National
Family Planning
& Reproductive Health Association

June 19, 2012

Secretary Kathleen Sebelius
Centers for Medicare & Medicaid Services
US Department of Health and Human Services
Attention: CMS-9989-P
P.O. Box 8010
Baltimore, MD 21244-8010

Re: **Comments on General Guidance on Federally-facilitated Exchanges**

Dear Secretary Sebelius:

The National Family Planning & Reproductive Health Association (NFPRHA) is pleased to respond to the general guidance from the US Department of Health and Human Services (HHS) on implementing the Federally-facilitated Exchange (FFE) authorized by Patient Protection and Affordable Care Act ("Affordable Care Act").

NFPRHA is a national membership organization representing the nation's family planning providers – nurse practitioners, nurses, administrators and other key health care professionals. NFPRHA's members operate or fund a network of more than 3,700 health centers and service sites that provide comprehensive family planning services to millions of low-income, uninsured or underinsured individuals in 49 states and the District of Columbia.

As HHS moves forward with FFE implementation, NFPRHA believes the policies outlined below should be included in the guidance to improve health care access for the millions of people who seek care from essential community providers (ECPs).

1. NFPRHA asks that HHS require qualified health plans (QHPs) participating in the FFE to contract with any willing ECP.
2. NFPRHA asks that HHS require that QHP networks explicitly include family planning providers that deliver sensitive sexual health and reproductive health services.
3. NFPRHA asks that the FFE prohibit discrimination against family planning providers by QHPs.

4. Finally, NFPRHA asks that HHS require consultation with publicly supported family planning providers in the states in which the FEE will operate.

Section: Plan Management in Federally-facilitated Exchange

HHS should require Qualified Health Plans participating in the FFE to contract with any willing essential community provider.

Section 1311(c)(1)(C) of the ACA requires that QHPs, health plans certified for participation in state-based exchanges ("qualified health plans" or "QHPs") must contract with safety-net providers, referred to in the law as "essential community providers." Congress included Section 1311(c)(1)(C) in the ACA to guarantee that ECPs and their patients are included in the health care delivery system changes resulting from the ACA insurance coverage expansions. To meet the goal of ensuring health care access for low-income and underserved women and men we ask that the FFE require QHPs to contract with any willing ECP including publicly-funded family planning providers. Although the final rule for state based exchanges fails to require that QHPs contract with any willing provider it emphasizes that, "Exchanges have the discretion to set higher, more stringent standards with respect to essential community provider participation, including a standard that QHP issuers offer a contract to any willing essential community provider."[1] Thus HHS should take the important step of requiring QHPs operating in the FFE to contract with any willing ECP.

Despite the high-quality care delivered in the safety net, commercial health plans routinely erect barriers that prevent community providers from being paid for the care delivered to commercial plan enrollees. Requiring that QHPs contract with any willing ECP prevents plans from cherry-picking a provider that most benefits the plan financially and allows plan enrollees to obtain care from their preferred provider. For several reasons, family planning providers may be particularly disadvantaged in trying to obtain contracts with commercial plans. Family planning health centers tend to have smaller patient populations compared to other ECPs, such as public hospitals and large community health centers. The federal insurance subsidies incentivize QHPs to contract with providers with larger patient capacity possibly to the exclusion of smaller community providers. Millions of women and men currently access health services from family planning providers and requiring QHPs to contract with any willing ECP will enable them to continue with their preferred provider.

HHS should require that QHP networks explicitly include family planning providers that deliver sensitive sexual health and reproductive health services.

