIP through a State Plan Amendment. States would have a new option to cover pregnant women through a State Plan Amendment in CHIP if the State covers pregnant women in Medicaid up to 185 percent of the Federal poverty level, covers children in CHIP up to 200 percent of the Federal poverty level, and does not have a waiting list, enrollment cap, or other similar limitation on children's coverage, and does not cover pregnant women at higher eligibility levels than children. Current State options to cover pregnant women under a State waiver or regulation is preserved.

Sec. 112. Phase-out of Coverage for Non-pregnant Childless Adults under CHIP; Coverage of Parents.

- Childless Adults: CHIP coverage for childless adults would be phased out. In FY2008, States that cover childless adults in CHIP will be able to continue coverage at CHIP match. Beginning in FY2009, CHIP funding for childless adults will be capped based on FY2008 spending levels, but States will only be eligible for a Medicaid match and limited to covering only those individuals enrolled during FY2008. After FY2009, States are given an expedited process for transitioning to Medicaid.
- Parents: Parent coverage will transition to lower Federal payments. States now covering parents can maintain coverage at the CHIP matching rate for 2 years in FY2008 and FY2009. In FY2010, States may receive an additional year at CHIP match if they meet

outreach or coverage benchmarks. For FY2011 and FY2012, States receive a reduced match rate if they meet the following coverage benchmarks: (1) the State is in the lowest 1/3 of all States in terms of the number of uninsured low-income kids, or (2) the State is eligible for a bonus fund payment for increasing enrollment. States that do not meet benchmarks will get the Medicaid match rate. No new parent waivers are permitted.

Sec. 113. Elimination of Counting Medicaid Child Presumptive Eligibility Costs Against Title XXI Allotment. This provision would facilitate the use of presumptive eligibility in Medicaid and CHIP by allowing the same entities to determine eligibility of pregnant women that currently determine presumptive eligibility for children. This section also clarifies that newborns who are enrolled in Medicaid at birth remain enrolled for the first year of life.

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. States that provide coverage to children in families with incomes above 300 percent of the Federal poverty level would be eligible only for Medicaid Federal matching payments (not enhanced payments) for children above 300 percent of the Federal poverty level**.** State programs that were approved before the date of enactment are not affected. Nothing in the amendments made by this section shall be construed as changing any income eligibility level for children under title XXI of the Social Security Act.

Sec. 115. Technical Correction Regarding Current State Authority Under Medicaid. This provision clarifies that nothing prevents States from covering children in Medicaid and receiving regular matching payments from the Federal Government or from receiving the regular Medicaid match rate for CHIP children under an expansion of the State's Medicaid program.

Sec. 116. Preventing Substitution of CHIP Coverage for Private Coverage. The Government Accountability Office and the Institute of Medicine would produce analyses on the most accurate and reliable way to measure the rate of public and private insurance coverage and on best practices by States in addressing crowd-out. Following these two reports, the Secretary, in consultation with States, will (1) develop crowd-out best practices recommendations for the States to consider and (2) develop a uniform set of data points for States to track and report on coverage of children below 200 percent FPL and on crowd-out.

Once done, States that extend CHIP coverage to children above 300 percent FPL must submit to the Secretary a State plan amendment describing how they will address crowd-out for this population, incorporating the best practices recommended by the Secretary.

In addition, after October 1, 2010, Federal matching payments are not permitted to States that cover children whose family incomes exceed 300 percent of poverty if the State does not meet a target for the percentage of children at or below 200 percent of poverty enrolled in CHIP. The target rate would be the average rate of insurance coverage (public and private) among the highest-ranking 10 States. The agreement gives States time and assistance in developing and implementing best practices to address crowd-out.

Title II – Outreach and Enrollment

Subtitle A – Outreach and Enrollment Activities

Sec. 201. Grants and Enhanced Administrative Funding for Outreach and Enrollment. This section provides $100 million for grants to fund outreach and enrollment efforts that increase coverage of eligible Medicaid and CHIP children.

