



April 23, 1999

This just in! HB 1 Conference Committee Named—page 4

No. 82

Senate sends CHIP bill to House; Amended House Public Health version will be voted on soon

On March 11, the Senate voted out the Committee Substitute to Senate Bill 445 (Moncrief), the bill to create Texas' Children's Health Insurance Program (CHIP). The Senate bill outlined a strong basic structure for CHIP. The Senate bill was then sent to the House Committee on Public Health, which made many significant changes, and voted April 7 to send its amended version of the CHIP bill to the full House. A House floor vote is expected near the end of April. The Senate will then either accept the House amendments, or call for a conference committee to negotiate a compromise bill. This Policy Page summarizes the Senate and House Committee bills, highlighting the most significant changes made by the House.

MAJOR DIFFERENCES BETWEEN SENATE CHIP BILL AND HOUSE COMMITTEE SUBSTITUTE

- **Senate starts CHIP program with kids up to age 10 covered to 200% of the federal poverty income level (FPL) and ages 11-18 covered to 150% FPL; House version starts all ages at 200% FPL. In the 2000-2001 biennium, the cost difference would be \$8.5 billion GR (state dollars), to cover an additional 47,900 children under the House bill.**
- **Estimated enrollment at 200% FPL would be 377,000 by the end of 2001, growing to 445,000 by 2003.**
- **House bill adds language to include legal immigrant children. The cost of including these children is estimated at \$7 million GR for the 2000-2001 biennium (less if Congress restores full CHIP and Medicaid eligibility).**
- **Senate bill drafted from a "no-frills" perspective; House version contains many more specific directives.**

The Senate Lays the Foundation

Key elements of the Senate bill by Senator Mike Moncrief (as amended in Senate Committee and on the Senate floor) include:

- **Older Children Capped at 150% FPL.** CHIP eligibility would include uninsured children ages 0-10 from families with incomes up to 200% of the federal poverty income level (hereafter, "FPL"; 200% FPL is \$27,760 annual income for a family of 3 in 1999), and children ages 11-18 (coverage ends when youth reaches age 19) in families with incomes up to 150% FPL (\$20,820 for a family of 3).
- **Possibility of Raising Cap; Trigger Unclear.** The Commissioner of Health and Human Services is directed to periodically evaluate "the adequacy of funding and the ability of the program to sustain enrollment at higher income eligibility levels for children ages 11 through 18." The Commissioner would then report a "finding of fact" to the Legislative Budget Board and the Governor's Office of Budget and Planning, and would in theory then be able to raise the income cap for the older children. However, the bill language does not specify what constitutes availability of adequate funds. Presumably, the Commissioner would be given a directive by the LBB and GOBP defining the circumstances under which funds would be adequate, but the bill does not clearly identify the trigger.
- **Cap Could be Lowered, Too.** The language also provides for the possibility of **reducing** eligibility for children ages 8 to 10 if the program "funding is not sufficient to sustain enrollment." Any such cutback would apply to new applicants, rather than cutting already-enrolled children.
- **CHIP Not an Entitlement.** The bill specifies that no child is entitled to coverage under the CHIP program, and declares that the Texas program will be ended if Congress terminates federal funding.
- **THHSC Authority.** Establishes authority of the Texas Health and Human Services Commission (THHSC) over CHIP. Defines specific activities for the Texas Department of Health (TDH), Texas Department of Human Services (TDHS), and the Texas Department of Insurance (TDI), to be performed under the direction of THHSC.
- **Outreach Required.** THHSC is directed to conduct an outreach campaign to inform Texans about CHIP, and to coordinate outreach with the Texas Healthy Kids Corporation (THKC, a nonprofit that markets low-cost health insurance for children statewide). Outreach

would include a statewide toll-free line providing information about all options for uninsured children. THHSC is **permitted (not required)** to contract with community-based organizations, TDH, or TDHS to perform outreach functions.

- **Continuous Coverage Possible.** THHSC is **permitted (not required)** to make children eligible for a 12-month period (rather than children being subject to losing coverage on a month-to-month basis if family income changes, as is the current policy in Texas Medicaid).
- **Application Options.** "To the extent possible," THHSC is to create a single application that could be used interchangeably for children's Medicaid, CHIP, or THKC. THHSC may accept applications by phone, mail, and Internet. The bill states that children who appear to be Medicaid-eligible would be "identified and referred to" Medicaid. However, federal policy guidance has specifically stated that a simple referral to Medicaid is **not** sufficient to comply with federal law, which requires that Medicaid-eligible CHIP applicants be **enrolled** in Medicaid.
- **Benefits.** The Senate bill directs THHSC to consider the needs of both healthy children and children with special health care needs in determining the benefits to be covered by CHIP, but does not mandate any particular menu of benefit coverage.
- **Out-of-Pocket Costs.** The Commission is directed to use co-payments, enrollment fees, and premium contributions, with higher-income families having higher contribution responsibilities. Cost-sharing by parents of children in CHIP must not exceed caps set under federal law.
- **Discouraging "Crowd-Out."** THHSC is **permitted (not required)** to adopt policies (including waiting periods) to discourage employers and individuals from dropping existing children's coverage and shifting those children to CHIP.
- **Participating Health Insurers.** Health plans selected to provide CHIP coverage must be properly licensed or certified by TDI. The THHSC may give preference in selection to health plans currently contracting with Medicaid or THKC.
- **Legislative Oversight.** A legislative oversight committee would monitor and report on CHIP implementation until 2003.
- **Texas Healthy Kids Corporation Option.** THHSC is **permitted (not required)** to purchase CHIP coverage through THKC, and to delegate outreach and enrollment to the Corporation.
- **Time Line.** The Commission is directed to submit a revised CHIP (Title XXI) State Plan to federal authorities no later than September 1, 1999. This would not necessarily mean CHIP enrollment would begin that soon, and no deadline for having coverage operational is included.

