DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop: S2-26-12
Baltimore, Maryland 21244-1850

SHO# 18-010

RE: Key Provisions of Legislation Extending Federal Funding for the Children's Health Insurance Program

October 5, 2018

Dear State Health Official:

Congress has extended federal funding for the Children's Health Insurance Program (CHIP) through September 30, 2027, providing federal funding for states' administration of the program for ten years, and continuing coverage for over 9 million children currently enrolled in CHIP. This extension was provided through the Helping Ensure Access for Little Ones, Toddlers, and Hopeful Youth by Keeping Insurance Delivery Stable Act (referred to as the HEALTHY KIDS Act and included in Pub. L. No. 115-120) and the Advancing Chronic Care, Extenders and Social Services Act (referred to as the ACCESS Act and included in Pub. L. No. 115-123).

The purpose of this State Health Official (SHO) letter is to describe some key provisions of the HEALTHY KIDS and ACCESS Acts that are related to CHIP as well as other children's coverage and quality provisions, specifically:

- Funding Extension of CHIP through FY 2027 (Section 3002 of the HEALTHY KIDS Act and Section 50101 of the ACCESS Act)
- Extension and Reduction of Additional Federal Financial Participation for CHIP (Section 3005 of the HEALTHY KIDS Act)
- Extension of the Child Enrollment Contingency Fund (Section 3002 of the HEALTHY KIDS Act and Section 50101 of the ACCESS Act)
- Extension of the Qualifying States Option (Section 3002 of the HEALTHY KIDS Act and Section 50101 of the ACCESS Act)
- Availability of Unused Fiscal Year Allotments for 2018 Redistribution (Section 3002 of the HEALTHY KIDS Act)
- Maintenance of Effort (Section 3002 of the HEALTHY KIDS Act and Section 50101 of the ACCESS Act)
- Extension of the Express Lane Eligibility Option (Section 3002 of the HEALTHY KIDS Act and Section 50101 of the ACCESS Act)
- State Funded CHIP Look-Alike Plans (or "CHIP Buy-In Programs") (Section 3002 of the HEALTHY KIDS Act)
- Extension of the Outreach and Enrollment Program (Section 3004 of the HEALTHY KIDS Act and Section 50103 of the ACCESS Act)

- Extension of the Child Obesity Research Demonstration Project (Section 3003 of the HEALTHY KIDS Act)
- Extension of the Pediatric Quality Measures Program (Section 3003 of the HEALTHY KIDS Act and Section 50102 of the ACCESS Act)
- Third Party Liability in Medicaid and CHIP (Section 53102 of the ACCESS Act)
- Treatment of Lottery and Gambling winnings and Other Income Types When Determining Medicaid and CHIP Eligibility (Section 3004 of the HEALTHY KIDS Act and Section 53103 of the ACCESS Act)

CHIP Funding Provisions and Matching Rate

a. Funding and Allotments

Federal funding for CHIP has been extended for 10 years. Section 3002 of the HEALTHY KIDS Act appropriates funding for allotments for FY 2018 through FY 2023 and section 50101 of the ACCESS Act appropriates funding for FY 2024 through FY 2027 (pursuant to the allotment formulas and methodologies specified in Section 2104(m) of the Social Security Act).

b. Enhanced Federal Medical Assistance Percentage (FMAP)

In general, the rate of payment for expenditures funded by CHIP allotments is equal to the "enhanced FMAP" (EFMAP) as determined under section 2105(b) of the Social Security Act (the Act), which is capped at 85 percent unless otherwise provided in the statute. Section 2101(a) of the Patient Protection and Affordable Care Act amended section 2105(b) of the Act by increasing the EFMAP by 23 percentage points (not to exceed 100 percent) for FY 2016 through FY 2019. Section 3005 of the HEALTHY KIDS Act amended section 2105(b) of the Act by increasing the EFMAP by 11.5 percent points (not to exceed 100 percent) for FY 2020. Beginning October 1, 2020, there will no longer be any additional percentage points increasing the EFMAP. The effect of the amendments to the EFMAP collectively are as follows:

- The EFMAP plus 23 percentage points remains in effect for FYs 2018 and 2019,
- The EFMAP plus 11.5 percentage points is in effect for FY 2020, and
- The EFMAP reverts to the standard EFMAP (pre-October 1, 2015 formula) beginning FY 2021.

c. Extension of the Child Enrollment Contingency Fund

Section 3002 of the HEALTHY KIDS Act and section 50101 of the ACCESS Act extend the Child Enrollment Contingency Fund from FY 2018 through FY 2023 and from FY 2024 through FY 2027, respectively.