- National Campaign: $10 million would be spent on a national outreach program for the Secretary to improve outreach and enrollment.
- Native American Outreach: $10 million for grants to Indian organizations to improve enrollment of Native Americans.
- Federal Grant Program: For the remaining $80 million, the Secretary would prioritize funding entities that target rural areas with high rates of eligible but not enrolled children, racial and ethnic minorities and health disparity populations, and populations with cultural and linguistic barriers to enrollment.

This section also ensures Community Health workers are an integral part of CHIP outreach. To improve outreach, access to services, and retention, this section provides enhanced funding for translation and interpretation services under both Medicaid and CHIP. Payments for this activity in CHIP are matched at either 75 percent or the sum of the CHIP match for the State plus 5 percentage points, whichever is higher; or 75 percent in Medicaid.

Sec. 202. Increased Outreach and Enrollment of Indians. The provision would encourage States to take steps to provide for enrollment of Indians residing on or near a reservation in Medicaid and CHIP, and exempts States from the 10 percent cap on administrative spending in CHIP for outreach and enrollment to Native American families.

Sec. 203. State Option to Rely on Findings from an Express Lane Agency to Conduct Simplified Eligibility Determinations. States would have a new time-limited option to expedite children's enrollment in CHIP and Medicaid by using eligibility information used by other programs, such as the Food Stamp or School Lunch programs. This section facilitates the information disclosure needed for Express Lane determinations and would ensure that privacy protections are maintained.

Subtitle B – Reducing Barriers to Enrollment

Sec. 211. Verification of Declaration of Citizenship or Nationality for Purposes of Eligibility for Medicaid and CHIP.

- Social Security Number Verification Alternative: The provision provides a new Medicaid citizenship documentation option. Under this new option, a State could document citizenship by submitting the names and Social Security numbers (SSN) of individuals to the Commissioner of Social Security.

States would be required to provide information on the percentage of invalid names and SSNs submitted each month. If the average monthly percentage of invalid matches for any fiscal year is greater than 3 percent, the State shall adopt a corrective plan and will be financially penalized. States would receive 90 percent reimbursement for costs attributable to the design, development, or installation of mechanized verification systems, and 75 percent for the operation of such systems.

- Technical Clarifications: The provision also includes technical clarifications for the existing citizenship documentation requirement. It would add tribal documents to the list of acceptable citizenship documents, except for tribes located within States having an international border whose membership includes non-citizens. It would also provide a permanent exemption for children deemed eligible for Medicaid by virtue of being born to a mother on Medicaid.

Sec. 212. Reducing Administrative Barriers to Enrollment. The provision would require the State plan to describe the procedures used to reduce the administrative barriers to the enrollment of children and pregnant women in Medicaid and CHIP, and to revise these procedures as often as the State determines is appropriate.

Sec. 213. Model of Interstate Coordinated Enrollment and Coverage Process. This section requires the Secretary of the Department of Health and Human Services (HHS) to work with State Medicaid and CHIP directors and interested organizations to develop model processes to facilitate Medicaid and CHIP enrollment for people who move between States in certain circumstances, such as disaster survivors, military families or migrant workers. The Secretary will submit a report on the model process to Congress within 18 months of enactment

Title III – Reducing Barriers to Providing Premium Assistance

Subtitle A – Additional State Option for Providing Premium Assistance

Sec. 301. Additional State Option for Providing Premium Assistance. This provision provides a new option for States to offer premium assistance subsidies for qualified employer coverage for employers that contribute at least 40 percent towards the cost of coverage and meet other requirements. Premium assistance subsidies could not be provided for health flexible spending arrangements and high deductible health plans under this option. States would be allowed to use a new cost-effectiveness test under CHIP allowing consideration of family costs or the aggregate costs to the State, and would be required to provide supplemental coverage for low-income children enrolled in the premium assistance plans.