House Committee on Public Health Amendments

The House Committee on Public Health made a number of changes to the Bill as described above. A number of the changes made by the Committee were intended to clarify the authority of THHSC over CHIP policy, in the event that the Commission should delegate responsibility for procuring insurance and enrolling children in CHIP to the Texas Healthy Kids Corporation (THKC). (See below for a description of issues related to THKC's role in CHIP.) Major House Public Health (HPH) Committee amendments to CSSB 445 are described below; most provisions that are not discussed below are identical in the two bills :

- **Eligibility Cap at 200% FPL for ages 0-18.** The HPH substitute establishes eligibility for uninsured children from families with incomes up to 200% FPL (\$27,760 annual income for a family of 3 in 1999).
- **THHSC Retains all Policymaking Authority over CHIP, Including Benefits.** The Commission may choose to retain, delegate to state agencies, or contract with external entities to perform CHIP functions. The Commission may not delegate policy oversight (including the determination of CHIP-covered benefits) to any other entity or agency.
- **Medical Savings Account Option.** This amendment directs THHSC to include in CHIP an "option for the parent of the child to participate in a medical savings account (MSA) insurance program...and allow a parent's employer or other benefactor to contribute" to the MSA. Under the MSA concept, which is popular with some conservative groups, most health expenditures are removed from the private insurance market and made out-of-pocket by the consumer from a special tax-sheltered savings account. Only "catastrophic" health expenses are actually insured. *It is not clear whether an MSA option can actually be designed which would not violate the caps on out-of-pocket spending (e.g., not to exceed 5% of family income for families above 150% FPL) in federal CHIP law.*
- **Standards for Contracting.** THHSC must perform a "readiness review" of any non-governmental entity with which it contracts to perform a CHIP function, to ensure that the contractor is ready and able to perform all contracted functions. The HPH version also mandates competitive procurement processes for certain contracts.
- **Outcomes Monitoring Authorized.** THHSC may direct TDH to monitor outcome measures, including rates of hospitalization for a number of "ambulatory sensitive conditions", injuries, and risky health behaviors.
- **Outreach Modifications.** The HPH bill **requires** the involvement of community-based organizations and school-based health clinics in CHIP outreach efforts.
- **Advisory Committee.** The HPH bill requires THHSC to create a statewide CHIP advisory committee to provide input into CHIP implementation and operations.

- **Continuous Coverage Mandated.** THHSC is required to make children eligible for a 12-month period.
- **Application and Enrollment.** Single application form for children's Medicaid, CHIP, or THKC is mandatory. Applications must be available in languages other than English. Families of children who appear to be Medicaid-eligible must be assisted with the Medicaid enrollment process. The state would document which of these children enrolled in Medicaid, were ultimately found eligible for CHIP, or failed to complete the Medicaid application process and remained uninsured. Eligibility and enrollment systems must be adequately staffed to ensure that children will be enrolled with a health plan within 30 days of completing an application for CHIP.
- **Inclusion of Legal Immigrant Children.** Though most legal immigrant children are already eligible for CHIP and Medicaid, legal immigrant children who arrived in the U.S. since August 1996 are subject to a 5-year bar from both programs, after which they are eligible on the same terms as citizen children. However, Congress is currently considering bills that would lift this 5-year bar **at state option**. The HPH bill directs the state to exercise the option to draw full federal match for CHIP and Medicaid for these children if Congress enacts that policy. If Congress does not create that option, the state would offer CHIP-like health coverage for children subject to the 5-year bar.
- **Covered Benefits.** The HPH bill directs that the CHIP program be implemented with a benefits package "in substantial compliance" with the benefits recommended by the House and Senate interim committees studying CHIP in 1998. While more specific than the Senate language, it is not clear what "substantial compliance" really requires. The HPH version also specifically excludes "reproductive services" from the primary and preventive services covered. This seems to mean that coverage of family planning and prenatal care both would be excluded.
- **"Crowd-Out" Provisions.** The HPH bill adds language **requiring** that any child who has been insured within 90 days of making a CHIP application, cannot be enrolled in CHIP until 90 days **after** the date of application. Exceptions to this requirement are specified for children who lost coverage due to parents' layoffs, business closures, end of COBRA coverage periods, parental divorce, other similar involuntary loss, or good cause as determined by THHSC. The bill also specifically excludes children leaving THKC coverage from any waiting period. An exception is also provided if a parent terminates coverage because the cost exceeds 10% of annual family income.
- **Participating Health Insurers.** Insurers providing CHIP coverage must be selected by the state through either a competitive procurement, or an open process in which all qualified insurers could participate. Clarifying

