

**Colorado's SCHIP Crowd-Out Regulation:
Background, Community Feedback, and Options**

Fall 2003

**Colorado Covering Kids and Families
A Project of the Colorado Community Health Network
800 Grant Street, Suite 505
Denver, CO 80202
303-861-5165**

Table of Contents

Page 3	Executive Summary
Page 4	Definitions
Page 5	Laws and Regulations on Crowd-Out
Page 6	Community Feedback on Colorado's Crowd-Out Rule
Page 8	Other States' Crowd-Out Rules
Page 10	Discussion and Recommendations
Page 12	References

Tables and Graphs

Page 7	Figure 1.	Geographical regions of survey respondents
	Figure 2.	Effect of the crowd-out rule on families
	Figure 3.	Frequency of the problem
Page 10-11	Figure 4.	Alternatives to the crowd-out rule

Executive Summary

All states that provide coverage under SCHIP¹ are required to take measures to prevent crowd-out of private health insurance. These measures usually take the form of an eligibility rule that denies applicants who voluntarily cancel private insurance within a certain time period prior to application. These rules can force parents to choose between continuing to pay unaffordable health insurance premiums and allowing their children to go without insurance for a period of time so that they will qualify for SCHIP. This places a disproportionate burden on families of children with disabilities that do not receive Medicaid and Supplemental Security Income (SSI) and cannot risk periods of uninsurance.

Colorado's crowd-out rule requires a 3-month period between the time a family loses private insurance and the time they become eligible for CHP+. The rule exempts situations when the loss of private insurance is not voluntary, such as a job change or layoff, and only applies if the employer is paying 50% or more of the dependents' premium.

This report looks at Colorado's crowd-out regulation in a number of ways: the legal and regulatory basis of the crowd-out rule, how the rule affects children and families, and how other states deal with crowd-out. Finally, it presents a number of options that may make the rule less burdensome for families while still preventing crowd-out.

Key findings of this report:

- Although they require states to adopt provisions to prevent crowd-out of private insurance by the SCHIP programs, federal law and regulations allow states a great deal of flexibility in choosing particular measures.
- Colorado's 3-month rule poses a significant burden to families who need insurance for their children. Community agencies see families that are struggling as a result of this rule with moderate frequency.
- Because states are allowed to adopt a variety of approaches to crowd-out, there are a number of models that suit the federal requirements but pose less of a hardship to families. These models include: adopting shorter waiting periods for CHP+ eligibility or eliminating waiting periods entirely; providing exceptions to waiting periods on the basis of disability or family income; and instituting a monitoring program to identify if crowd-out is indeed occurring.
- State and federal studies that look at crowd-out consistently identify that it is not occurring as a result of the SCHIP programs.

¹ Title XXI of the Social Security Act created the State Children's Health Insurance Program (SCHI). It is known as the Child Health Plan, *Plus* (CHP+) in Colorado.

Definitions

The term *crowd-out* refers to the process whereby the existence of public benefits provides employers with an incentive to stop offering insurance coverage to employees. In the case of SCHIP, crowd-out would occur if employers stopped offering coverage for employees' dependents because coverage under SCHIP was available instead.

Additionally, many states are concerned with a related phenomenon: consumers choosing public benefits [SCHIP, Medicaid] over private ones [i.e. employer-sponsored health insurance]. This issue, similar to crowd-out, is usually driven by the expense of employer-sponsored coverage and has been coined *price-out* to reflect the burden of insurance premiums on families. Price-out occurs when the dependent premiums are so expensive under employer sponsored coverage that the family enrolls into SCHIP rather than continue making significant sacrifices in order to pay the premiums.

All states are required to submit a State SCHIP plan to the Centers for Medicare and Medicaid Services (CMS) to have their programs approved. In these state plans, states use the term *crowd-out* to refer to both phenomena. This report uses the term in the same manner.

Laws and Regulations

Federal Law and Regulations

The federal SCHIP legislation pertaining to this issue reads as follows.

42USC1397bb (3) "The plan shall include a description of procedures to be used to ensure- (C) that the insurance provided under the State child health plan does not substitute for coverage under group health plans."

