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## HOUSE BUDGET RECONCILIATION BILL WOULD HARM PEOPLE WITH DISABILITIES

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The budget reconciliation bill passed by the House of Representatives on November 18 includes a number of provisions that would adversely affect people with disabilities and their families. These provisions are described briefly below. None of these provisions is included in the Senate version of the budget reconciliation bill.

### Medicaid

The House bill includes provisions that would allow states to charge many low-income Medicaid beneficiaries to pay more out-of-pocket for health care and to reduce the health care services covered by Medicaid. The federal Medicaid cuts in these two areas will total nearly \$30 billion over the next ten years, according to the Congressional Budget Office. People with disabilities would be among the groups hit hardest by these provisions.

**States would be permitted to scale back the health care services Medicaid provides for people with disabilities.** Under the House bill, states would be permitted to scale back benefits for many categories of Medicaid beneficiaries, including many individuals with disabilities with incomes well below the poverty line.<sup>1</sup> States would be permitted to replace the current federally prescribed Medicaid benefit package with a benefit package that is provided under any of a number of so-called “benchmark” plans or with a benefit package that is “actuarially equivalent” to any of the benchmark packages. A state can choose as its benchmark any plan offered to state employees,

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<sup>1</sup> Certain groups would *not* be affected by this provision, including people who are dual eligibles (i.e., receive both Medicaid and Medicare), people who receive Medicaid under the medically needy “spend down” category, certain groups eligible for long-term care services, and people who are deemed to be “medically frail” or to have “special medical needs.” However, the “medically frail” and “special medical needs” categories — which will be defined by the Secretary of Health and Human Services — apparently are not intended to include all people with disabilities, since the House Energy and Commerce Committee dropped an explicit exemption for people with disabilities from an earlier version of the bill. Cindy Mann and Jocelyn Guyer, *House Budget Bill Would Eliminate All Current Federal Medicaid Benefit Standards for Six Million Children and Other Vulnerable People*, Georgetown University Health Policy Institute Center for Children and Families (November 10, 2005), Table 1, note, page 1.

one of the standard plans offered to federal employees, or the largest health maintenance organization (HMO) in the state.

These benchmark plans are likely to cover fewer health care services than are now covered under Medicaid. The benchmark plans also are likely to exclude services that are critically important to poor and low-income individuals with serious disabilities who do not have the disposable income to purchase these additional needed services privately. For example, some states may decide to reduce access to certain mental health services, especially non-traditional services such as extended day treatment or in-home care. States also could reduce the amount of services that are covered or could treat people differently based on their medical condition or where they live. For example, a state could sharply limit the number of psychiatric doctor visits or in-patient hospital stays for certain conditions.

The Congressional Budget Office (CBO) estimates that this provision would reduce federal Medicaid spending by \$3.9 billion over five years and \$18.2 billion over ten years. The option to reduce the health care services covered by Medicaid is the *largest* single cut in the Medicaid area in the House bill. CBO estimates that in 2015, a total of 5 million Medicaid beneficiaries would see their benefits reduced as a result of this option. CBO estimates that the new limits on benefits would result in a reduction of 15 to 35 percent in average spending on beneficiaries facing benefit reductions as a result of the new option. Using the CBO estimates, a recent analysis found that the cut in spending for each person with disabilities would range from \$4,194 to \$9,786 in 2015.<sup>2</sup> In other words, CBO expects the provision to lead to a substantial reduction in the care provided to people with disabilities, the aged, children, and others through Medicaid.

**States would be permitted both to increase co-payments for Medicaid services and to charge premiums for Medicaid coverage.** States could impose substantial new co-payment and premium fees on millions of low-income Medicaid beneficiaries — the highest fees could be imposed on beneficiaries whose incomes are modestly above the poverty line and who are not also enrolled in Medicare or living in long-term care settings, including many Medicaid beneficiaries with disabilities.

For people with incomes over the poverty line, states could set co-payments at high levels — for example, these fees could be set at \$25 or more for every doctor visit — and sizable premiums could be charged as well. The only limit would be that total co-payments and premiums could not exceed five percent of a family's annual income, though these fees could exceed five percent of a family's *monthly* income. This means that if a person with a disability has a health crisis one month that requires significant medical attention, she could incur substantial co-payment fees that consume a quarter, a third, or more of her monthly income.

