

SPECIAL COMMENTARY

**THE CHILDREN’S HEALTH INSURANCE PLAN:
THE TIME FOR CONGRESS TO REAUTHORIZE IT IS NOW!**

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The Children’s Health Insurance Plan (hereafter, “CHIP”) is a program designed to ensure children have access to high quality healthcare. CHIP has been in the news recently because Congress failed to appropriate funding for the program in September of this year.¹ The program requires reauthorization from Congress from time to time and does not have a permanent funding source like Medicare does. Recently Congress has been embattled in political fights to repeal and replace the Affordable Care Act, and now the push for tax reform (in reality: tax cuts for the wealthy), not to mention the controversies peppered in both the legislative and executive branches of the federal government. Congress, for various reasons, missed the reauthorization deadline of September 30th. As a result, it is reported in the main stream media that 9 million kids, who get healthcare coverage through the program, will see their coverage lapse.² This is an incredibly mind-numbing thing to have happened, even in the extraordinary and nonsensical times of our politics today. Congress should act immediately to correct this grave error and reauthorize the program before 9 million vulnerable kids lose their access to affordable healthcare; inaction is not acceptable.

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¹ Valerie Strauss, *9 Million Kids Get Health Insurance Under CHIP. Congress Just Let It Expire*, The Washington Post (Oct. 1, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/10/01/9-million-kids-get-health-insurance-under-chip-congress-just-let-it-expire/>.

² Sam Petulla, *These States Are Running Out of CHIP Funding*, CNN (Dec. 14, 2017), <http://www.cnn.com/2017/12/14/politics/chip-extended-states-funds-kimmel-authorization/index.html>.

BACKGROUND

CHIP was passed into law during the Clinton administration in 1997, and it was taken on as a pet project by then First Lady Hillary Clinton who championed the effort. The program was established by law with broad bipartisan support, after many years of the law being drafted, modified, debated, and studied by commission. CHIP expanded healthcare access for kids in households with incomes higher than the limit to qualify for Medicaid coverage, but not so high that a private health insurance plan would be affordable. It provides, in relevant part, “coverage for children up to at least 200 percent of the Federal Poverty Level.”³

The program is a partnership with the federal government and the states, and it covers healthcare costs for wellness checkups, prescriptions, and emergency and hospital services, among others. CHIP works through block granting dollars to the states to administer the program statewide, and it allows the states flexibility in the how the program is administered.⁴ I strain to find any argument in the press as to why CHIP should *not* be reauthorized. I would, under normal circumstances, make the assumption that such an argument is politically toxic, but I am not so sure that that is the case in present times. If there is an argument to be made for inaction, I doubt it will have any credibility or support from members of Congress. Who would want to be on the record, politically-speaking, in support of not reauthorizing a law designed to protect a small, vulnerable population of children? But again, present times....

WHERE THE PROGRAM CURRENTLY STANDS AND WHERE IT IS HEADED

Regardless, failing to reauthorize CHIP seems to be particularly cruel, given the vulnerable nature of the people the program covers, *children*. The program is not designed to help just the poor, Medicaid does that. CHIP serves middle-class families: families with incomes that are not so low that the families can get coverage under Medicaid, but families with modest means. How, or rather why, this Congress has failed to reauthorize the program is largely beyond the scope of this commentary, but it is certainly worth mentioning, in particular given how much Congress and the current presidential administration hold themselves out to be champions of the middle-class, despite their actions, and inactions, to the contrary. The fact that Congress has failed to act is alarming in its own right. Coverage losses will be born by some of the most vulnerable in our society.

As a matter of ethics, this failure by Congress is plainly wrong and unethical. Vulnerable populations such as these children should be protected by our government and not ignored, let alone neglected. Beneficence and the “do good” ethical principle and the “do no harm” ethical principle both certainly come to mind. The full Senate has not even taken up the issue after nearly a yearlong session, it has only taken up the issue at the committee level. The House has passed a reauthorization, but that effort has not gone any further. This failure to act is not an act of doing

³ *Program History*, Medicaid.gov (last accessed Dec. 16, 2017), <https://www.medicaid.gov/about-us/program-history/index.html>.

⁴ Elisabeth Wright Burak, *CHIP Financing Basics #1 – Federal CHIP Funding Structure*, Georgetown University Health Policy Institute Center for Children and Families (May 22, 2014), <https://ccf.georgetown.edu/2014/05/22/chip-financing-basics-1-federal-chip-funding-structure/>.

good, and it is also likely to result in causing harm to vulnerable children if not corrected, substantial breaches in ethical duty.

As a matter of justice, this failure to act is intolerable. Part of the Merriam-Webster definition of justice is “the quality of being just, impartial, or fair.”⁵ I cannot see any viable or reasonable argument for how this situation is at all fair to the children and families affected. Even arguments that the program causes an increase in the national deficit: the debates over the \$1.5 trillion tax cut bills have betrayed such conservative arguments against raising the deficit; such political arguments are shamelessly betrayed in the interests of political self-preservation. It is an understatement to state that these 9 million children are being treated unfairly.