This following rule appears in the Code of Federal Regulations, Title 42, Chapter IV, Part 457.805

State plan requirement: Procedures to address substitution under group health plans. The State plan must include a description of reasonable procedures to ensure that health benefits coverage provided under the State plan does not substitute for coverage provided under group health plans as defined at §457.10.

The states are made accountable to this regulation through their State Plan for SCHIP. A question on the State Plan, section 4.4.4, asks the states to verify that,

The insurance provided under the state child health plan does not substitute for coverage under group health plans. [Section 2102 (b)(3)(C)] [42 CFR 457.805] [42 CFR 457.810 (a)-(c)]

Colorado Law and Regulations

26-19-109 Colorado Revised Statutes states,

(1) To be eligible for a subsidy², a child must not have currently nor in the three months prior to application for the plan have been insured by a comparable health plan through an employer, with the employer contributing at least fifty percent of the premium cost. Children who have lost health insurance coverage due to a change in or loss of employment shall not be subject to the waiting period.

Colorado does this with the Children's Basic Health Plan (a.k.a. CHP+) Rule 120.1,

To be eligible for the Children's Basic Health Plan, an eligible person shall not:

- A. Be covered under a group health plan or under health insurance coverage, or*
- B. Currently have, or have had within the three months prior to application, comparable (as defined in Title XXI of the Social Security Act, Section 2103) health coverage through an employer where the employer contributes at least fifty percent of the premium cost for the individual unless the individual lost health coverage due to a change in or loss of employment.*

Colorado provides this response to the substitution of coverage question on the State Plan:

4.4.4.1. The joint Medicaid/CHP+ application asks whether the applicant has been covered under an employer health benefits plan with at least 50% employer contribution during the three months prior to application. A person is ineligible for the CHP+ if they have had such coverage in the noted time period, unless the coverage was terminated due to a loss of employment. The joint application also asks whether the applicant currently has group or individual coverage and will deem the person ineligible if he/she has such coverage. CHP+ eligibility technicians verify this information with the families' employers if necessary.

² 26-18-103 C.R.S. (8) "Subsidy" means the amount paid by the department to assist an eligible person in purchasing coverage under the plan or a comparable health insurance product available to the eligible person through another coverage entity.

Crowd-Out in Colorado: Community Feedback

A family recently shared a story with the Colorado Consumer Health Initiative (CCHI). Trenton is seven years old, has a genetic disability, and is covered under his parents' employee health insurance. Unfortunately, the cost sharing in the parents' health plan is "exorbitant," even though the employer is paying at least 50% of the premium. The family qualifies for CHP+ except for the crowd-out rule and has applied and been denied for this reason. Due to the child's disability, the family cannot risk being uninsured for three months in order to qualify for CHP+.

Colorado Covering Kids and Families (CKF) asked people who work directly with families about this issue. It is a frequent complaint among people who work in the community, but, to now, we only had anecdotal information with which to document the problem. We asked two questions:

- On a scale of 1-10, 1 being "not at all" and 10 being "HUGE," how significant is this issue for the families that you see?
- On a scale of 1-10, 1 being "never," 5 being "sometimes," and 10 being "daily," how often do families that you see present with this issue?

Responses were solicited from members of the CKF Outreach Work Group, Colorado Community Health Network's Outreach and Enrollment Work Group, and the Board of Directors of the Colorado Association of School Based Health Centers. Thirty-four people responded to the survey. Respondents from across the state provided answers to the questions. (Fig. 1.)

Respondents' agencies include:

- | | |
|--|--|
| • Hilltop Community Resources, Inc. | • Pueblo School Based Wellness Centers |
| • Valley Wide Health Services, Inc. | • Tri County Health Department |
| • Mountain Family Health Centers | • Doctor's Care |
| • Sunrise Community Health Center | • Pueblo Community Health Center |
| • Denver Health Community Voices | • Jefferson Center for Mental Health |
| • Jefferson County Schools Medicaid Program | • Metro Community Provider Network |
| • Commerce City Health Services | • People's Clinic |
| • Eastern CO Services for the Developmentally Disabled | • Community Health Centers, Inc. |
| • Pueblo Coalition for the Medically Underserved | • Salud Family Health Centers |
| • Health District of Northern Larimer County | |

Responses to the survey are consistent with anecdotal information: Colorado's crowd-out rule is a significant barrier to insurance for a number of families. (Figure 2.) Respondents to the survey feel that this is an issue of great significance to families, with over 60% of respondents indicating that it falls into the two highest categories of importance. A respondent in Larimer county noted, "It is huge because those families have insurance and cannot afford it. Oftentimes they tell me that they are unable to pay their rent because their premiums are so high, and cannot cancel their insurance and be assured they will get CHP+."

