

September 17, 2010

Secretary Kathleen Sebelius  
Office of Consumer Information and Insurance Oversight  
U.S. Department of Health and Human Services  
Attention: OCIO-992-IFC  
P.O. Box 8016  
Baltimore, MD 21244

Re: Comments on OCIO-992-IFC, Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act

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 preventive health services provisions of the Patient Protection and Affordable Care Act ("Affordable Care Act").

NFPRHA is a national membership organization representing publicly supported family planning providers throughout the country, serving primarily the poor and low-income. We ask that HHS encourage a thorough yet expedited review process for determining what services are included in a comprehensive Women's Health Preventive Services benefit, Section 2173(a)(4) of the Affordable Care Act. We expect that upon completion of the review process, the women's preventive health services benefit will include the full range of family planning services, including all contraceptive methods approved by the U.S. Food and Drug Administration (FDA). Following the completion of the review process, we ask that HHS implement policies that will accelerate health insurance coverage of the benefit. Finally, we ask that the implementation guidance require that plans cover family planning services and supplies provided by any provider participating in the state-based health insurance exchanges or the Medicaid program.

#### **Background**

NFPRHA is a membership organization representing the nation's dedicated family planning providers – nurse practitioners, nurses, 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.

## **I. Expedited Review of the Women's Health Preventive Services Benefit**

Section 2713(a)(4) of the Affordable Care Act requires the Health Resources and Services Administration (HRSA) to develop a preventive health services benefit specifically for women. The inclusion of this provision in the Affordable Care Act was an attempt by federal legislators to include a broader range of preventive health benefits than those identified by the U. S. Preventive Services Task Force (USPSTF) in new health insurance plans, many of which will be operative in state-based health insurance exchanges. More specifically, the addition of this policy was an attempt to ensure that family planning services and screening for reproductive health-related cancers were also recognized as important preventive health benefits for women and required in newly issued commercial insurance health plans as required by the law.

Current public health authorities have routinely promoted the preventive health benefits of family planning and access to contraception. We are disappointed that HHS/HRSA did not issue formal guidance outlining a comprehensive women's health benefit but instead contracted out the process, further delaying its implementation. Because the process for developing a comprehensive women's health benefit will be determined after a review by a non-federal agency, we ask that HHS/HRSA conclude this review as quickly as possible. Prolonging the review of the services that comprise a comprehensive women's health benefit will result in newly insured women struggling to access the care they need most. Studies show that cost-sharing can limit individuals' ability to access family planning services which can ultimately lead to increased rates of unintended pregnancies or fewer breast and cervical cancer screens.<sup>1</sup> We propose the final rule reduce the timeline allotted for research and review of the women's health preventive services benefit. The review process must be completed on or before August 1, 2011.

## **II. Women's Health Preventive Services Benefit Should Include Family Planning Services**

We expect that the women's health preventive services benefit will require coverage of family planning services, including all FDA-approved contraceptive methods. The ability to access family planning services is necessary for promoting healthy pregnancies and preventing unintended pregnancy. Research shows that promoting access to contraceptive services and supplies leads to better birth outcomes and overall improved health among women. Family planning also results in better education attainment and economic security among women generally, and particularly among poor and low-income communities which traditionally lack access to comprehensive health care. As stated in Healthy People 2010:

Socially the costs [of unintended pregnancy] can be measured in unintended births, reduced educational attainment and employment opportunity, greater welfare dependency, and increased potential for child abuse and neglect. Economically, health care costs are increased. An unintended pregnancy, once it occurs, is expensive no matter what the outcome. Medically, unintended pregnancies are serious in terms of the lost opportunity to prepare for an optimal pregnancy, the increased likelihood of infant and maternal illness, and the likelihood of abortion. The consequences of unintended pregnancy are not

confined to those occurring in teenagers or unmarried couples. In fact, unintended pregnancy can carry serious consequences at all ages and life stages.<sup>ii</sup>

Legislators included the women’s health preventive services benefit in the Affordable Care Act with the clear intent of providing women with access to family planning and contraceptive services. Millions of women and their families depend on family planning and contraceptives for the majority of their reproductive health years. According to the American Congress of Obstetricians and Gynecologists, “[t]he typical US woman will need birth control for more than three decades of her life, and not only to avoid pregnancy. For years, doctors have prescribed hormonal contraceptives to alleviate heavy bleeding, irregular periods, and acne and to protect against a number of other health problems that affect women, such as ovarian cysts, bone loss, benign breast disease, the symptoms of polycystic ovary syndrome, and anemia.”<sup>iii</sup>

In addition, the preventive health benefits of family planning access have been well-documented and supported by a wealth of research. The Institute of Medicine (IOM) noted in a recent report that **“The ability of individuals to determine their family size and the timing and spacing of their children has resulted in significant improvements in health and in social and economic well-being.”**<sup>iv</sup>

We are encouraged by the overwhelming evidence that supports access to family planning care and contraceptive services and supplies. We anticipate that family planning services and all FDA-approved contraceptives will be included in the women’s health benefit at the end of the benefit determination review process.