Per section 2104(n)(3)(A) of the Act, child enrollment contingency fund payments shall be available to a state for a fiscal year or semi-annual allotment period for certain fiscal years if the state's projected expenditures under title XXI of the Act for a fiscal year exceed available CHIP allotments for such fiscal year and if the unduplicated number of children enrolled in the state's title XXI state plan exceeds enrollment targets calculated for the fiscal year or period.

d. Extension of the Qualifying States Option

Section 3002 of the HEALTHY KIDS Act and section 50101 of the ACCESS Act extend the Qualifying States Option from FY 2018 through FY 2023 and FY 2024 and FY 2027, respectively.

Qualifying states, as set forth under section 2105(g)(2) of the Act, may continue to elect to claim certain title XIX expenditures described at section 2105(g)(4)(B) of the Act at an enhanced matching rate that effectively equals the CHIP EFMAP. As provided at section 2105(g)(4)(A) of the Act, qualifying states may elect to use their CHIP allotment to fund the enhanced portion of such title XIX expenditures, which is equal to the difference between the Medicaid and CHIP matching rates (i.e., the FMAP under section 1905(b) of the Act and the EFMAP under section 2105(b) of the Act, respectively). The standard Medicaid FMAP portion of such title XIX expenditures are funded by Medicaid and are not applied to CHIP allotments.

e. Availability of Unused Fiscal Year Allotments for 2018 Redistribution

Per section 2104(e) of the Act, CHIP allotments that were previously obligated to states for a fiscal year, but that were not expended during the period of availability are available for redistribution to shortfall states for a fiscal year. As described in section 2104(f)(2) of the Act, a shortfall state is a state whose projected expenditures for a fiscal year exceed the available CHIP allotments for the fiscal year (including any unused allotments available from previous fiscal years, any contingency fund payments, and the current fiscal year allotment).

A number of shortfall states received redistribution payments during the first few months of FY 2018, prior to the enactment of the HEALTHY KIDS Act, which provided CHIP allotments for FY 2018. All redistribution payments awarded prior to the enactment of the HEALTHY KIDS Act have been recovered. Section 3002 of the HEALTHY KIDS Act requires the Secretary to reflect an updated estimate of shortfalls and have them available for redistribution for subsequent fiscal years. CMS will recalculate states' FY 2018 CHIP funding projections (including the FY 2018 CHIP allotments) and determine if there are any FY 2018 shortfall states and if so, whether they qualify for a contingency fund and/or redistribution payment for FY 2018.

As has been the case in the past, in the event that in a future fiscal year there is not enough redistribution funding to cover states' CHIP funding shortfall(s) for a fiscal year, redistribution payments for eligible shortfall states will be prorated consistent with section 2104(f)(2)(B)(i) of the Act, which will reduce each shortfall state's redistribution payment proportionally, in an amount equal to each state's percentage of the total national projected shortfall.

Maintenance of Effort (MOE)

The maintenance of effort (MOE) provisions at section 2105(d)(3) and section 1902(a)(74) and 1902(gg)(2) of the Act specify that as a condition of receiving federal funding for Medicaid (with certain exceptions), states must maintain Medicaid and CHIP "eligibility standards, methodologies, and procedures" for children that are no more restrictive than those in effect on

March 23, 2010.[1] The MOE requirement was first implemented under the American Recovery and Reinvestment Act (ARRA) and extended by the Patient Protection and Affordable Care Act.[2] MOE was set to expire at the end of FY 2019.

Section 3002 of the HEALTHY Kids Act extends the MOE requirements for children in CHIP and Medicaid through FY 2023, and Section 50101 of the ACCESS Act extends the MOE requirements for children in CHIP and Medicaid through FY 2027. Section 3002 of the HEALTHY KIDS Act amends the MOE provisions such that starting in FY 2020 and through FY 2027, the MOE provision is applicable to children in families with incomes that do not exceed 300 percent of the FPL. States with eligibility levels above 300 percent of the Federal Poverty Level (FPL) will have the option of maintaining or reducing existing coverage levels to 300 percent FPL at that time.

Programmatic Provisions

a. Extension of the Express Lane Eligibility Option

Section 3002 of the HEALTHY KIDS Act and section 50101 of the ACCESS Act extend the Express Lane Eligibility (ELE) Option from FY 2018 through FY 2023 and from FY 2024 through FY 2027, respectively.

The state option to implement ELE under Medicaid at 1902(e)(13) of the Act or CHIP at 2107(e)(1)(H), has been extended through FY 2027. ELE is designed to provide states with a simplified process for determining and/or re-determining CHIP or Medicaid eligibility for children by relying on findings for income, household size, or other factors of eligibility from another program designated as an express lane agency (ELA) to facilitate enrollment in Medicaid and/or CHIP. Express lane agencies may include: Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Head Start, National School Lunch Program, and Women, Infants, and Children, among others. For more information on this provision, please see SHO#10-003 at https://www.medicaid.gov/federal-policy-guidance/downloads/sho10003.pdf.

b. State Funded Qualified CHIP look-alike Program

Section 3002 of the HEALTHY KIDS Act amends 2107(g)(2) of the Act to define "qualified CHIP-look alike program," as a state program for children that are ineligible for either Medicaid or federally funded CHIP. The amendment specifies that coverage under a qualified CHIP-look alike program must be identical (or more generous) than the benefits provided under the CHIP state plan, or waiver of the plan. The amendment also clarifies that children enrolled in a qualified CHIP look-alike program and children enrolled in a state child health plan may be included in a single or blended risk pool.

