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CHIP and the ACA Maintenance of Effort (MOE) Requirement: In Brief

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Summary

State Children's Health Insurance Program (CHIP) is a means-tested program that provides health coverage to targeted low-income children and pregnant women in families that have annual income above Medicaid eligibility levels but do not have health insurance. CHIP is jointly financed by the federal government and the states and administered by the states. The federal government sets basic requirements for CHIP, but states have the flexibility to design their own version of CHIP within the federal government's basic framework. States may design their CHIP programs in three ways: a CHIP Medicaid expansion, a separate CHIP program, or a combination approach in which the state operates a CHIP Medicaid expansion and one or more separate CHIP programs concurrently. As a result, there is significant variation across CHIP programs. In FY2013, CHIP enrollment totaled 8.4 million and federal and state CHIP expenditures totaled \$13.2 billion.

Under the CHIP statute, FY2015 is the last year federal CHIP funding is provided, even though the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) child maintenance of effort (MOE) requirement is in place through FY2019. The MOE provision requires states to maintain income eligibility levels for CHIP children through September 30, 2019, as a condition for receiving federal Medicaid payments (notwithstanding the lack of corresponding federal CHIP appropriations for FY2016-FY2019). The MOE requirement impacts CHIP Medicaid expansion programs and separate CHIP programs differently.

- *For CHIP Medicaid expansion programs*, when federal CHIP funding is exhausted, the CHIP-eligible children in these programs will continue to be enrolled in Medicaid but financing will switch from CHIP to Medicaid.
- *For separate CHIP programs*, states are provided a couple of exceptions to the MOE requirement: (1) states may impose waiting lists or enrollment caps to limit CHIP expenditures, and (2) after September 1, 2015, states may enroll CHIP-eligible children in qualified health plans in the health insurance exchanges. In addition, in the event that a state's CHIP allotment is insufficient to fund CHIP coverage for all eligible children, a state must establish procedures to screen children for Medicaid eligibility and enroll those who are Medicaid eligible. For children not eligible for Medicaid, the state must establish procedures to enroll CHIP children in qualified health plans in the health insurance exchanges that have been certified by the Secretary of Health and Human Services to be "at least comparable" to CHIP in terms of benefits and cost sharing.

This report discusses the ACA MOE requirement for children if federal CHIP funding expires. It begins with a brief background about CHIP, including information regarding program design and financing. The report then describes the ACA child MOE requirements for CHIP Medicaid expansion programs and for separate CHIP programs and discusses potential coverage implications.

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Introduction

Under the State Children's Health Insurance Program (CHIP) statute, FY2015 is the last year federal CHIP funding is provided, even though the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended) child maintenance of effort (MOE) requirement is in place through FY2019. The ACA MOE provision requires states to maintain income eligibility levels for CHIP children through September 30, 2019, as a condition for receiving federal Medicaid payments (notwithstanding the lack of corresponding federal CHIP appropriations for FY2016-FY2019).

This report discusses the ACA MOE requirement for children if federal CHIP funding expires. It begins with a brief background of CHIP, including information regarding program design and financing. The report then describes the ACA child MOE requirements for CHIP Medicaid expansion programs and for separate CHIP programs and discusses potential coverage implications.

CHIP Background

CHIP is a federal-state program that provides health coverage to certain uninsured, low-income children and pregnant women in families that have annual income above Medicaid eligibility levels but do not have health insurance.¹ CHIP is jointly financed by the federal government and the states and is administered by the states. Participation in CHIP is voluntary, and all states and the District of Columbia participate. The federal government sets basic requirements for CHIP, but states have the flexibility to design their own version of CHIP within the federal government's basic framework. As a result, there is significant variation across CHIP programs. In FY2013, CHIP enrollment totaled 8.4 million and federal and state CHIP expenditures totaled \$13.2 billion.²

CHIP was established as part of the Balanced Budget Act of 1997 (P.L. 105-33) under a new Title XXI of the Social Security Act. Since that time, other federal laws have provided additional funding and made significant changes to CHIP. Most notably, the Children's Health Insurance Program Reauthorization Act of 2009 (P.L. 111-3) increased appropriation levels for CHIP, changed the formula for distributing CHIP funding among states, and altered the eligibility and benefit requirements.³ The ACA largely maintains the current CHIP structure through FY2019 and requires states to maintain their Medicaid and CHIP child eligibility levels through FY2019 as a condition for receiving federal Medicaid matching funds. However, the ACA does not provide federal appropriations for CHIP beyond FY2015.⁴

¹ For more information about the State Children's Health Insurance Program (CHIP), see CRS Report R43627, *State Children's Health Insurance Program: An Overview*, by Evelyne P. Baumrucker and Alison Mitchell.