Sec. 302. Outreach, Education, and Enrollment Assistance. This provision requires States to include a description of the procedures in place to provide outreach, education, and enrollment assistance for families of children likely to be eligible for premium assistance subsidies under CHIP or a section 1115 waiver. The State must include description of efforts to educate employers that may potentially provide coverage that qualifies for CHIP premium assistance subsidies. States that use premium assistance programs are given additional administrative funds to spend on outreach and enrollment for these programs.

Subtitle B – Coordinating Premium Assistance with Private Coverage

Sec. 311. Special Enrollment Period Under Group Health Plans in Case of Termination of Medicaid or CHIP Coverage or Eligibility for Assistance in Purchase of Employment-Based Coverage. This provision amends current special enrollment rules under ERISA, the Internal Revenue Code, and the Public Health Service Act to require group health plans and health insurers to permit children covered under Medicaid or CHIP to enroll in private coverage outside of the open enrollment period if the child becomes newly eligible for CHIP or Medicaid coverage or loses coverage under Medicaid or CHIP. The provision also sets up a new process for group health plans and insurers to share information about private coverage offered to CHIP and Medicaid-eligible individuals with States so they can determine whether the private coverage is cost-effective for the purposes of initiating a premium assistance program. The Secretary of HHS and the Secretary of Labor would be required to jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group to develop forms to enable States to determine the availability and cost-effectiveness of coverage. Group health plans and insurers would be required to provide information to States upon request.

Title IV – Strengthening Quality of Care and Health Outcomes

Sec. 401. Child Health Quality Improvement Activities for Children Enrolled in Medicaid or CHIP. This provision creates a new quality initiative for children including grants for the development, testing, and evaluation of evidence-based measures of child healthcare services provided by CHIP and Medicaid. The Secretary of HHS will identify and publish a core set of measures that will be updated to evaluate the quality of care provided to children enrolled in Medicaid and CHIP, including a focus on children with special needs and measures that reduce racial, ethnic, and socioeconomic disparities in care. States would report CHIP and Medicaid quality measures annually. This section also provides $5 million in grants for the development of an electronic health record for CHIP and Medicaid enrollees. In addition, it provides $10 million in grants for child health studies, including: health care for the duration of childhood, preventative health care, treatment for chronic and acute conditions, and discovery of knowledge gaps within CHIP and child health.

Sec. 402. Improved Information Regarding Access to Coverage under CHIP. This provision requires each State to include additional information in its annual CHIP report to the Secretary of HHS such as: eligibility criteria, enrollment, and retention data.

Sec. 403. Application of Certain Managed Care Quality Safeguards to CHIP. This section applies certain managed care protections in Medicaid, such as information disclosure and prudent layperson emergency standards to managed care plans in CHIP.

Title V – Improving Access to Benefits

Sec. 501. Ensuring Child-centered Coverage. This section fixes a technical problem with the Deficit Reduction Act to clarify that Medicaid-eligible children are entitled to coverage of medically necessary Early Periodic Screening, Diagnosis, and Treatment (EPSDT) services.

Sec. 502. Dental Services. This section provides comprehensive dental coverage in CHIP. States may either provide a dental benefit as contained in the CHIP statute or choose among three other coverage options: (1) equivalent to the coverage offered by the FEHBP dental option, (2) the largest dental plan in the State, or (3) the State employees dental plan with the largest enrollment of children.

Sec. 503. Mental Health Parity in CHIP. This section ensures that coverage for mental illnesses are treated on par with physical illnesses in CHIP.

Sec. 504. Application of Prospective Payment System for Services Provided by Federally Qualified Health Centers and Rural Health Clinics. This section applies the Medicaid prospective payment system for Federally Qualified Health Centers and Rural Health Clinics to CHIP.

Sec. 505. Premium Grace Period. This section ensures that States provide at least a 30-day grace period for payment of premiums before terminating a child's coverage.