Families who are facing this barrier come to community agencies for assistance with varying frequencies. About 40% of respondents report seeing these families in the mid-range of frequency. (Figure 3.) This indicates that the problem affects a number of families. A respondent in Jefferson County added, "[the incidence of families that are excluded from CHP+ due to the crowd-out rule] has definitely increased over the last 2 years due to rising insurance costs and job changes." Another respondent in Logan County pointed out, "Naturally the majority of applicants we see are not covered by anything at the time, but we do see families who are paying large premiums for individual policies who definitely need the coverage."

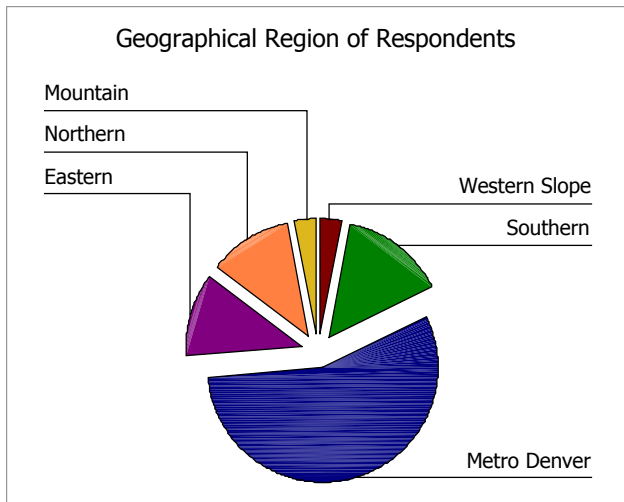


Figure 1. Geographical distribution of responses. Answers to the two questions posed were consistent across all respondent sources, as well as across different regions of the state.

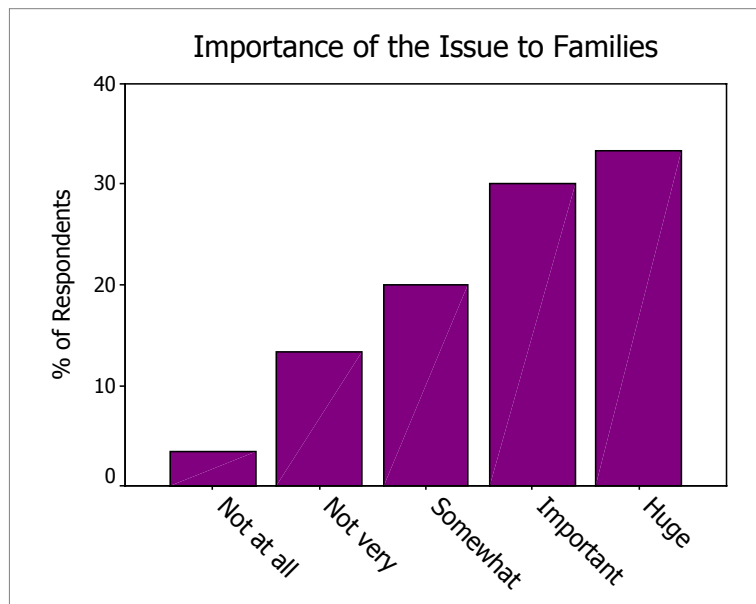


Figure 2. Importance of the crowd-out rule to families. Families who are affected by the crowd-out rule find that it places an extreme burden on their families.