Furthermore, research indicates that a limit on co-payments and premiums set at five percent of annual income would not protect beneficiaries from harm. Various studies have found that co-payments and premiums totaling well below five percent of income lead low-income individuals to forgo coverage altogether or to put off addressing health problems or filling needed prescriptions, sometimes making them sicker as a result. Moreover, out-of-pocket expenses that beneficiaries had to incur for health care services that Medicaid no longer covered (if the state used the authority the

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<sup>2</sup> Jeanne Lambrew and Karen Davenport, "Medicaid: House Budget Proposal Harms Millions," Center for American Progress, November 2005.

House bill provides to scale back benefit coverage) would not count toward the five percent limit. Total out-of-pocket costs for low-income beneficiaries with serious disabilities thus could significantly exceed five percent of these beneficiaries' limited incomes.

Increased co-payments would be especially harmful for people with disabilities. They need to use medical services more and often need multiple prescription medications. As a result, they face larger total co-payments.

In another major reversal of policy, the House bill allows providers to deny health care services and prescription drugs to beneficiaries unable to meet their cost-sharing obligations. Because people with disabilities will have difficulty affording the new, higher co-payments, this change in policy heightens the risk that they will be unable to obtain medications or health care they need.

The co-payment and premium changes would reduce federal Medicaid spending by \$2.3 billion over five years and \$10 billion over ten years, according to the Congressional Budget Office.

CBO estimates that:

- 17 million low-income Medicaid beneficiaries would ultimately be subject to higher co-payments;
- about 80 percent of the savings from the increased co-payments would come from *decreases in the use of services such as doctors' visits and prescribed medications*. In other words, the vast majority of the savings would come from beneficiaries forgoing care because of the financial burdens placed on them when they access health care services or fill prescriptions, rather than from the increased fees paid by Medicaid recipients; and
- more than 100,000 people would ultimately lose coverage altogether because they would have trouble paying the premiums.

CBO also predicts that the reduced use of health care services would result in more emergency room visits and higher emergency care costs. In many cases, emergency room visits may become necessary when health conditions that were left untreated because of the copayments and premiums charged to Medicaid recipients grow worse.

## **Supplemental Security Income**

**Payments owed to eligible SSI disability recipients would be delayed by up to a year.** SSI recipients with disabilities often are owed back benefits that accrue while they wait for the Social Security Administration (SSA) to determine whether they meet SSI's stringent disability standards. When someone applies for SSI on the basis of having a disability, he or she must submit medical documentation that SSA then must review to determine whether an individual's medical conditions are severe enough to meet the SSI standards. This process often takes many months or even longer — the process can be particularly lengthy for individuals' whose applications are initially denied and then later approved when the eligibility decision is appealed. When a person is found eligible, the

individual receives back benefits that cover the period of time during which the application for SSI benefits was under review by SSA.

Currently, if SSA owes an SSI recipient back benefits, it provides those benefits in a lump sum to the recipient, unless it owes the individual more than 12 months worth of benefits. In that case, SSA provides the back benefits to the individual in installment payments. The first installment covers 12 months of benefits; a second installment paid six months later covers up to another 12 months of benefits; and the final payment provides any remaining amount.

Under the House budget bill, however, any SSI recipient owed more than *three months* of back benefits would have to receive these benefits in installments, and the initial installment payment would be made smaller. The first installment would cover only three months of benefits. The second installment paid six months after the first payment would cover no more than another three months of benefits. The final payment — made a full year after the individual was found eligible for SSI benefits — would cover all remaining amounts owed to the recipient.

This delay means that many SSI recipients would have to wait even longer for the benefits they are owed, making it more difficult for them to pay outstanding bills they incurred during the period that they were unable to work due to their disability but did not receive monthly SSI benefits because SSA was still processing their application.

Some individuals could die before receiving their full SSI benefits. With two minor exceptions, if a person dies before being paid SSI benefits that they are owed, the SSI benefits are not paid to the person's relatives or estate. These back benefits are not even available to help family members pay for funeral costs.

**A second SSI provision would aggravate the problems caused by the lump sum provision.** The House budget bill would require SSA to do an extra review of a fixed percentage of the cases in which SSA has determined the person is eligible for SSI disability benefits *before* the individual can begin to receive benefits.<sup>3</sup> This extra review could further delay SSI benefits for needy individuals with disabilities.