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[1] Under section 2105(d)(3) of the Act, MOE applies to CHIP children under age 19 (42 CFR 457.320) and under section 1902(a)(74) and 1902(gg)(A) of the Act, MOE applies to Medicaid children under age 19 (42 CFR 435.118) but may be higher if the state elected the optional eligibility for reasonable classifications for individuals under age 21 (42 CFR 435.222).

[2] Effective January 1, 2014, states converted their Medicaid and CHIP eligibility levels to be based on MAGI. The conversion did not change the effective eligibility level in states.

Major medical health insurance plans and qualified health plans offered within the individual market within a state qualify as Minimum Essential Coverage (MEC) under section 5000A(f) of the Internal Revenue Code. Certain types of government-sponsored coverage, such as Medicaid and CHIP, also qualify as MEC under section 5000A(f)(1). Previously, state "CHIP buy-in" programs, even if identical to a state's federally funded CHIP, had to adhere to the MEC standard applicable to private health plans. Section 3002 of the HEALTHY KIDS Act also amends 5000A(f)(1)(A)(iii) of the Internal Revenue Code of 1986 to state that qualified CHIP look-alike programs as defined under section 2107(g) of the Act will be considered MEC applicable to taxable years beginning after December 31, 2017.

For background purposes, we note that some states have elected to create CHIP look-alike programs funded through state and consumer dollars only. These programs serve children in families that exceed income eligibility levels for federally funded CHIP, and provide the families with the option to purchase coverage by paying part or full cost premiums. The coverage provided to families may be similar or identical to coverage under the CHIP state child health plan. Because there is no federal funding for these programs, title XXI rules do not apply, and there is often variation in cost sharing and other programmatic features that may not be consistent with federal CHIP rules.

Prior to the HEALTHY KIDS Act changes, CHIP look-alike programs, even if identical to a state's federally funded CHIP, had to adhere to the MEC standard applicable to private health plans. CMS conducted an analysis of each CHIP buy-in program to determine whether the CHIP buy-in program met these standards. With this change, states now must only demonstrate that coverage in the CHIP buy-in program is identical to coverage under the CHIP state child health plan for it to be considered MEC.

CMS provided guidance on CHIP look-alike programs in its final rule, "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019", published on April 17, 2018 (83 FR 16930, 17028), which can be found at https://www.gpo.gov/fdsys/pkg/FR-2018-04-17/pdf/2018-07355.pdf.

An individual who elects to enroll in a CHIP buy-in program that has been designated as MEC is ineligible for a premium tax credit only for the period the individual is enrolled in the CHIP buy-in. This has not been changed by either the HEALTHY KIDS Act or the ACCESS Act.

Extension of the Outreach and Enrollment Program

Section 3004 of the HEALTHY KIDS Act extends the Outreach and Enrollment Program by providing $120 million from FY 2018 through FY 2023. Section 50103 of the ACCESS Act extends the Outreach and Enrollment Program by providing $48 million from FY 2024 through FY 2027.

Since 2009, the "Connecting Kids to Coverage" Outreach and Enrollment Grants and the National Enrollment Campaign have served to increase the enrollment of eligible children in Medicaid and CHIP. The Outreach and Enrollment grants provide awards to states, providers, and community-based organizations to conduct activities to enroll and retain eligible children in Medicaid and CHIP, and the National Campaign provides outreach training and support for

grantees and other partners and organizations who are working to help enroll eligible children in Medicaid and CHIP.[3]

Section 2113 of the Act has set aside 10 percent of this Outreach and Enrollment funding for grants that target the enrollment of American Indian and Alaska Native (AI/AN) children into Medicaid and CHIP, and 10 percent for the National Campaign, which provides outreach training and support for grantees and other partners and organizations who are working to help enroll eligible children in Medicaid and CHIP. The remaining funding is for outreach and enrollment grants that broadly target eligible but unenrolled children and facilitate their enrollment and retention in Medicaid and CHIP. These allocations remain unchanged. However, the ACCESS Act requires that 10 percent of this funding is set aside for evaluation and provision of technical assistance to grantees for from FY 2024 through FY 2027.