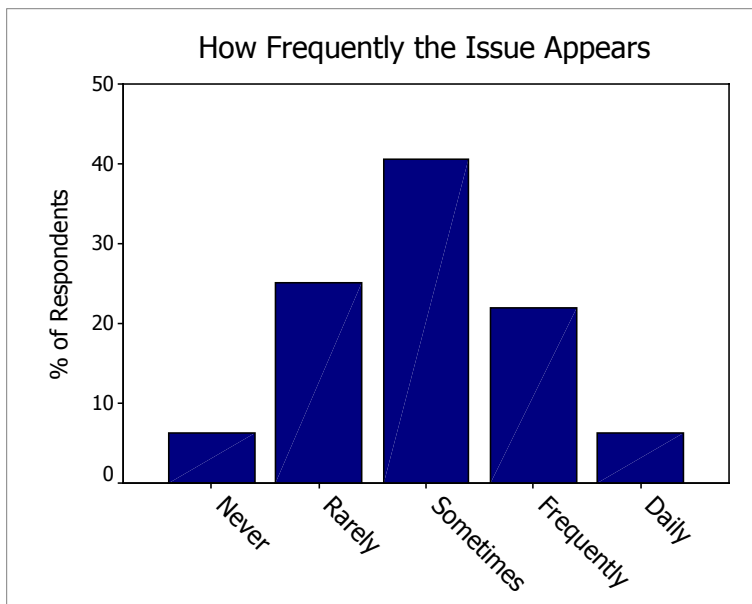


Figure 3. Frequency that the crowd-out rule appears as an issue at community centers that assist with SCHIP enrollment. This frequency reflects the number of families for whom the crowd-out rule is a problem.

Crowd-Out Regulations in Other States

The other states offer a wide range of solutions to the crowd-out question. Most commonly used are waiting periods between the time that a child is covered under employer-sponsored insurance and the time that the child is eligible for coverage under an SCHIP plan. These waiting periods range from one month to one year, with the most common being 3 or 6 months.

Colorado is on the lesser end of the spectrum of crowd-out restrictions, but a significant number of states that have crowd-out provisions offer more opportunities for families to become covered under an SCHIP plan. These other states generally fall into three categories:

- States whose waiting period between coverage under private insurance and coverage under SCHIP is less than three months.
- States who impose a waiting period similar to Colorado's but allow for exceptions to this rule, such as for children who have reached their lifetime maximum for benefits or whose health insurance premiums constitute five or ten percent of the family's total income.
- States who do not take specific action to prevent crowd-out, but rather study SCHIP participants to determine if crowd-out is indeed happening and then take action.

All of these strategies are approved by CMS, and can be found at <http://cms.hhs.gov/schip/chpa-map.asp>.

Shorter Waiting Periods

Wyoming, Vermont, and North Carolina are examples of states that have shorter waiting periods than Colorado. Wyoming and Vermont both have a one-month period of uninsurance between the time that a family voluntarily drops private coverage and is eligible for coverage under SCHIP. Like Colorado, both of these states make exceptions for families whose lapse in coverage is due to situations like involuntary loss of employment or moving to a new job.

North Carolina, which previously used a six-month waiting period, changed their crowd-out provision in 2001. Now, North Carolina requires only that a client be uninsured by any other coverage on the date of enrollment into the SCHIP program.

Exceptions

Many states include a variety of exceptions with their waiting periods, including Colorado. Arizona, Georgia, West Virginia, Maine, and Rhode Island, however, make exceptions that impact price-out concerns as well as special needs populations.

Like Colorado, Arizona's SCHIP program uses a three-month waiting period between private and public insurance to guard against crowd-out. It also uses similar exceptions to ours in regard to involuntary loss of employment. Additionally, children who have reached the lifetime limit on private insurance and children who are seriously or chronically ill are also exempted from the three-month waiting period.

Georgia, West Virginia, Maine, and Rhode Island all have exceptions that address price-out. In addition to a waiting period with some basic exemptions, these states also exempt families whose private insurance premiums is five (Georgia) or ten (Maine, West Virginia) percent of a family's annual income. Rhode Island exempts families who are paying more than \$50 per month in private insurance premiums from its four-month waiting period.