² Medicaid and CHIP Payment and Access Commission, *Report to Congress on Medicaid and CHIP*, March 2014.

³ For more information on the changes enacted under the Children's Health Insurance Program Reauthorization Act of 2009, see CRS Report R40226, *P.L. 111-3: The Children's Health Insurance Program Reauthorization Act of 2009*, by Evelyne P. Baumrucker, Elicia J. Herz, and Jane G. Gravelle.

⁴ For more information about the changes enacted under the Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended), see CRS Report R41210, *Medicaid and the State Children's Health Insurance Program (CHIP)* (continued...)

Program Design

States may design their CHIP programs in three ways: a CHIP Medicaid expansion, a separate CHIP program, or a combination approach in which the state operates a CHIP Medicaid expansion and one or more separate CHIP programs concurrently.

CHIP benefit coverage and cost-sharing rules depend on program design. CHIP Medicaid expansions must follow the federal Medicaid rules for benefits and cost sharing, which entitle CHIP enrollees to Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) coverage (effectively eliminating any state-defined limits on the amount, duration, and scope of any benefit listed in Medicaid statute) and exempt the majority of children from any cost sharing. For separate CHIP programs, states can design benefits that look more like private health insurance and may impose cost sharing, such as premiums or co-payments, with a maximum allowable amount that is tied to annual family income. Aggregate cost sharing under CHIP may not exceed 5% of annual family income.

Regardless of the choice of program design, all states must cover emergency services; well-baby and well-child care, including age-appropriate immunizations; and dental services. If offered, mental health services must meet federal mental health parity requirements. States that want to make changes to their programs beyond what Medicaid or CHIP laws allow may seek approval from the Centers for Medicare & Medicaid Services (CMS) through the use of the Section 1115 waiver authority.⁵

Eight states, the District of Columbia, and the territories had CHIP Medicaid expansions as of July 1, 2014, whereas 13 states had separate CHIP programs⁶ and 29 states used a combination approach.⁷ The bulk of CHIP enrollees received coverage through separate CHIP programs (approximately 70%) in FY2013. The remainder received coverage through a CHIP Medicaid expansion.⁸

(...continued)

Provisions in ACA: Summary and Timeline, by Evelyne P. Baumrucker et al.

⁵ Under §1115 of the Social Security Act, the Secretary of Health and Human Services (HHS) may waive CHIP program requirements so states can test new program design options that further the goals of the CHIP program. CHIP §1115 waivers are time limited (up to five years) and must be allotment neutral to the federal government. In other words, they cannot cost the federal government more than what is available under the state's annual allotment(s) (i.e., federal funds allocated to each state for the federal share of its CHIP expenditures) applicable to the fiscal years for which the demonstration is operational.

⁶ As of July 1, 2014, 2 states (Washington and Connecticut) had separate CHIP programs with no Medicaid expansions. The remaining 11 states (Alabama, Arizona, Georgia, Kansas, Oregon, Mississippi, Pennsylvania, Texas, Utah, West Virginia, and Wyoming) are considered to have separate CHIP programs, but technically these programs are part of combination CHIP programs due to the ACA requirement to transition CHIP children aged 6 through 18 in families with annual income less than 133% of the federal poverty level (based on modified adjusted gross income, or MAGI) to Medicaid, beginning January 1, 2014.

⁷ Centers for Medicare & Medicaid Services (CMS), *Children's Health Insurance Program Plan Activity*, as of July 1, 2014.

⁸ Medicaid and CHIP Payment and Access Commission, *Report to the Congress on Medicaid and CHIP*, March 2014.

CHIP Financing

CHIP is jointly financed by the federal government and the states, with the federal government paying about 70% of total CHIP expenditures.⁹ The federal government reimburses states for a portion of every dollar they spend on CHIP (including both CHIP Medicaid expansions and separate CHIP programs) up to state-specific annual limits called allotments. The federal government's share of CHIP expenditures (including both services and administration) is determined by the enhanced federal medical assistance percentage (E-FMAP) rate. The E-FMAP rate is calculated by reducing the state share under the federal medical assistance percentage (FMAP) rate (i.e., the federal matching rate for most Medicaid expenditures) by 30%, which increases the federal share of expenditures.¹⁰ The E-FMAP rate varies by state. In FY2015, the E-FMAP rate ranges from 65% (in 13 states) to 82% (in Mississippi).