Currently, SSA contracts with state agencies to determine whether an individual's medical condition meets the SSI disability standard. (These same state agencies also determine whether individuals meet the disability standards in the Social Security program.) Under the House bill, SSA ultimately would be required to review half of all disability decisions made by the state agency before SSI benefits are provided to individuals.

This rule already exists in the Social Security (as opposed to SSI) program which provides disability-related benefits to workers and some dependents of workers who cannot work due to their disability. Extending this provision to SSI is made more troubling, however, in combination with the House provision discussed above that would further delay assistance to individuals owed back benefits by requiring them to be paid out over a twelve month period. Taken together, these two

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<sup>3</sup> The House bill requires that reviews occur in 20 percent of state agency determinations in FY 2006, 40 percent in FY 2007, and 50 percent in FY 2008. Within SSA's disability adjudication process, state disability determination services (DDSs) make the first level decision in SSI disability cases and consider appeals from denials at the second level of review, known as reconsideration. Further appeals occur at the federal level, to SSA's administrative law judges and then to SSA's Appeals Council.

House provisions would delay both the SSI eligibility determination process — which also often delays Medicaid coverage as well — and the ultimate provision of all of the benefits vulnerable individuals with disabilities need to meet their most basic needs.

## **Temporary Assistance for Needy Families**

**The House bill imposes rigid new TANF work requirements that fail to make appropriate accommodations for parents with disabilities or those who care for children with disabilities.** The House budget bill increases the percentage of parents receiving TANF cash assistance that must participate in welfare-to-work programs, requires parents to participate in those activities for 40 hours each week, and places significant limits on the *types* of activities to which TANF recipients can be assigned. Under the bill, 24 of the 40 hours of required participation each week must be spent working in a subsidized or unsubsidized job. This would apply even if states determined that recipients could not succeed in a subsidized job for this many hours each week or that such activities would be less effective than activities more tailored to the individual needs of a particular parent.

These rigid rules would apply to parents with disabilities, parents who are ill, parents with substance abuse problems, and parents caring for children with disabilities some of whom may be unable to work in a job for 24 hours. States would not be permitted to count recipients toward the federal work participation rates they must meet if they participate in specialized rehabilitation services designed to help them address these serious barriers to employment in lieu of the requirement to work for 24 hours. (The fiscal penalties on states for failing to meet the work requirements are steep, so it is almost unimaginable that states would operate programs in a manner that left them at significant risk for failing to meet the requirements.)

If the House provisions are enacted, states likely would have to create large-scale workfare programs to satisfy the requirement that recipients work in a subsidized or unsubsidized job for 24 hours each week. For parents unable to find private employment, states would need to place them in either a workfare program or a wage-paying subsidized job. While subsidized jobs have shown success in some areas, they are expensive to operate, and thus states are likely to have to assign many recipients to workfare programs. Unfortunately, research has not shown workfare programs to be effective at helping parents transition to unsubsidized jobs.

If parents are placed in activities that are not tailored to their circumstances and the parent is unable to comply with the requirements to participate in those activities, the consequences would be severe. The bill would require states to terminate all assistance to the family — including children in the family — if a parent failed to comply with program expectations, even if the work activity to which they are assigned is ill-suited to the particular needs of the parent.

Thus, the impact of the House work and sanction provisions on parents with disabilities and those caring for children with disabilities could be severe. Under pressure to meet the bill's work requirements, states may assign recipients with disabilities into workfare programs they cannot comply with and then sanction them — and their children — off the program when the recipients fail to meet program requirements. There already is significant research evidence showing TANF recipients who are sanctioned for failing to meet the current law work requirements are far more

likely than other TANF recipients to have disabilities or serious health problems or to be caring for a child or other dependent with a disability. These new more rigid work requirements, coupled with new requirements to terminate all assistance to families in which a parent does not meet work program expectations, are likely to exacerbate this problem.

And, even if parents find a way to comply with the rules, states may be wasting resources by placing parents in dead-end workfare jobs that fail to address their real problems, rather than providing them with rehabilitative services that are more effective at helping parents prepare for employment.

Finally, the bill also includes no accommodations for parents caring for children or other family members with disabilities. In some cases, these parents may be unable to participate in welfare-to-work activities for 40 hours each week. These parents may be needed in the home to care for a child with a disability for whom appropriate child care is not available or may need to take significant time each week to take a child to medical appointments, physical therapy, and be available to the child's school to address any health crises or problems that arise. If parents with children with disabilities do not meet the full 40 hours of required participation, the state will not get full credit toward the work participation rate.

