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**Memorandum**

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**SUBJECT: Status of SCHIP Adult Coverage Waivers (as of August 18, 2008)****FROM:** Evelyne P. Baumrucker  
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**Background on the Section 1115 Waiver Authority**

Section 1115 of the Social Security Act provides the Secretary of Health and Human Services (HHS) with broad authority to conduct research and demonstration projects under several programs authorized in the Social Security Act, including Title XIX (Medicaid) and Title XXI (the State Children’s Health Insurance Program, SCHIP). Under Section 1115, the Secretary may waive any Medicaid requirements contained in Section 1902 (including but not limited to what is known as “freedom of choice” of provider, “comparability,” and “statewideness”).<sup>1</sup> For SCHIP, no specific sections or requirements are cited as “waiveable.” Section 2107(e)(2)(A) of the Social Security Act states that Section 1115 of the Act, pertaining to research and demonstration waivers, applies to SCHIP.

States must submit proposals outlining terms and conditions for proposed waivers to CMS for approval before implementing these programs. In recent years, there has been increased interest among states and the federal government in the Section 1115 waiver authority as a means to restructure Medicaid and SCHIP coverage, control costs, and increase state flexibility.<sup>2</sup> States have used the Section 1115 waiver authority to cover “nontraditional”

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<sup>1</sup> “Freedom of choice” refers to a requirement that Medicaid recipients have the freedom to choose their medical care providers. In the case of managed care, a choice of at least 2 providers must be provided. “Comparability” refers to a requirement that services be comparable in amount, duration, and scope for all persons in each eligibility group. “Statewideness” refers to the requirement that states provide services on a statewide basis, rather than in only a portion of the state.

<sup>2</sup> The Secretary can develop policies that influence the content of demonstration projects and prescribe approval criteria in three ways: (1) by promulgating program rules and regulations; (2) through the publication of program guidance (e.g., the waiver program must meet a budget neutrality (continued...))

Medicaid and SCHIP services, limit benefit packages for certain groups, or cap program enrollment, among other purposes.

## Adult Coverage Under SCHIP Section 1115 Waivers

As of January 11, 2007, 34 states and the District of Columbia provided access to Medicaid and/or SCHIP benefit coverage for adult populations through the Section 1115 waiver authority.<sup>3</sup> On August 4, 2001, the Bush Administration announced the Health Insurance Flexibility and Accountability (HIFA) Demonstration Initiative. Using Section 1115 waiver authority, this initiative was designed to encourage states to extend Medicaid and SCHIP to the uninsured, with a particular emphasis on statewide approaches that maximize private health insurance coverage options and target populations with income below 200% of the federal poverty level (FPL). In other words, states were permitted and encouraged to direct their unspent SCHIP funds towards coverage expansions under the HIFA initiative.<sup>4</sup>

While coverage expansions under Section 1115 waiver authority were common before the HIFA initiative, this initiative dramatically increased states' coverage of adults with children (typically parents of Medicaid/SCHIP children, caretaker relatives, or legal guardians) and childless adults,<sup>5</sup> and expanding coverage for adult populations with SCHIP funds has proven controversial.<sup>6</sup> Of the 20 states with SCHIP waivers, 14 have/had SCHIP waivers that were granted under the HIFA initiative.<sup>7,8</sup> Currently, 12 states have CMS approval to finance at least some of their adult coverage groups with unspent SCHIP funds,

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<sup>2</sup> (...continued)

test); and (3) waiver policy may also be implicitly shaped by the programs that have been approved (e.g., CMS approval of benefit specific waivers such as family planning waivers). Legislative action may be required if Congress chooses to further shape the Secretary's authority over the content of the demonstration programs, dictate specific Section 1115 waiver approval criteria, or otherwise limit the Secretary's waiver authority.

<sup>3</sup> See the CRS Congressional Distribution Memorandum, *Chronological Analysis of Populations added to the State Children's Health Insurance Program (SCHIP) Under the Section 1115 Waiver Authority (as of March 2007)*, by Evelyne P. Baumrucker (available upon request)

<sup>4</sup> *Medicine and Health*, "CMS Administrator: McClellan on Value Purchasing, SCHIP, DSH, and Specialty Hospitals," March 22, 2004.

