

The Poverty Forum: Health Care

Protection for States with SCHIP “Unborn Child” Regulation

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Area: Health Care

Issue:

In 2002 the United States Department of Health and Human Services (HHS) improved the State Children’s Health Insurance Program (SCHIP) by stating that the word “child” in the statute may include the period from conception to birth. Fourteen states have already chosen to provide health care to pregnant women and their unborn children under this regulatory option: AR, CA, IL, LA, MA, MI, MN, OK, OR, RI, TN, TX, WA, WI.

Problem:

SCHIP reauthorization efforts (which did not become law) in the 110th Congress would have codified many regulatory provisions of SCHIP, but not this one. The bill that passed Congress and vetoed by President Bush mentioned the availability of this option, but explicitly took no position on the regulation’s “legality or illegality.” This leaves the unborn child option in an uncertain legal situation, subject to rescission by any President or HHS Secretary. Later H.R. 976 was vetoed by the President, and a veto override effort fell short of the necessary two-thirds margin in the House.

Giving states only *one* way to provide prenatal care -- by defining the pregnant woman as the patient in need of “child health assistance” -- has serious practical and negative consequences:

- Many children will be born as U.S. citizens in poorer health (and in greater need of expensive health care) from lack of prenatal care, because their immigrant mothers were not eligible for benefits in their own name during pregnancy.
- The 14 states now forced by court orders to fund abortion on demand in their Medicaid program will be required to provide the same services to pregnant women under SCHIP. Thus they will be unable to improve their coverage for unborn children without expanding state funding for the elimination of those children. This would be tragic in a program explicitly dedicated to the lives and health of children.

Policy Recommendation:

The Administration should keep the unborn child regulation in place so states that have chosen this option can be secure in *choosing* to provide life-affirming health services to needy children and their mothers without involvement in abortion. The regulation should continue to be clear in supporting the health needs of the woman during and for 60 days after pregnancy, as long as this is consistent with the health of the child. This improvement in the bill would serve both women

and children, and reaffirm SCHIP's key principle of allowing states to design children's health care programs that best serve their needs.

Previous Legislation (if applicable):

An amendment offered in the last Congress to codify this rule, and clarify the scope of its coverage for women after delivery, failed in the Senate by one vote, 49 to 50.

(Current events are developing as we write this)

Political Outlook:

Continuation of the SCHIP unborn child regulation is not only an important policy, it also has the potential to bring together an unusual alliance of supporters. The provision will make it easier to provide essential health care for unborn children whose mothers may not be in the U.S. legally, and it will do so in a way that avoids entanglement with state requirements which would otherwise require abortion provisions, as well. Consequently, pro-life legislators and those who are concerned about adequate health care for immigrants should find the proposal compelling.

References for more Information:

The current regulation is available at 67 Fed. Reg. 61955, 61974 (Oct. 2, 2002), revising 42 C.F.R. § 457.10.

H.R. 976 was the SCHIP reauthorization bill in the last Congress which was vetoed. Subsequently, Congress passed a short-term extension of SCHIP which expires at the end of March 2009.