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CONGRESS FAILS TO APPROVE BIPARTISAN LEGISLATION TO EXTEND EXPIRING FUNDS FOR CHILDREN'S HEALTH INSURANCE

by Edwin Park and Robert Greenstein

On Wednesday, November 20, in its last day of legislative activity this year, the Senate failed to pass bipartisan compromise legislation to extend the availability of several billion dollars in expiring federal funds for the State Children's Health Insurance Program (SCHIP). Developed by Representatives Billy Tauzin (R-LA) and John Dingell (D-MI) and Senators Max Baucus (D-MT) and Charles Grassley (R-IA) — the Chairmen and Ranking Members of the House Energy and Commerce Committee and the Senate Finance Committee, which oversee SCHIP — the legislation (H.R. 5470) would preserve \$2.7 billion in federal SCHIP funds that either expired at the end of fiscal year 2002 or are slated to expire at the end of fiscal year 2003. The National Governors Association supports the legislation, and the Administration has said it is acceptable. The legislation died when Senator Bob Smith (R-N.H.), apparently acting on behalf of the Senate Republican Leadership, objected to its consideration.

According to media reports and Congressional sources, the Senate Leadership acted to block consideration of what appeared to be noncontroversial legislation when it was fashioned last week in order to avoid embarrassing House Budget Committee chairman Jim Nussle (R-Iowa). Nussle successfully worked to prevent the legislation from being taken up by the House late last week when Tauzin sought to bring it to the House floor. Nussle objected to the legislation on the grounds that "budget authority" for the legislation in fiscal year 2003 is not included in the House budget resolution.¹

Yet the reason these funds are not reflected in the House budget resolution is that Nussle declined to include them when the budget resolution was designed last spring. Nussle failed to include these funds despite the fact that the House budget resolution was portrayed as reflecting the Administration's budget request and the Administration's budget *did* include these funds. Furthermore, Administration analyses that accompanied the budget showed that nearly one million low-income children will eventually lose health insurance if problems in the SCHIP funding structure, including the scheduled expiration of these funds, are not addressed. It also may be noted that the House approved tax cuts this year that, in total, substantially exceed the amount allowed for tax cuts under the House budget resolution. Rep. Nussle supported the tax-cut measures.

On Friday, November 22, the House is scheduled to reconvene to pass the homeland security legislation that the Senate approved this week. The House has the opportunity at that time to

¹ See Julie Rovner, "...As Solution Sought for Children's Health Program," *Congress Daily*, November 18, 2002.

take up and pass H.R. 5470. When Congress reconvenes in early January to complete work on fiscal year 2003 appropriations, the Senate then could quickly pass this extension of SCHIP funds and ensure that states continue to have these funds to provide health insurance coverage to low-income uninsured children.

Such House action is extremely unlikely on November 22, however, without action by the Administration to urge the House and Senate Republican Leaderships to move the legislation.

Explanation of the Legislation

The Tauzin-Dingell-Baucus-Grassley compromise proposal would extend the availability of \$1.2 billion in unspent SCHIP funds that were originally allocated to states for fiscal years 1998 and 1999 and that expired on September 30, 2002 and reverted to the Treasury. The proposal would extend the availability of these funds through the end of fiscal year 2004.

The legislation also would extend the availability of an additional \$1.5 billion in SCHIP funds scheduled to expire at the end of fiscal year 2003. Under current law, unspent funds from fiscal year 2000 are to be recovered in the next few months from states that did not use these funds by September 30, 2002 and redistributed to states that have fully spent their fiscal year 2000 allocations. An estimated \$1.5 billion of these redistributed funds are expected to remain unused at the end of fiscal year 2003 and to revert to the Treasury at that time. The proposed legislation would make these funds, as well, available through 2004.

These funds from the early years of the SCHIP program, which started in 1998, remain unspent because it took many states several years to develop and implement their SCHIP programs. But SCHIP has since matured, now insures 4.3 million low-income children, and will badly need these unspent funds to help avert sharp cutbacks in the years ahead. Under the terms of the 1997 Balanced Budget Act, which created SCHIP, funding for SCHIP was reduced by more than \$1 billion — or 26 percent — in fiscal year 2002 and is slated to remain at this reduced level through fiscal year 2004. States have been able until now to draw upon unspent SCHIP funds from the program's early years to avert SCHIP cutbacks. However, a number of states will have to cut their SCHIP programs in the years ahead unless problems in the federal SCHIP funding structure are addressed. The Office of Management and Budget has projected that if no action is taken, the number of children insured through SCHIP will *fall by 900,000* between fiscal years 2003 and 2006. Essentially, under current law, there is a mismatch between the years for which the expiring funds are available and the years in which these funds are needed to help states lessen the magnitude of the cuts they will have to implement in their SCHIP programs.

An extension of the expiring funds is a necessary, but not sufficient, condition to averting these steep cutbacks. To minimize the cutbacks, a second problem — not addressed in the compromise bipartisan legislation (and also not addressed in the Administration's budget proposal) — must be tackled as well. The second problem is the significant SCHIP funding imbalances that have developed among states. In the years ahead, some states will be sitting on substantial amounts of federal SCHIP funds they cannot use while other states are forced to cut their programs and cast more low-income children into the ranks of the uninsured. Some

proposals, such as the proposal reflected in the Administration's budget, would exacerbate this problem. A better system of matching federal funds with state needs is needed, along with an extension of the expiring funds.

Passage of the pending legislation would keep the expiring \$2.7 billion in expiring funds in the SCHIP program. It would provide Congress time to develop more comprehensive legislation to head off the sharp SCHIP cutbacks that otherwise loom in the next few years.