<sup>5</sup> The Deficit Reduction Act of 2005 (P.L. 109-171) prohibited the use of SCHIP funds for coverage of non-pregnant childless adults in any new waivers approved after February 8, 2006.

<sup>6</sup> For example, see the hearing webcast and written testimony for *Covering Uninsured Kids: Missed Opportunities for Moving Forward*, held by the Subcommittee on Health, House Energy and Commerce Committee, January 29, 2008, at [[http://energycommerce.house.gov/cmte\\_mtgs/110-he-hrg.012908.CoveringUninsured.shtml](http://energycommerce.house.gov/cmte_mtgs/110-he-hrg.012908.CoveringUninsured.shtml)].

<sup>7</sup> SCHIP waiver states include: Alaska, Arizona (HIFA), Arkansas (HIFA), California (HIFA), Colorado (HIFA), Hawaii, Idaho (HIFA), Illinois (HIFA) (expired 9/31/07), Michigan (HIFA), Minnesota (HIFA), Missouri, Nevada (HIFA), New Jersey (HIFA), New Mexico (2 programs; one is a HIFA waiver), Oregon (HIFA) (expired 10/31/07), Rhode Island, Texas, Utah (HIFA), Virginia (HIFA), and Wisconsin. Delaware, the District of Columbia, Louisiana, and Maine were granted HIFA waivers under Medicaid authority.

<sup>8</sup> Arkansas and New Mexico each have 2 operational SCHIP Section 1115 demonstration waivers.

and four states (i.e., Arizona<sup>9</sup>, Idaho, Michigan, and New Mexico) have approval to cover childless adults under their HIFA waivers (see **Table 1**).

In addition to parents and childless adults, SCHIP permits states to cover adult pregnant women (aged 19 and older) in one of three ways: (1) states may apply for Section 1115 waivers to extend coverage to such pregnant women; (2) states may provide health benefits coverage, including prenatal care and delivery services, to unborn children of adult pregnant women through an SCHIP state plan amendment (SPA) as permitted through regulation;<sup>10</sup> or (3) states may offer a “family coverage option” through a group health plan that may include maternity care to adult females in eligible families. As of October 2007, 17 states offered pregnancy-related services to adults using SCHIP funds. Of those, six states used the §1115 waiver authority (see **Table 1**), and 12 states extended coverage to unborn children of adult pregnant women through unborn child SPAs (Rhode Island extends coverage to adult pregnant women through both authorities through September 30, 2008 when their SCHIP adult coverage waiver will expire).<sup>11</sup>

**Waiver Project Duration.** A population added under an 1115 waiver is only SCHIP-eligible for the five-year waiver period or specified (usually three year) waiver extension period. Recently the Administration has not renewed some waivers that permitted coverage of adults through SCHIP. Illinois’s waiver to cover adults in SCHIP expired September 30, 2007.<sup>12</sup> Oregon’s waiver to cover adults in SCHIP also expired, on October 31, 2007.<sup>13</sup> In 2007, Wisconsin’s waiver for adult SCHIP coverage came up for renewal, under the renewal, the program was permitted to keep some adults in SCHIP.<sup>14</sup> Finally, Rhode Island’s SCHIP waiver was set to expire on July 31, 2008. As a part of their waiver renewal negotiations, the state was permitted to continue their SCHIP adult coverage through September 30, 2008. As of October 1, 2008, scaled back adult coverage groups will be

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<sup>9</sup> FY2007 SCHIP annual enrollment reports did not show enrollment estimates associated with the state’s childless adult demonstration population despite the fact that the state has CMS authority to provide coverage to such individuals.

<sup>10</sup> Although CMS requires the care to be directed at the unborn child, the SCHIP unborn child SPA option effectively enables states to provide prenatal care to adult pregnant women including those with incomes at or above the Medicaid income eligibility thresholds and for individuals who do not qualify for Medicaid (or SCHIP) for other reasons, such as immigration status or incarceration. (See *Federal Register*, vol. 67, no. 191, Wednesday, October 2, 2002, Rules and Regulations).