Sec. 506. Demonstration Projects Relating to Diabetes Prevention. This section provides grant funds for diabetes prevention.

Title VI – Program Integrity and Other Miscellaneous Provisions

Subtitle A – Program Integrity and Data Collection

Sec. 601. Payment Error Rate Measurement ("PERM"). The provision applies a Federal matching rate of 90 percent to expenditures related to PERM and would exclude from the 10 percent CHIP administrative cap all expenditures related to the administration of PERM. Any calculation or publishing of national or State-specific error rate is prohibited until six months after the date of final implementation. Final rules must include clearly defined criteria for errors for both States and providers, clearly defined process for appealing error determinations, and clearly defined responsibilities and deadlines for States in implementing any corrective action plans.

Sec. 602. Improving Data Collection. This provision appropriates an additional $10 million annually for the Current Population Survey (CPS) improvements and directs the Secretary to assess the American Community Survey (ACS) to determine its suitability for future use in CHIP.

Sec. 603. Updated Federal Evaluation of CHIP. This section directs the Secretary to conduct an overall evaluation of CHIP modeled after the first comprehensive program evaluation in 2005.

Sec. 604. Access to Records for IG and GAO Audits and Evaluations. This section ensures that the Inspector General and Government Accountability Office have access to necessary data and documents for audits and evaluations.

Section 605. No Federal Funding for Illegal Aliens. This section clarifies that nothing under this Act allows Federal funding to be spent on illegal aliens.

Subtitle B – Miscellaneous Health Provisions

Sec. 611. Deficit Reduction Act Technical Correction. This section fixes a problem in the Deficit Reduction Act relating to notice under benchmark coverage**.**

Section 612. References to Title XXI. This provision repeals the requirement to use the term "SCHIP" or "State Children's Health Insurance Program" in official publications and renames the program "CHIP".

Sec. 613. Prohibiting Initiation of New Health Opportunity Account Demonstration Projects. This section prohibits the Secretary from implementing any additional health opportunity account demonstrations.

Sec. 614. County Medicaid Health Insuring Organizations. This section increases the percentage of enrollees who may enroll in a county Medicaid health organization.

Sec. 615. Adjustment in Computation of Medicaid FMAP to Disregard an Extraordinary Employer Pension Contribution. This section ensures that States are not penalized if an employer makes an extraordinarily large pension contribution.

Sec. 616. Moratorium on Certain Payment Restrictions. The Secretary shall not restrict payments under Medicaid for rehabilitation services, school-based administration, transportation, or medical services beyond such coverage or payment as of July 1, 2007.

Sec. 617. Medicaid DSH Allotments for Tennessee and Hawaii. This section provides disproportionate share hospital allotments for Tennessee and Hawaii.

Sec. 618. Clarification of Treatment of Regional Medical Center. This section clarifies that a regional medical center located on the border of multiple States may receive Medicaid reimbursement from any of those States.

Section 619. Extension of Supplemental Security Income (SSI) Web-Based Asset Demonstration Project to the Medicaid Program. Extends the existing SSI Web-based asset demonstration program to Medicaid beginning in FY2013, in the States in which the demonstration is currently operating.

Subtitle C – Other Provisions

Sec. 621. Support for Injured Service Members. This section provides up to six months of Family Medical Leave Act (FMLA) leave for family members who serve as primary caregivers of servicemembers who suffer from a combat-related injury or illness.

Sec. 622. Military Family Job Protection. This section prohibits employment discrimination against a family member who is caring for a recovering servicemember and provides up to one year of protected leave.

Sec. 623. Outreach Regarding Health Insurance Options Available to Children. This section establishes a task force to conduct outreach and education to small businesses about the availability of coverage for children under private insurance, Medicaid, and CHIP.

Sec. 624. Sense of the Senate Regarding Access to Affordable and Meaningful Health Insurance Coverage. This section affirms the Senate's intent to enact legislation to assist small businesses in providing meaningful health coverage to their employees.