language specifies that preference may only be given to plans that provide Medicaid or THKC coverage in the same region where they seek to provide CHIP coverage. The bill directs the state to include at least one CHIP insurer in a metro area which is also a Medicaid Managed Care insurer. (This is presumably to allow families who have young children in Medicaid, and older children who qualify for CHIP, to enroll all their children with the same insurer. This will occur because Medicaid covers children 0-1 to 185% FPL, and 1-6 up to 133% FPL.) The bill also mandates that CHIP insurers include "significant traditional providers," as they are required to do to qualify for Medicaid Managed Care contracts. Finally, the House Committee bill requires that a choice of at least two different health plans be available in metropolitan areas.

- **Texas Healthy Kids Corporation Option.** House amendments add a requirement that **if** the Commission contracts with THKC to procure health coverage and enroll children, THKC must use a competitive process to award contracts for eligibility and enrollment services, and to select health insurers. House language also requires THKC to review the capacity of contractors to take on a project of the magnitude of Texas CHIP.
- **Legislative Oversight.** The House Committee version directs the standing committees of the House and Senate — rather than a special committee as outlined in the Senate bill — to monitor CHIP implementation.
- **First Call on Tobacco Settlement Funds.** This House amendment states that the first available funds from future tobacco settlement proceeds shall be used to fund CHIP. This is consistent with statements of intent made by both Chairman Junell (House Appropriations) and Chairman Ratliff (Senate Finance).
- **Time Line.** The House committee added language directing that CHIP should be implemented no later than September 2000, assuming federal approval has been granted.

CHIP and the Texas Healthy Kids Corporation

House Bill 3, passed by the 75th Texas Legislature, created the nonprofit Texas Healthy Kids Corporation (THKC), which coordinates the creation and marketing by private insurers of health insurance products for families who lack access to good, affordable children's coverage through the workplace. While state funds were appropriated to get the Corporation up and running, there is no state funding stream to provide subsidies for low-income and working poor families. All subsidies offered by THKC have to come from private sources, such as charitable donations. THKC now has coverage available in all 254 Texas counties, and has enrolled about 1,500 children, with many new applications being processed. The lowest premium is about \$42 per child

per month in Galveston, but statewide the average premium is closer to \$70 per month.

Congress created CHIP in August 1997, several months after the Texas Legislature created THKC and went home for two years. Because CHIP and Texas Healthy Kids share the goal of insuring children, it has always been assumed that a high level of coordination between Medicaid, CHIP, and THKC would be important, and most parties weighing in on CHIP have agreed that coordination of outreach and application forms and processes are a necessity. However, some elected officials would like to go a step further and actually have THKC subcontract with THHSC to procure CHIP health coverage and administer eligibility and enrollment for CHIP. Others officials support having THHSC contract for coverage and enrollment services itself, or even more likely, to delegate immediate responsibility for those procurements to the Texas Department of Health.

Apart from the clear compatibility of goals, the reasons behind the push for Healthy Kids handling CHIP contracting are a bit obscure. Proponents suggest that having THKC — a non-governmental entity — contract with health insurers and an eligibility and enrollment contractor would give the program more of a "private sector" character,

in keeping with Texas' non-entitlement approach to CHIP. However, the truth of the matter is that the very same private sector insurers and potential contractors will compete for CHIP contracts, whether the procurements are managed by THHSC, TDH, or THKC. As such, CHIP itself will be administered and delivered largely through private sector contractors. Those who push for state agency management of the procurements point to the fact that TDH has been administering managed care programs since 1993, procuring managed care coverage and enrollment services for 370,000 Medicaid enrollees statewide, compared to THKC's modest 1,500 enrollees since its creation (initial THKC coverage began in September 1998). Still, some skeptics observe that the roll-out of Medicaid Managed Care by TDH has been slow and not without its share of problems. Some CHIP supporters fear if THKC lacks proper resources, major enrollment backlogs could result. Everyone agrees that if THKC is to be able to handle CHIP enrollment to achieve a target of 377,000 enrollees by 2001, the Corporation will need to increase its in-house and contracted resources very substantially.

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HB 1 Conference Committee Members Named

On April 23, the Senate voted to recommend a \$98.4 billion state spending package in place of the \$97 billion version approved by the House on April 13. The House declined to accept the Senate's amendments to the budget proposal, so House and Senate members have been chosen for a conference committee that will recommend a state budget acceptable to both chambers. The legislators listed below will iron out the differences in proposed funding.

Amounts proposed by the House and Senate for health and human services programs can be seen at <http://www.cphp.org/products/policyanalysis/hvs.html>

Committee Members

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