<sup>11</sup> For more information see CRS Report RS22785, *SCHIP Coverage for Pregnant Women and Unborn Children*, by Evelyne P. Baumrucker.

<sup>12</sup> As of August 6, 2008, Illinois has not requested a new Medicaid adult coverage waiver.

<sup>13</sup> While Oregon is no longer permitted to extend coverage to its adult population using SCHIP funds, several eligibility changes were made as a part of Oregon’s waiver renewal. For example, uninsured adults were moved from the title XXI population into the Medicaid waiver population, and the SCHIP child population for children in families with annual income between 170 to 185% FPL (who are not in employer-sponsored insurance programs) were moved from the 1115 waiver program to the SCHIP state plan. In addition, Medicaid mandatory pregnant women and infants are granted full Medicaid State Plan benefits under the renewal.

<sup>14</sup> Under its prior waiver, parents of Medicaid- or SCHIP-enrolled children from 100% to 185% FPL were eligible for SCHIP; under the renewal, parents from 100% up to 130% FPL are in Medicaid, with parents from 130% to 185% FPL in SCHIP. Although family income cannot exceed 185% FPL for initial eligibility, parents may continue enrollment as long as family income does not exceed 200% FPL.

covered under the Rhode Island's Medicaid waiver authority<sup>15</sup> (See **Table 1** for SCHIP waiver expiration dates).

**FY2007 SCHIP Adult Coverage Waiver Enrollment Estimates.** Fourteen states reported enrollment of about 587,000 adults in SCHIP in FY2007 (see **Table 1**). A substantial share of these adults (487,000, about 83%) were parents. Roughly 93,000 were childless adults, and the remainder (6,500) were pregnant women.

The number of SCHIP-enrolled adults in FY2007 — 587,000 — is lower than in FY2006, when it was 701,000. SCHIP adult enrollment in FY2008 will likely be even lower, because the adult-coverage waivers in multiple states were not renewed or were scaled back, as previously discussed. As shown in **Table 1**, FY2007 adult enrollment was nearly 251,000 in Illinois and 15,000 in Oregon. Adult SCHIP enrollment in these two states made up nearly half of all adult SCHIP enrollment nationally.<sup>16</sup>

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<sup>15</sup> Under Rhode Island's new waiver among other coverage groups, the state will extend coverage to pregnant women with annual income between 185% and 250% FPL. This coverage will be financed with Title XIX federal matching funds. The waiver also extends coverage to parents and care taker relatives of Medicaid and SCHIP-eligible children in families with annual income between 100% FPL and 175% FPL (i.e., down from the upper income eligibility threshold of 185% as under the SCHIP adult coverage waiver). In addition, the new waiver will extend family planning services and supplies to pregnant women with annual income up to 200% FPL for a period of 2 years for those women who lose Medicaid eligibility due to the birth of their child (down from current eligibility levels of 250% FPL).

<sup>16</sup> For more information on SCHIP enrollment see CRS report, RL30473, *The State Children's Health Insurance Program (SCHIP): A Brief Overview*, by Elicia J. Herz, Chris L. Peterson, and Evelyne P. Baumrucker.