Many states also include the ability for the State's SCHIP Department to determine that good cause exists for dropping private insurance. This broader language gives the State more leeway to determine instances for which the waiting period should not apply. In the case of

Maine, a three-month waiting period applies unless the private insurance premium exceeds 10% of a family's income, the employer does not pay at least 50% of dependent coverage, or the State SCHIP Department determines that there is another good cause for waiving the three month requirement.

Studying Crowd-Out

Many states have implemented a study of crowd-out and price-out to fulfill all or part of their federal crowd-out requirement. In most cases where this occurs, a question is added to the SCHIP application to discern how recently a family was covered under employer-sponsored insurance.

Oklahoma, Pennsylvania, and New York all utilize the "monitoring" option as their primary crowd-out prevention strategy. Pennsylvania relies on the families' self-declaration of previous private insurance coverage on the SCHIP application to monitor crowd-out. Pennsylvania's SCHIP program existed prior to the federal SCHIP program and was one of three programs that were cited as model programs in the original Title XXI Legislation (Section 2103[a][3]). Ann Bacharach of the Pennsylvania Partnerships for Children notes that, both before and after SCHIP was passed, Pennsylvania did not identify any problems with crowd-out. A similar strategy is used in New York, with a similar finding. New York has found that only 4-6% of families applying for SCHIP voluntarily dropped employer-sponsored coverage in the 6 months prior to application.

New York is one of six states that was studied intensely for the *Interim Evaluation Report: Congressionally Mandated Evaluation of the State Children's Health Insurance Program*, which was submitted to Congress in February 2003. Colorado was also among the states studied. This report found that, across all states studied, crowd-out occurred infrequently: *"In the four states with waiting periods, between 1 and 5 percent of children applying for SCHIP were denied coverage because they had private insurance during the waiting period."*

Discussion and Recommendations

Nebraska's Legislature established a committee to study the implementation of its SCHIP program, Kids Connection. Crowd-out is among the areas intensively reviewed in this study, which was presented to the Nebraska Legislature in September of 2000. It found no evidence of crowd-out activity among the families that participated in the study. These findings are consistent with studies done by other states, as well as by the federal government.

At the same time, Colorado's crowd-out regulations are a significant issue for families struggling to deal with them. Families whose children cannot risk being uninsured for three months are placed at undue risk of financial hardship. Because failing to provide care to special-needs children makes their future care more costly, and because valuing health insurance is a predictor of greater health and success among families, it is in the State's best interest to adopt a crowd-out policy that alleviates the risk to these families to the fullest extent possible.

The Centers for Medicare and Medicaid Services has approved state plans with a wide variety of regulations to guard against crowd-out. There are many states whose crowd-out rules provide more flexibility to families than Colorado's. A survey of these rules illustrates that the following approaches, which are approved by CMS, may be options for Colorado:

Option	Discussion For	Discussion Against
<i>Decrease the waiting period between private coverage and CHP+ eligibility.</i>	Decreasing the waiting period to one month may be more reasonable for some families.	This still requires a lapse in coverage.
	Simply requiring that a family be uninsured at the time of application would be a better option.	Given the natural possibility of unpredictable delays in processing, this may still result in lapses of insurance for some families.
<i>Provide an exception for families whose private insurance requires cost sharing for dependents that exceeds a certain percentage of a family's income.</i>	While Colorado currently exempts families whose employers pay less than 50% of the dependents' premium, paying the up-to-50% of the remaining premium, deductibles, and co-payments are still a burden for many families. Adding an exception to the three-month waiting period for families for whom the up-to-50% cost is more than five or ten percent of the family's income would alleviate this burden.	This strategy could be administratively problematic because it adds another eligibility rule that could be missed by an eligibility technician. The determination of a percentage of income could also be complicated.
<i>Provide an exception for families whose children have special needs or who have reached their lifetime maximum on the family's policy.</i>	This exception would address the needs of families whose children depend on their medical coverage and are making significant sacrifices to maintain private insurance because they cannot risk being uninsured for three months.	Adding this exception could be administratively burdensome as it increases the number of rules for and eligibility technician to consider when working with families.