### **III. Expedited Implementation of the Women’s Health Preventive Services Benefit**

Following the review process, we ask that HHS develop a policy that will require health insurers to cover the services considered important to women’s health as quickly as possible. We recognize that Section 2713(b)(1) of the Affordable Care Act (ACA) requires HHS to establish no less than a one-year interval between when the recommendations or guidelines under the preventive health section of the law are issued and the plan year for which the covered services will take effect. However, HHS has encouraged plans to implement some of the preventive health policies in the ACA earlier than required in the law. We are concerned that the mandated period could be further delayed by the imposition of unnecessary rules and regulatory timelines issued by the agency. HHS should avoid publishing any rules or regulations following the HRSA process for determining the women’s health benefit with timelines that would further delay the date in which the benefit requirement takes effect.

### **IV. Freedom of Choice for Family Planning and Contraceptive Services**

The interim final rule allows insurers with a network of providers to deny coverage and impose cost-sharing for recommended preventive services if those services are delivered by an out-of-network provider.<sup>v</sup> We ask that the final guidance require that plans cover family planning services and supplies provided by any provider participating in the state-based health insurance exchanges or the Medicaid program.

Federal law has long recognized the public health importance of enabling women and men to access family planning services from their preferred health care provider.<sup>vi</sup> The Medicaid program has a “freedom of choice” provision for Medicaid managed care beneficiaries seeking family planning services. The provision allows women and men enrolled in Medicaid managed care programs to go outside of network for family planning services and supplies.<sup>vii</sup> The law makes an allowance for family planning services because Medicaid beneficiaries tend to seek family planning services from providers that have experienced difficulty contracting with managed care organizations.<sup>viii</sup>

The final rule should require that private insurers allow beneficiaries to seek family planning services from the provider of their choice regardless of their participation in the network. Allowing women and men to seek family planning care from their preferred provider will result in fewer unintended pregnancies, lower health care costs generally and better public health outcomes.

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We appreciate the opportunity to comment on the Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act. If you require additional information about the issues raised in this letter, please contact Dana Thomas at 202.293.3114.

Sincerely,



Clare Coleman  
President & CEO

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<sup>i</sup> Hudman, J. and O’Malley, M. Health Insurance Premiums and Cost-Sharing: Findings from Research on Low-Income Populations, Kaiser Commission on Medicaid and the Uninsured, 2003, <http://www.kff.org/medicaid/upload/Health-Insurance-Premiums-and-Cost-Sharing-Findings-from-the-Research-on-Low-Income-Populations-Policy-Brief.pdf> [accessed September 8, 2010].

<sup>ii</sup> U.S. Department of Health and Human Services, *Healthy People 2010*, 2<sup>nd</sup> ed. 2 vols. Washington, DC: U.S. Government Printing Office, November 2000, p. 9-5.

<sup>iii</sup> American Congress of Obstetricians and Gynecologists, *Contraception—A Basic Health Necessity*, May 8, 2007, [http://www.acog.org/from\\_home/publications/press\\_releases/nr05-08-07-2.cfm](http://www.acog.org/from_home/publications/press_releases/nr05-08-07-2.cfm), [accessed July 24, 2010].

<sup>iv</sup> *A Review of the HHS Family Planning Program: Mission, Management, and Measurement of Results*, National Academies of Science Institute of Medicine, 2009.

<sup>v</sup> Interim Final Rules for Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services Under the Patient Protection and Affordable Care Act, 75 Federal Register 137 (19 July 2010), pp. 41759-41760.

<sup>vi</sup> Social Security Act §§ 1902(a)(2), 1915(b).

<sup>vii</sup> Kaiser Family Foundation and Guttmacher Institute, Medicaid’s Role in Family Planning, October 2007, [http://www.guttmacher.org/pubs/IB\\_medicaidFP.pdf](http://www.guttmacher.org/pubs/IB_medicaidFP.pdf), [accessed September 10, 2010].

<sup>viii</sup> Kaiser Family Foundation and Guttmacher Institute, Medicaid’s Role in Family Planning, October 2007.