We are pleased that the final state-based exchange rule requires QHPs to maintain "a provider network that is sufficient in number and types of providers to assure that all services will be accessible

[1] "Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers." *Federal Register* 77:59 (March 27, 2012) p. 18421.

without unreasonable delay."[2] The final rule also clarifies that inclusion of ECPs is related to network adequacy, therefore a QHP "issuer may not be prohibited from contracting with any essential community provider."[3] We ask that the FFE build on the criteria outlined in the state-based exchange rule and ensure that QHP networks explicitly include family planning providers that deliver sensitive sexual health and reproductive health services. The state-based exchange rule highlights the need for networks to include mental health and substance abuse providers because "such services have traditionally been difficult to access in low-income and medically underserved communities."[4] Family planning health centers share many of the access challenges facing the mental health and substance abuse community. Several states ban coverage of reproductive health services or restrict access to family planning providers. Moreover, patients seeking sexual and reproductive health services often experience difficulty obtaining confidential and culturally sensitive care. Family planning providers have a history of delivering confidential services and therefore QHPs should be explicitly required to include them in networks.

HHS should prohibit discrimination against family planning providers by QHPs participating in the FFE.

The state-based exchange rule includes several provisions designed to protect reproductive health providers from discrimination and those policies should be replicated for the FFE. As previously noted, the final rule prohibits exchanges from banning contracts between QHPs and specific ECPs, further guidance on FFE should also prohibit discrimination against specific providers including family planning and reproductive health providers. Family planning health centers regularly incur discrimination on the part of plans with ideological objections to contraceptive use and other sensitive sexual health services. The need to offer women and men access to comprehensive health services, not the ideology of any one health plan, should guide which providers are available to patients.

Additional FFE guidance should also prohibit QHPs from discriminatory contracts that either fail to provide coverage for all of the family planning services available to the beneficiary under the plan or reduce reimbursement based on the provider's status as an ECP. Family planning health centers and the clinicians they employ are frequently presented with health plan contracts that pay them lower reimbursement rates than other providers for the provision of the same services.[5] The state-based exchange rule clarifies that "'generally applicable payment rate' means, at a minimum the rate offered to similar situated providers who are not essential community providers."[6] The FFE should include the same clarification and make plan acceptance subject to oversight of the contracts offered to ECPs.

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[2]"Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers." *Federal Register* 77:59 (March 27, 2012) p. 18420.

[3] *Id*. at 18419.

[4] *Id.* at 18419.

[5] National Association of Pediatric Nurse Practitioners, "NAPNAP Position Statement on Reimbursement for Nurse Practitioner Services," *Journal of Pediatric Health Care* (November/December 2009).

[6] Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers." *Federal Register* 77:59 (March 27, 2012) p. 18422.

Family planning health centers, staffed by primarily mid-level providers, are at a particular disadvantage when negotiating health plan contracts and would benefit from enhanced oversight of the process by the FFE administrator.

The FFE should also require certified QHPs to credential nurses for the services they are licensed to provide. Family planning health centers are typically nurse-managed centers and third-party payers may not recognize or credential advanced practice nurses, adversely impacting health centers' ability to bill insurance. ECPs are frequently required to care for "all comers" in the communities in which they serve. Unfair contracting practices by QHPs can mean fewer health services for plan enrollees or require ECPs to unnecessarily provide uncompensated care as a way of cost-shifting onto community-based providers. By requiring the FFE to adopt policies that protect family planning providers and other ECPs, HHS will help ensure the accessibility of a diverse network of community-based providers with a history of caring for millions of underserved people.

HHS should explicitly require consultation with family planning providers in states in which the FEE operates.

We ask that the FFE consult specifically with family planning providers working in the states in which it is operating. Millions of women and men rely solely on their family planning provider, including publicly supported family planning health centers, OB/GYNs and other women's health providers, to access preventive and primary care. Moreover, publicly funded family planning providers are often the first entry point into the health care system for many poor and low-income women. It is imperative that the FFE explicitly consult family planning providers in states as it develops the criteria for certifying the QHP and establishing a network of providers that are prepared to meet a state's health care needs.

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We appreciate the opportunity to comment on the general guidance from HHS outlining the administration's approach to implementing a Federally-facilitated Exchange. If you require additional information about the issues raised in this letter, please contact Dana Thomas at 202.293.3114.Sincerely,

Clare M. Coleman

Clare Coleman
President & CEO