Option	Discussion For	Discussion Against
<i>Establish a means by which the Department of Health Care Policy and Financing or ACS (the CHP+ contractor) can make exceptions for families on a case-by-case basis.</i>	This option provides additional flexibility and will assist families on a case-by-case basis.	It creates a great deal of administrative load on the Department and its Contractor. Additionally, it may create an additional barrier for families who are reluctant to share their story or are confused by the process of appealing their case to the Department.
<i>Remove the three-month waiting period entirely and institute a monitoring system.</i>	This option is perhaps the least confusing for families and eligibility technicians. Ample evidence from other states indicates that crowd-out is not occurring with CHP+ programs, so the likelihood that the State would have to institute measures beyond this is minimal.	A monitoring program may impose a significant administrative burden on the State. The State would need to devise and implement a monitoring system. Additionally, the State would need to determine the point at which crowd-out is occurring and intervene if the program reached that point.

Figure 4. Feasible alternatives to Colorado's current crowd-out rule

Participants of the Colorado crowd-out survey recommend exempting children of disability status from Colorado's current crowd-out rule. The group feels that, while a rule that more comprehensively benefits children stuck in the 3-month period would be preferable, it may be more feasible and important at this time to pursue a rule change that affects children with disabilities because they are disproportionately affected by the current rule.³

As an additional note, many of the participants in the survey are concerned about the message that the current crowd-out rule sends to families. Many health advocates agree that a key to promoting enrollment and retention into insurance programs is buy-in to the program from families. Encouraging families to understand and value their health insurance is both important and difficult. In addition to disproportionately affecting children with disabilities, the crowd-out rule also disproportionately affects working families that value health insurance enough to avoid lapses in coverage. These parents understand the dangers of allowing their children to be uninsured for any period of time. In order to be responsible to the health of their family, they often pay private insurance premiums that exceed their means because they will not risk a period of uninsurance to obtain the public benefit for which they are otherwise qualified. In addition to punishing families for behaving responsibly in this way, the crowd-out rule also penalizes families who simply can no longer afford private insurance by forcing them to endure the three-month period of uninsurance. Both of these actions send a poor message to families faced with this burden.

³ Although the SSA prevents programs from adopting eligibility policies on the basis of diagnosis, it does permit states to adopt policies on the basis of disability status. (42 USC 1397bb [b] [1] [A]) CMS further explains this: "Eligibility standards may also relate to disability status as long as any standard relating to such status does not restrict eligibility. We interpret this provision to allow a State to establish a group of children who may be eligible because they meet State-established disability criteria or have a particular disabling condition. The State could establish different eligibility criteria for each such group, as long as the criteria do not restrict eligibility for either group." (64 Fed. Reg. 60,901 [Nov. 8, 1999])

References

42 Code of Federal Regulations §457.825

26-18-103 Colorado Revised Statutes (8)

26-19-109 Colorado Revised Statutes (1)

64 Federal Register 60,901 (Nov. 8, 1999)

42 United States Code 1397bb (3) (c)

42 United States Code 1397bb (b) (1) (A)

Bacharach, Ann. Pennsylvania Partnerships for Children. Personal communication, 3 September 2003.

120.1 (A) and (B) Children's Basic Health Plan Rules. Colorado Department of Health Care Policy and Financing. [On-line] Available:
<http://www.chcpf.state.co.us/titlexxi/rules/100Eligibility.pdf>.

Colorado State Plan for the Children's Basic Health Plan. Colorado Department of Health Care Policy and Financing. [On-line] Available:
<http://www.chcpf.state.co.us/titlexxi/StatePlan/Submitted%20State%20Plan%206-27-02.pdf>.

Interim Evaluation Report: Congressionally Mandated Evaluation of the State Children's Health Insurance Program. Mathematica Policy Research, Inc. February 2003. [On-line] Available: <http://aspe.hhs.gov/health/schip/interimrpt/>.

Report to the Legislature. Nebraska Kids Connection Study Committee. September 2000.

State Children's Health Insurance Program Approved Plan Files: State Plans, Approval Letters, Fact Sheets, Press Releases, Official Correspondence, Annual Reports, State Evaluations. The Centers for Medicare and Medicaid Services. [On-line] Available:
<http://cms.hhs.gov/schip/chpa-map.asp>.