In addition, section 3004 of the HEALTHY KIDS Act amends section 2113(f) of the Act to expand the types of organizations eligible for grant awards to include organizations using parent mentors to assist families with enrolling in Medicaid and CHIP, retain coverage, and find resources for addressing social determinants of health. Parent mentors must have at least one Medicaid or CHIP covered child, and undergo training to understand the Medicaid and CHIP enrollment process and benefit packages. This enrollment strategy was shown to be successful at incorporating an evidence-based outreach and retention strategy into the criteria for organizations eligible for receiving CMS grant awards.[4]

Section 50103 of the ACCESS Act amends the activities of the National Campaign to include the development of materials and toolkits and provision of technical assistance to states for enrollment and retention strategies.

The additional funding allocated by the HEALTHY KIDS and ACCESS Acts provides continued support for the Connecting Kids to Coverage National Campaign, new opportunities for parent mentors, and the development of new enrollment and retention resources for states.

Extension of the Childhood Obesity Research Demonstration (CORD) Project

The CORD Project is administered by the Centers for Disease Control and Prevention, which links primary care and public health with the goal of improving obesity-related behaviors including diet and physical activity and reducing childhood obesity among underserved children. Section 3003 of the HEALTHY KIDS Act extends federal funding for the CORD Project from FY 2018 through FY 2023.

Section 1139A(e)(8) of the Act provided $30 million for FYs 2018 through 2023. This is the third round of funding for this project as CORD 1.0 was funded through Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) and CORD 2.0 through Medicare

[3] Additional information about the National Campaign and resources available to help outreach partners is available at: https://www.insurekidsnow.gov/.

[4] Flores G., Lin H., Walker C, et al. Parent Mentors and Insuring Uninsured Children: A Randomized Controlled Trial. Pediatrics. 2016; 137(4): e 0153519; Flores G., Lin H., Walker C, et al. Parent Mentoring Program Increases Coverage Rates for Uninsured Latino Children. Health Affairs. 2018; 37(3); 403–412.

Access and CHIP Reauthorization Act (MACRA) of 2015. Additional information on CORD can be found at http://www.cdc.gov/obesity/childhood/researchproject.html.

Extension of the Pediatric Quality Measures Program

Section 3003 of the HEALTHY Kids Act and section 50102 of the ACCESS Act extend federal funding for the Pediatric Quality Measures Program with an additional $90 million from FY 2018 through FY 2023 and an additional $60 million from FY 2024 through FY 2027, respectively. Section 50102 of the ACCESS Act mandates reporting on the Child Core Set of measures beginning with the annual State report on FY 2024. CMS will provide additional guidance and technical assistance to states as they prepare for mandatory reporting.

The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) included provisions to strengthen the quality of care and health outcomes of children in Medicaid and CHIP by establishing a core measure set of children's health care quality measures for voluntary use by state Medicaid and CHIP programs. The Child Core Set includes a range of children's quality measures encompassing both physical and mental health. The 2018 Child Core Set consists of 26 measures that address key aspects of health care access and quality for children and pregnant women covered by Medicaid and CHIP. The core set supports federal and state efforts to collect, report, and use a standardized set of measures toward improving the quality of care provided to children.

Third Party Liability in Medicaid and CHIP

Under current law, Medicaid is generally the "payer of last resort," meaning that Medicaid only pays for covered care and services if there are no other sources of payment available. Section 1902(a)(25) of the Act requires that states take "all reasonable measures to ascertain the legal liability of third parties." Section 1902(a)(25)(A) defines third parties to include, "health insurers, self-insured plans, and group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations (MCOs), pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service." 42 CFR 433.136 defines third party as "any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan."

Section 53102 of the ACCESS Act removes special treatment of certain types of care, delays the implementation changes to the time period for payment of claims, repeals a provision regarding recoveries from settlements, and applies Third Party Liability to CHIP effective on the date of enactment. These changes are described in detailed guidance released in a CMCS Informational Bulletin (CIB) on June 1, 2018, which can be found at https://www.medicaid.gov/federal-policy-guidance/downloads/cib060118.pdf.

Treatment of Lottery and Gambling Winnings and Other Income Types When Determining Medicaid and CHIP Eligibility

Section 3004 of the HEALTHY KIDS Act amends section 1902(e) of the Act to exclude parent mentor compensation from the income determination using modified adjusted gross income

(MAGI). Section 53103 of the ACCESS Act makes changes to how states shall count certain lottery winnings and income received as a lump-sum when determining eligibility. Additional guidance may be published in this area.

States should consult with CMS if they have questions related to any of the legislative provisions discussed in this letter. CMS also encourages states to reach out to their CHIP project officers with any specific questions or concerns, or contact Amy Lutzky, Director of the Division of State Coverage Programs at 410-786-0721 or amy.lutzky@cms.hhs.gov.

Sincerely,

/s/

Timothy Hill
Acting Director