

# Holland & Knight

800 17th Street, N.W., Suite 1100 | Washington, DC 20006 | T 202.955.3000 | F 202.955.5564  
Holland & Knight LLP | www.hklaw.com

## Memorandum

**Date: October 10, 2017**

**To: Healthcare Clients**

**From: Holland & Knight**

**Re: CHIP Reauthorization Legislation and Medicare-Medicaid Extender Provisions**

## Overview

The Senate Finance Committee and the House Energy and Commerce Committee on Oct. 4, 2017, approved each chamber's respective draft legislation to extend funding for the Children's Health Insurance Program (CHIP). Direct appropriations for CHIP, which was last reauthorized as part of the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015, were provided through Fiscal Year (FY) 2017, which ended on Sept. 30, 2017. There is a measure of urgency in moving a reauthorization, as some states may begin to exhaust their existing funding allotments. To date, the reauthorization effort has remained largely bipartisan, although proposed "offsets" to pay for the House bill have drawn objections from Democrats.

The Senate version of the CHIP reauthorization was introduced by Sens. Orrin Hatch (R-Utah) and Ron Wyden (D-Ore.) in September. It would provide five years of funding for the program without any substantive change to program requirements. It would, however, phase out the enhanced federal matching rate that was enacted as part of the Affordable Care Act (ACA). As approved by the Committee, offsets to account for the approximately \$8 billion budgetary impact of the bill were not included. Please see additional information on the [Senate Finance Committee website](#). The Senate bill does not address other year-end healthcare priorities, including a package of provisions to address expiring provisions of Medicaid.

The House CHIP reauthorization nearly mirrors the Senate's approach. However, the House bill added additional provisions to its legislation, including a one-year reprieve in implementation of cuts under the Medicaid Disproportionate Share Hospital (DSH) program to avoid a large reduction in program resources, as well as modest initial Medicaid funding for Puerto Rico. Additionally, the House bill includes offsets meant to pay for the five-year cost of extending CHIP.

The Energy and Commerce Committee also approved eight additional pieces of legislation, including legislation that would address some of the Medicare and Medicaid provisions that expired on Sept. 30, and a bill to provide funding for community health centers to avoid a major reduction in the program. Not all of these bills have bipartisan support – two were passed on party line votes. However, there remains bipartisan support for the CHIP program and its extension.

## Senate Legislation

The Senate bill, the Keep Kids' Insurance Dependable and Secure (KIDS) Act of 2017 (S. 1827), includes the following provisions.

- Extends funding for CHIP for five years, through FY 2022
- Extends the "bump" of 23 percentage points in the CHIP federal matching rate, authorized under the ACA, for FY 2018 and 2019. After 2019, the bump will phase down to 11.5 percent in 2020 and will be eliminated in 2021
- Extends the child enrollment contingency fund through FY 2022 to help qualifying states that have exhausted their CHIP funding
- Extends the maintenance-of-eligibility requirement, which precludes states from reducing Medicaid and CHIP eligibility for children, through 2019; children in families below 300 percent of the federal poverty line would be protected under this requirement through 2022
- Extends the Express Lane Eligibility option through 2022, which reduces the administrative burden for children enrolling in Medicaid and CHIP by allowing them to use information previously submitted for enrollment in other federal programs, such as the Supplemental Nutrition Assistance Program (SNAP)
- Extends the Childhood Obesity Demonstration Project, the Pediatric Quality Measures Program, and the CHIP Outreach and Enrollment Program through 2022

The bill represents a compromise on the issue of eliminating the enhanced CHIP match that was implemented under the ACA. Essentially, it was agreed to phase out the enhanced match over a period of years while also agreeing to fund the program for five years – a longer period than under past extensions. Once phased out, CHIP will return to the pre-existing match rate, which was already higher than Medicaid matching rates.

A number of senators were interested in offering related and unrelated amendments to the bill – more than 20 amendments were submitted prior to the markup. These included amendments to repeal the Independent Payment Advisory Board (IPAB) and extend the Maternal, Infant, and Early Childhood Home Visiting Program. However, ultimately it was agreed to keep the bill clean of other issues and it was passed by voice vote without additional amendments.

It should be noted that the Senate legislation does not address any of the existing provisions of Medicare that have expired or are set to expire in December (see below), nor does it address the pending reduction in Medicaid DSH payments. And, as mentioned above, the Senate legislation did not include any offsets to pay for the cost of the legislation as these are still being negotiated. Chairman Hatch indicated that it was his intent to address both Medicare and Medicaid extenders in a subsequent package.

## House Legislation

Energy and Commerce Committee Chairman Greg Walden (R-Ore.) on Oct. 2 unveiled the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable (HEALTHY KIDS) Act of 2017. (The bill was not formally introduced and thus does not yet have a number.) The CHIP provisions largely mirror those in the Senate bill, including extending funding for

CHIP through FY 2022 and phasing down the bump of 23 percentage points in the federal match rate for CHIP on the same timeline as the Senate legislation.

The legislation also includes an additional \$1 billion in Medicaid funding for Puerto Rico. Federal funding for Puerto Rico's Medicaid program is nearly exhausted, and the proposed funding would provide temporary relief.