Although FY2015 is the last year states are to receive CHIP allotments, federal CHIP outlays are expected in FY2016 because states will have access to unspent funds from their FY2015 allotments and unspent FY2014 allotments redistributed to shortfall states (if any).¹¹ However, federal CHIP funding is not expected to be sufficient to cover the federal share of states' CHIP programs for the entire year, especially with the 23 percentage point increase in the E-FMAP that is set to begin in FY2016.¹² With this 23 percentage point increase, the federal share of CHIP will be significantly higher, which means states are expected to spend their limited federal CHIP funding (i.e., state CHIP allotments) faster when this percentage increase takes effect.

In a few situations, federal CHIP funding is used to finance Medicaid expenditures. For instance, certain states significantly expanded Medicaid eligibility for children prior to the enactment of CHIP in 1997.¹³ These states are allowed to use their CHIP allotment funds to finance the difference between the Medicaid and CHIP matching rates (i.e., the FMAP and E-FMAP rates, respectively) to cover the cost of children in Medicaid above 133% of the federal poverty level (FPL).¹⁴

In addition, states may use CHIP allotment funds and receive the more generous E-FMAP rates for two ACA provisions that went into effect on January 1, 2014:¹⁵ (1) expenditures for children aged 6 to 18 in families with annual income up to 133% FPL who had been enrolled in separate

⁹ U.S. Department of Health and Human Services, CMS, Form CMS-64 data.

¹⁰ For more information about the federal medical assistance percentage (FMAP) rate and how it is calculated, see CRS Report R43847, *Medicaid's Federal Medical Assistance Percentage (FMAP), FY2016*, by Alison Mitchell.

¹¹ If a state's CHIP allotment for the current year, in addition to any allotment funds carried over from the prior year, is insufficient to cover the projected CHIP expenditures for the current year, a few different shortfall funding sources are available. These include Child Enrollment Contingency Funds, redistribution funds, and Medicaid funds.

¹² The ACA included a provision to increase the enhanced federal medical assistance percentage (E-FMAP) rate by 23 percentage points (not to exceed 100%) for most CHIP expenditures from FY2016 through FY2019.

¹³ The following 11 states meet this definition: Connecticut, Hawaii, Maryland, Minnesota, New Hampshire, New Mexico, Rhode Island, Tennessee, Vermont, Washington, and Wisconsin.

¹⁴ §2015(g) of the Social Security Act.

¹⁵ CMS, "Medicaid and CHIP FAQs: Funding for New Adult Group, Coverage of Former Foster Care Children and CHIP Financing," December 2013.

CHIP programs and were transitioned to Medicaid,¹⁶ and (2) children who moved from CHIP to Medicaid due to the application of the 5% income disregard.¹⁷

MOE Requirement

The ACA extended and expanded the MOE provisions in the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).¹⁸ The ACA MOE provisions contain separate requirements for Medicaid and CHIP and were designed to ensure that individuals eligible for these programs did not lose coverage between the date of enactment of the ACA (March 23, 2010) and the implementation of the health insurance exchanges (for adults) and September 30, 2019 (for children).

Under the ACA MOE provisions, states are required to maintain their Medicaid programs with the same eligibility standards, methodologies, and procedures in place on the date of enactment of the ACA until January 1, 2014, for adults and through September 30, 2019, for children up to the age of 19. The ACA also requires states to maintain income eligibility levels for CHIP children through September 30, 2019, as a condition for receiving payments under Medicaid.¹⁹ The penalty to states for not complying with either the Medicaid or the CHIP MOE requirements would be the loss of all federal Medicaid matching funds.²⁰

Together, these MOE requirements for Medicaid and CHIP impact CHIP Medicaid expansion programs and separate CHIP programs differently.²¹

CHIP Medicaid Expansion Programs

For CHIP Medicaid expansion programs, the Medicaid and CHIP MOE provisions apply concurrently.²² For states to continue to receive federal Medicaid funds, the ACA child MOE provisions require that CHIP-eligible children in CHIP Medicaid expansion programs must continue to be eligible for Medicaid through September 30, 2019.²³ When a state's federal CHIP funding is exhausted, the state's financing for these children switches from CHIP to Medicaid.

¹⁶ The E-FMAP rate is *not* available for children aged 6 to 18 who have access to private health insurance.

¹⁷ Beginning January 1, 2014, the ACA required the federal government and states to rely on MAGI rules when determining eligibility for CHIP, Medicaid (for most nonelderly populations), and subsidized exchange coverage. Under MAGI rules, a state looks at each individual's MAGI, deducts 5% (which the law provides as a standard disregard), and compares that income with the new income standards set by each state.

