

September 28, 2010

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Comments on OCIIO-9995-IFC, Interim Final Rule for Pre-Existing Condition Insurance Plan Program

Dear Secretary Sebelius:

The National Family Planning and Reproductive Health Association (NFPRHA) is pleased to respond to the Interim Final Rule from the Department of Health and Human Services (HHS), Office of Consumer Information and Insurance Oversight, implementing requirements in section 1101 of the Patient Protection and Affordable Care Act (“Affordable Care Act”).

NFPRHA is a membership organization representing the nation’s dedicated family planning providers – nurses, nurse practitioners, administrators and other key health care professionals. NFPRHA’s members provide care to millions of poor and low-income women at approximately 3700 health centers across the country.

NFPRHA supports section 1101 of the Affordable Care Act, which will provide much-needed access to health insurance for individuals who are too often excluded from such coverage. Women have historically been excluded from insurance coverage for a range of pre-existing conditions, including a prior Caesarean section and treatment following a sexual assault or for breast cancer. The Pre-Existing Condition Insurance Plan (PCIP) program is intended to ensure that individuals, including women, can no longer be denied health care they need. Many of these individuals are poor and low-income, and therefore NFPRHA strongly supports the PCIP program.

However, we are concerned that under the current regulations, a state might determine that a state’s section 1115 family planning waiver is “creditable coverage,” thereby improperly excluding women who receive services limited only to family planning from being eligible for the state’s PCIP program. We believe such an interpretation would violate the spirit of section 1101 and is contrary to current “creditable coverage” exclusions allowed under law. Therefore, we urge HHS to make clear in its Final Rule that coverage under a Medicaid family planning waiver program or one of the new state plan amendments authorized in section 2303 of the Affordable Care Act is not “creditable coverage” for purposes of determining Pre-Existing Condition Insurance Plan program eligibility.

Enrollment in a Medicaid Family Planning Expansion Program Should Not Be Considered “Creditable Coverage” for Purposes of Determining PCIP Program Eligibility

Section 1101 of the Affordable Care Act requires that an individual demonstrate that he/she has not had “creditable coverage,” as defined by section 2701(c) of the Public Health Service Act, for the previous six

months in order to be eligible for the Pre-Existing Condition Insurance Plan program. This definition, found both in the PHSA and federal regulations (45 CFR §146.113 and 45 CFR §146.145), contemplates numerous exceptions to what can be considered to be “creditable coverage.” Benefits excepted from the definition of “creditable coverage” include certain dental or vision benefits that are “limited-scope,” as well as coverage available “for only a specified disease or illness.”

Medicaid family planning waiver programs, while an important part of the health care safety-net for women, do not provide enrolled women with the full range of health services included in a typical health insurance plan. Rather, Medicaid family planning waiver programs provide coverage only for family planning and family planning-related services. While services “to prevent or delay pregnancy” are a critically important part of women’s health care, they do not and should not be interpreted to serve as a substitute for insurance coverage that addresses the full range of women’s health needs.

Like other types of benefits excluded from the definition of “creditable coverage,” coverage provided under a Medicaid family planning waiver is limited in scope and covers only a specific category of medical service. As such, HHS should include Medicaid family planning waiver programs, as well as the new state plan amendments authorized in section 2303 of the Affordable Care Act, among the types of benefits that are excluded from “creditable coverage,” thus allowing women enrolled in these family planning programs to be eligible for the PCIP program.

Permitting women who receive family planning services through a Medicaid waiver program or state plan amendment to be made eligible for the PCIP program is in keeping with the intent of the Affordable Care Act. The PCIP program is intended to serve as a stop-gap measure for individuals who have no other source of health insurance coverage, public or private. Although a woman who receives services under a Medicaid family planning waiver technically does so through the Medicaid program, she is not Medicaid-eligible in any meaningful sense—her income, parental status and other factors exclude her from other Medicaid coverage. Thus, a woman enrolled in a Medicaid family planning waiver program is precisely the kind of woman the PCIP program was intended to help—someone who has no other source of health insurance coverage, public or private. Forcing a woman to give up her family planning coverage for six months in order to become eligible for the PCIP program—thereby increasing her risk of unintended pregnancy—not only controverts the spirit of both the PCIP program and the Affordable Care Act, but it also is bad public health.

For the foregoing reasons, we urge HHS to make clear in its Final Rule that coverage under a Medicaid family planning waiver program or one of the new state plan amendments authorized in section 2303 of the Affordable Care Act is not “creditable coverage” for purposes of determining Pre-Existing Condition Insurance Plan program eligibility.

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We appreciate the opportunity to comment on the Interim Final Rule for Pre-Existing Condition Insurance Plan Program. If you require additional information about the issues raised in this letter, please contact Robin Summers at 202.293.3114.

Sincerely,



Clare Coleman
President & CEO