Thus, under the House bill, states may pressure parents with children with disabilities to meet all or nearly all of the 40 required hours of participation, forcing some parents to make difficult decisions about tending to their children's special medical and educational needs or ensuring that the family does not become destitute by being sanctioned off the program because the parent failed to meet program requirements. States may be far less willing to grant exceptions to program rules for these parents when the requirements are difficult for the state to meet and the state faces fiscal penalties if it does not meet them. (The bill continues the current prohibition on reducing or terminating assistance to a family in which a parent fails to meet work requirements due to a lack of appropriate child care. This prohibition applies only to children under the age of six. It does *not* extend to parents of children ages six and over for whom no appropriate child care is available due to their disabilities. The prohibition also does not extend to cases in which parents miss hours of participation because of school or doctor's appointments.)

The approach to work requirements taken in the House bill was not adopted in the TANF reauthorization bill approved earlier this year on a bipartisan basis by the Senate Finance Committee. While the Senate Finance bill also increases the percentage of parents who must participate in welfare-to-work activities, the overall increase is more modest because states get credit toward the rate when families leave welfare for work and the increase in the hourly requirement is far more modest. Importantly, the Senate Finance bill also includes three important provisions that are responsive to the particular obstacles to work faced by TANF recipients who have disabilities themselves or are caring for children with disabilities and that seek to help such individuals move to greater independence. First, states would be permitted to count recipients who participate in rehabilitative services toward the work participation rates. (After a specified period of time, participation in rehabilitative services would have to be combined with other welfare-to-work activities.) Second, states would be permitted to count the time a parent cares for a child (or other household member) with a disability as work activity. Third, states would be required, before they sanction a family for noncompliance with TANF requirements, to make a reasonable effort to contact the family and determine whether any barriers to compliance exist.

## Child Care

**An estimated 330,000 children in low-income working families would lose child care assistance.** The amount of child care funding in the House bill is not sufficient even to enable states to continue their current child care efforts, much less meet the expanded child care needs that the bill's rigid new TANF work requirements would create. The lack of adequate funding means states likely would be forced to divert existing child care resources away from low-income working families that are not receiving TANF cash assistance in order to cover the cost of providing child care to the increased numbers of TANF cash recipients who would be participating in welfare-to-work programs.

As a result, an estimated 330,000 fewer children in low-income working families not receiving TANF income assistance would receive child care assistance in 2010 than in 2004.<sup>4</sup>

Child care can be especially costly and difficult to find for parents of a child with a disability. The under-funding of child care in the House bill would make it even harder for these parents to secure appropriate child care and be able to work outside the home.

## Food Stamps

**Despite reports to the contrary, some people with disabilities would lose food stamps.** Under the House bill *legal* immigrant adults who have been in the United States for more than five years but less than seven years would lose food stamp eligibility. Proponents argue that these immigrants could become naturalized citizens in the fifth year in the country and thereby avoid the loss of food stamp eligibility, but this often would not be feasible. The process for becoming a naturalized citizen can be lengthy, complicated, and expensive for many legal immigrants, and the process can be particularly difficult for people with disabilities, for whom the paperwork and citizenship test may pose particular difficulties.

There has been some confusion over whether people with disabilities would be affected by this provision, since legislation enacted in 2002 restored food stamp eligibility to legal immigrants who have disabilities. (Eligibility for these immigrants had been eliminated by the 1996 welfare law). The Food Stamp Program only considers someone to be “disabled” for purposes of food stamp eligibility if the individual receives disability-related benefits from a program with a stringent disability standard, such as SSI and Social Security disability benefits. Since legal immigrants who entered the United States after 1996 cannot qualify for the Supplemental Security Income (SSI) program, and many states do not have Medicaid programs that have disability tests sufficiently rigorous to meet food stamp standards, some low-income adults with disabilities who have lived in the United States for more than five years have no way to secure an official classification as being disabled and thus would be cut off food stamps under the House bill.

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<sup>4</sup> This figure was computed with the assistance of Danielle Ewen of the Center for Law and Social Policy and is based on CBO data on the projected child care costs associated with the new work requirements, 2001 HHS data on the per-slot cost of child care, the CBO estimate of how much the cost of child care increases each year due to wage and general inflation, and the child care funding levels under the House bill.