¹⁸ The American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5; extended in P.L. 111-226) included a temporary increase in the FMAP. To receive the FMAP increase under ARRA, states were required to maintain the same Medicaid eligibility standards, methodologies, and procedures in effect on July 1, 2008, through June 30, 2011.

¹⁹ §2105(d)(3) of the Social Security Act.

²⁰ §1902(gg)(2) of the Social Security Act.

²¹ The Secretary of HHS has not issued guidance regarding the impact of the maintenance of effort (MOE) requirements if federal CHIP funding expires.

²² Both the CHIP child MOE requirement and the Medicaid child MOE requirement concurrently apply to the CHIP Medicaid expansion programs.

²³ CHIP children covered under CHIP Medicaid expansion programs are an optional eligibility group under Medicaid. However, because the Medicaid MOE for children extends through FY2019, states are not permitted to roll back Medicaid eligibility for these children without the loss of all Medicaid federal matching funds.

This switch would cause the state share of covering these children to increase because the federal matching rate for Medicaid is less than the E-FMAP rate.

As discussed above, states may have some Medicaid expenditures financed with federal CHIP funds. In any of these situations, when federal CHIP funding is exhausted, states would be responsible for continuing to provide Medicaid coverage to these children through September 30, 2019. However, as is the case with the CHIP Medicaid expansion programs, the financing would switch from CHIP to Medicaid, resulting in an increase in the state share of these expenditures because the federal matching rate would be lowered from the E-FMAP rate to the FMAP rate.

Separate CHIP Programs

For separate CHIP programs, only the CHIP-specific provisions of the ACA MOE requirements are applicable. These provisions contain a couple of exceptions:

1. states may impose waiting lists or enrollment caps to limit CHIP expenditures, or
2. after September 1, 2015, states may enroll CHIP-eligible children in qualified health plans in the health insurance exchanges that have been certified by the Secretary of Health and Human Services (HHS) to be “at least comparable” to CHIP in terms of benefits and cost sharing.

In addition, in the event that a state’s CHIP allotment is insufficient to fund CHIP coverage for all eligible children, a state must establish procedures to screen CHIP-eligible children for Medicaid eligibility²⁴ and to enroll those who are eligible in Medicaid.

For children not eligible for Medicaid, the state must establish procedures to enroll CHIP-eligible children in qualified health plans offered in the health insurance exchanges that have been certified by the Secretary of HHS to be “at least comparable” to CHIP in terms of benefits and cost sharing. Under these ACA MOE requirements, states are required only to establish procedures to enroll children in qualified health plans certified by the Secretary. If there are no certified plans, the MOE requirement does not obligate states to provide coverage to these children. Even when there are certified plans, not all CHIP children may be eligible for subsidized exchange coverage due to the *family glitch*,²⁵ among other reasons.

²⁴ States must conduct eligibility redeterminations for Medicaid and CHIP at least annually. Due to fluctuations in income among the CHIP target population, it is possible that a formerly CHIP-eligible child may meet the state’s Medicaid eligibility standard due to a change in annual income that may not have been taken into consideration until the enrollee’s next regularly scheduled eligibility redetermination.

²⁵ Subsidized coverage in the health insurance exchanges is not available to individuals with access to affordable health insurance. The *family glitch* results from the definition of affordable coverage. Under the ACA, employer-sponsored insurance is considered affordable if an employee’s premium contributions for self-only coverage (not family coverage) comprise less than 9.5% of household income. However, there is no affordability limit on the employee’s share of the premium for family coverage. Due to the family glitch, some current CHIP enrollees would *not* be eligible for subsidized coverage in the health insurance exchanges based on a parent’s access to affordable employer-sponsored insurance. For more information about subsidized coverage in the health insurance exchanges, see CRS Report R41137, *Health Insurance Premium Credits in the Patient Protection and Affordable Care Act (ACA)*, by Bernadette Fernandez.

Conclusion

FY2015 is the last year federal CHIP funding is provided in the CHIP statute. If no additional federal funding is provided for the program, once federal CHIP funding is exhausted, CHIP children in CHIP Medicaid expansion programs would continue to receive coverage under Medicaid through at least FY2019, due to the ACA MOE requirement. However, coverage of CHIP children in separate CHIP programs who are not eligible for Medicaid depends on the availability of qualified health plans that are certified by the Secretary of HHS to be “at least comparable” to CHIP in terms of benefits and cost sharing unless states decide to provide state-funded CHIP coverage.

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