**Table 1. SCHIP Adult Coverage Waivers (as of August 6, 2008)**

State	Waiver Activity			Number of Adults Ever Enrolled in SCHIP Demonstrations during FY2007 (and Income Level by Group as a % of FPL <sup>a</sup> )			
	Award Date	Waiver Extension(s)	Expiration Date	Pregnant Women	Parents of Medicaid and/or SCHIP-Children	Childless Adults	Total Adults
Arizona	12/12/01	10/26/06	9/30/11	–	25,774 (100%-200%)	(0-100%) <sup>b</sup>	25,774
Arkansas	3/3/06	–	9/30/11	–	639 (0%-200%)	–	639
Colorado	9/27/02	9/26/06	9/30/09	3,173 (185%-200%)	–	–	3,173
Idaho	2/25/04	–	11/3/09	(133- 185%) <sup>c</sup>	380 (above Section 1931 levels -185%) <sup>c</sup>	152 (0%-185%) <sup>c</sup>	532 <sup>c</sup>
<i>Illinois<sup>d</sup></i>	<i>9/13/02</i>	–	<i>9/30/07</i>	–	<i>250,570</i>	–	<i>250,570</i>
Michigan	1/16/04	–	1/15/09	–	–	77,713 (0-35%)	77,713
Minnesota	6/13/01	12/7/05	6/12/09	–	29,225 (100%-200%)	–	29,225
Nevada	11/2/06	–	11/30/11	476 (133-185%) <sup>e</sup>	5 (0%-200%) <sup>e</sup>	–	481 <sup>e</sup>
New Jersey	1/18/01	1/10/06	1/17/09	275 (185%-200%)	99,629  (above Medicaid - 133%)  (133%-200%)	–	99,904

State	Waiver Activity			Number of Adults Ever Enrolled in SCHIP Demonstrations during FY2007 (and Income Level by Group as a % of FPL <sup>a</sup> )			
	Award Date	Waiver Extension(s)	Expiration Date	Pregnant Women	Parents of Medicaid and/or SCHIP-Children	Childless Adults	Total Adults
New Mexico	1/11/99	6/14/04 9/14/07	12/31/10	–	4,304 (37%-200%)	7,891 (0%-200%)	12,195
<i>Oregon<sup>c</sup></i>	<i>10/15/02</i>	–	<i>10/31/07</i>	–	7,856 (100%-185%)	7,378 (100%-185%)	15,234
Rhode Island	1/18/01	2/4/05 6/18/08	9/30/08	360 (185%-250%) <sup>f</sup>	20,588 (100%-185%) <sup>f</sup>	–	20,948 <sup>f</sup>
Virginia	10/25/06	–	6/30/10	2,175 (133%-185%)	–	–	2,175
Wisconsin	1/18/01	3/31/04 5/30/07 3/30/07 (30 day extension) 4/30/07 (30 day extension) 5/30/07	3/31/10	–	48,271 (100%-185%) <sup>g</sup>	–	48,271 <sup>g</sup>
<b>FY2007 Annual Enrollment Totals</b>	–	–	–	<b>6,459</b>	<b>487,241</b>	<b>93,134</b>	<b>586,834</b>

**Sources:** Table prepared by CRS based on information from CMS and individual states. For the number of adults enrolled in SCHIP demonstrations, *Adult SCHIP Chart FY2006 (030107).xls*, provided by CMS via e-mail on March 8, 2007.

- a. States have considerable flexibility in the way that countable income is defined. By excluding certain types of income from their definitions of countable income, states can effectively raise the generosity of the eligibility pathway without explicitly raising the income standards. The upper income levels for adults reflect state-reported SCHIP income eligibility thresholds and do not necessarily take into account state-specific income counting rules (e.g., income deductions/exclusions or assets tests) that are permitted by SCHIP program rules and regulations or the Section 1115 waiver authority.

- b. FY2007 SCHIP annual enrollment reports did not show enrollment estimates associated with the state's childless adult demonstration population despite the fact that the state has CMS authority to provide coverage to such individuals. The state has claimed Title XIX matching funds for this population since 2006.
- c. Adult SCHIP waiver is for employees of small businesses and their families with access to job-based health insurance.
- d. States that appear in *italics* represent SCHIP adult coverage waivers that have expired.
- e. Nevada's SCHIP coverage of parents uses their job-based health insurance.
- f. Rhode Island's adult SCHIP waiver was set to expire on 7/31/08. As a part of their waiver renewal negotiations, the state was permitted to continue their SCHIP adult coverage through September 30, 2008. As of October 1, 2008, scaled back adult coverage groups will be covered under the state's Medicaid waiver authority.
- g. Wisconsin adult SCHIP waiver expiration date: 3/31/10. As of 10/1/07, parents are eligible for SCHIP between 130% and 185% FPL. Although family income cannot exceed 185% FPL for initial eligibility, parents may continue enrollment as long as family income does not exceed 200% FPL.