An alternative non-action by Congress is unacceptable: it cannot be just to deprive such a vulnerable population of what can and does amount to life-altering healthcare access and treatment. As I write this commentary, our elected officials are in the process of passing a massive tax overhaul bill that is largely panned for being a \$1.5 trillion tax cut for the most privileged and wealthy in our country. Our elected representatives are not even trying to hide the nature of this tax giveaway; it was crafted behind closed doors and was not even published for public scrutiny until a Friday evening news dump around 5:30 pm in D.C., mere days before both chambers of Congress are scheduled to hold final votes on the tax bill. This is a naked and obvious giveaway to the wealthiest of Americans at the expense of some of our most vulnerable. Our president defended the tax bill as “one of the great Christmas gifts to middle-income people.”⁶ Far from being a gift, for 9 million children and their families, this is a Christmas nightmare.

At the same time, congressional dereliction of duty has in significant part resulted in the failure to reauthorize CHIP. I am not talking about a failure to make a government program more generous, this is about depriving a vulnerable population of healthcare coverage that they already have. The message from Congress is clear: tax cuts for the wealthy political donors take priority over healthcare coverage for middle-class children. It is not too surprising that this is the case in a post-*Citizens United* world and in this outlier of a year politically-speaking. 9 million vulnerable children do not apparently have the same political clout as the wealthy donors to congressional and presidential campaigns, a sad state of political affairs to say the absolute least. Unironically, that same tax cut bill contains language dispensing with the individual mandate requirement of the Affordable Care Act (hereafter, “ACA”), a central tenet of the ACA that, if repealed, will result in higher insurance premiums and lessened access to affordable healthcare for everyone else.

A recently published fact sheet by the Kaiser Family Foundation, based upon data collected from both the states and federal officials who oversee the program, shows that three-quarters of states will run out of the funds to administer CHIP in those states by March of 2018.⁷ The fact sheet indicates that already, nine states have run out of money and are merely standing presently because the Centers for Medicare Medicaid Services (hereafter, “CMS”) has some redistribution funding

⁵ *Justice*, Merriam-Webster (Dec. 16, 2017), <https://www.merriam-webster.com/dictionary/justice>.

⁶ *Trump Defends Tax Plan as ‘Great Christmas Gifts’ to Middle Class*, Reuters (Dec. 16, 2017), <https://www.reuters.com/article/us-usa-tax-trump/trump-defends-tax-plan-as-great-christmas-gifts-to-middle-class-idUSKBN1EA000>.

⁷ *State Plans for CHIP as Federal CHIP Funds Run Out*, Kaiser Family Foundation (Dec. 6, 2017), <https://www.kff.org/medicaid/fact-sheet/state-plans-for-chip-as-federal-chip-funds-run-out/>.

it can shift toward CHIP, a short-term funding mechanism that is not sustainable over the long-term.⁸ By the end of January, a third of states, including the District of Columbia which was counted as a state for the purpose of the surveys used to prepare the fact sheet, are projected to run out of CHIP funding, a terrifying prospect.⁹

Additionally, state budgets are made with the assumption that CHIP funding will be forthcoming, according to the Kaiser Family Foundation fact sheet.¹⁰ Because there are not requirements that the states provide funding under the program *without* federal dollars, many of the states that do not receive this funding will simply stop administering the program because the state budgets do not have alternative funds allocated for such an avoidable crisis. Colorado, Utah, and Oklahoma have already notified program recipients of potential reductions in coverage under the program.¹¹ The reimbursement rates for CHIP are significantly higher than the same for Medicaid so states will not likely be able to transition these 9 million children to state Medicaid programs.

CONCLUSION

The bottom line is that Congress needs to immediately reauthorize the program as soon as possible. Middle-class families are going to be unnecessarily punished by Congress' failure to reauthorize the program. The stress of the uncertainty alone is staggering. The federal government provides most of the funding for the program, but states have some skin in the game as well. Many states, including my state of Illinois, are suffering from budget problems that will likely result in the withdrawals of funds from CHIP. The state simply did not allocate a budget for this crisis. Many states have already indicated that they will pull funding from the program starting next year.

This is an entirely avoidable crisis in the making. With news of indictments coming from the Robert Mueller investigation, and with Congress' demonstrated and repeated inability to act in the interests of the people they are supposed to serve, as of late, I am skeptical that CHIP's reauthorization will be imminently forthcoming as well. There are bipartisan efforts being made to reauthorize the program, but who can predict what will come out of our government these days? What follows this will likely be a broader attack on the other healthcare entitlement programs: Medicare and Medicaid. That is a frightening prospect when the United States remains the wealthiest nation in the world and the only first world country that does not provide healthcare insurance or access for all of its people. The CHIP children and families are just the start of such an incredibly unethical and just plain wrong trend, and that is depressing in and of itself. I feel incredibly sorry for the 9 million children who are to be the first to pay the price for Congress' inaction, ineptitude, and short-sightedness.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*