Additionally, the HEALTHY KIDS Act would block cuts to the DSH program in FY 2018. These cuts, which would amount to \$2 billion, were originally authorized under the ACA under the assumption that Medicaid expansion would be mandatory for all states. These cuts have been delayed on several previous occasions. The bill does not block subsequent cuts scheduled to begin in FY 2019, and the cost of blocking the FY 2018 cuts was offset by adding additional cuts of \$16 billion over FYs 2026 and 2027. This practice of avoiding near-term cuts by shifting the cost, in higher and higher amounts, to future years has raised concerns in the safety net hospital community. Finally, in contrast to the Senate legislation, the House bill includes several offsets meant to generate savings in the Medicare and Medicaid programs to pay for the costs of the CHIP reauthorization.

- **Repealing special rules for pediatric and prenatal care and child support situations under Medicaid.** Currently, states must pay claims for furnishing pediatric or prenatal care for children covered by third-party insurers, if no payment is made by that insurer, within 30 days. Repealing the special rules would result in mandatory third-party liability.
- **Changing the treatment of lottery and lump sum winnings.** For those who receive lottery winnings or lump sums of money to exceed \$80,000, Medicaid eligibility would be forfeited on a case-by-case basis for a length of time based on the amount in question.
- **Increasing Medicare premiums on high-income beneficiaries.** Single Medicare beneficiaries with incomes of more than \$85,000 are required to pay income-related premiums at an increasing percentage on a sliding scale, with the maximum premium at 80 percent. The House legislation would raise the maximum premium for individuals with incomes of \$500,000 to 100 percent.

Rep. Frank Pallone (D-N.J.), the ranking Democrat on the Energy and Commerce Committee, has indicated his opposition to the proposed offsets, as has Wyden, ranking member of the Senate Finance Committee.

During the Oct. 4 session, the Energy and Commerce Committee also considered seven other pieces of legislation, including the Community Health And Medical Professionals Improve Our Nation Act (CHAMPION Act) of 2017, which would extend about \$3 billion per year in funding for the Community Health Center (CHC) program and National Health Service Corps (NHSC) through FY 2019. The CHC program is partially funded by about \$2 billion in annual appropriations but has also been receiving another \$3 billion in mandatory appropriations every year that was originally provided as part of the ACA. The second source of funding expired on Sept. 30. The legislation also would extend funding for two years for the Teaching Health Center Graduate Medical Education program, the Family-to-Family Health Information Centers, and the Abstinence Education (now Youth Empowerment) and Personal Responsibility Education programs.

To pay for the extension of the CHC and NHSC programs, the legislation would shift \$6.35 billion from the U.S. Department of Health and Human Services (HHS) Prevention and Public Health Fund. The Fund, which was created by the ACA, has been used to supplement appropriations for many public health

programs, including 12 percent of the Centers for Disease Control and Prevention's annual funding. Several public health organizations have indicated their opposition to this reduction.

## **CHIP Outlook**

As of this writing, it is not clear how the House and Senate will reconcile differences between their versions of the CHIP reauthorization, which will primarily involve agreeing on a set of offsets, deciding whether to include the reprieve on Medicaid DSH cuts, and whether or how to package the legislation with other bills.

As mentioned above, there is a need to take action before the end of the year. Thus far, 10 states have indicated they that will likely run out of CHIP funding by the end of this calendar year, with remaining states to exhaust their funding at some point in 2018. This may increase the chances of CHIP moving to President Donald Trump's desk independent of other year-end health items. Action may occur late in the year and quickly in order to preserve a clean reauthorization of the program given the popularity of CHIP and its potential as a useful vehicle for carrying other legislative items.

## **Health Care "Extenders"**

As discussed above, a number of healthcare authorizations are expiring, and legislation to "extend" these provisions will need to be considered before the year's end. For reference, the following is a list of these expiring provisions:

### ***Medicare***

#### **Sept. 30 Expiration**

- Funding for National Quality Forum (NQF) review and maintenance of quality measures and the process for Measure Applications Partnership input to HHS
- Medicare-Dependent Hospital Program extension for rural hospitals, with less than 100 serving a high percentage of Medicare beneficiaries
- Funding for low-income populations, including state health insurance programs, area agencies and disability centers as well as the National Center for Benefits Outreach and Enrollment

#### **Dec. 31 Expiration**

- Geographic Practice Cost Index (GPCI) Medicare variable floor for adjusting work component of physicians based on geographic location
- Medicare low-volume add-on payments to supplement operating costs for hospitals with a low number of Medicare discharges
- Add-on payments for ground ambulances (includes super rural add-on)
- Add-on payments for home health services in rural areas
- Medicare Advantage Special Needs plans

#### ***Other (all expired Sept. 30)***

- Delay in Medicaid DHS cuts
- Funding for CHCs, Teaching Health Center Graduate Medical Education program and NHSC
- Abstinence-only and personal responsibility education programs
- Health Workforce Demonstration Project for Low-Income Individuals
- Maternal, Infant, and Early Childhood Home Visiting Program

The Teaching Health Centers, the Medicare Intravenous Immunoglobulin Demonstration project and the Indian Health Service (IHS) special diabetes program were reauthorized in the Federal Aviation Administration (FAA) reauthorization legislation, which was signed into law on Sept. 29, 2017. Two years of funding for the IHS special diabetes program and Teaching Health Centers were included in the CHAMPION Act.

For questions or more information, contact [Ethan Jorgensen-Earp](#), [Robert Bradner](#) or [Lisa Tofil](#).