National
Family Planning
& Reproductive Health Association

December 21, 2012

National Healthcare Operations, Healthcare and Insurance
U.S. Office of Personnel Management
Attention: RIN 3206-AM47
1900 E Street NW., Room 2347
Washington, DC 21415

Re: **Comments on Establishment of the Multi-State Plan Program (MSPP) for the Affordable Insurance Exchanges Proposed Rule, RIN-3206-AM47**

Dear Director Berry:

The National Family Planning & Reproductive Health Association (NFPRHA) is pleased to respond to the proposed rule from the Office of Personnel Management (OPM) on establishing the Multi-State Plan Program (MSPP) for the upcoming affordable insurance exchanges under the Affordable Care Act (ACA).

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.

NFPRHA is encouraged by the availability of multi-State plans (MSPs) in the affordable insurance exchanges. If handled with appropriate oversight and administration, the MSPP will offer consumers additional plan options to meet their needs while reducing health costs. As OPM moves forward with MSPP establishment, NFPRHA believes the policies outlined below should be included in further guidance to improve health care access for the millions of people who seek care from essential community providers (ECPs), including family planning providers.

1. NFPRHA asks that OPM require health plans participating in the MSPP to contract with any willing ECP.

2. NFPRHA asks that OPM require that health plans participating in the MSPP explicitly include family planning providers that deliver sensitive sexual and reproductive health services.
3. NFPRHA asks that the OPM prohibit discrimination against family planning providers by health plans participating in the MSPP.
4. NFPRHA asks that OPM encourage at least one MSP to operate in the Medicaid market to protect low-income Americans who are likely to cycle between public and commercial insurance.
5. Finally, NFPRHA asks that OPM clarify the policies related to abortion coverage so there is the least possible burden on women in accessing and maintaining said coverage.

**OPM should require health plans participating in the MSPP to contract with any willing essential community provider.**

The MSPP could be the only coverage option for millions of Americans across the country. Therefore it is imperative that OPM impose the same protections and standards required of qualified health plans (QHPs) in affordable insurance exchanges. In the proposed rule, OPM explains that standards for the MSPP will be "consistent with the standards set for QHPs."[1] Section 1311(c)(1)(C) of the ACA requires that 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. NFPRHA recognizes that the MSPP requirements can waiver from the QHP requirements, but in order to meet the goal of ensuring health care access for low-income and underserved women and men we ask that the MSPP require participating plans to contract with any willing ECP including publicly-funded family planning providers.

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 health plans in the MSPP contract with any willing ECP would prevent plans from cherry-picking a provider that most benefits the plan financially and would allow 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. Millions of women and men currently access health services from family planning providers and requiring plans that will operate in the MSPP to contract with any willing ECP will enable them to continue with their preferred provider.

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[1] "Patient Protection and Affordable Care Act: Establishment of Multi-State Plan Program for Affordable Insurance Exchanges." *Federal Register* 77:234 (December 5, 2012) p. 72583.

**OPM should require that the MSPP explicitly include family planning providers that deliver sensitive sexual and reproductive health services.**

NFPRHA asks that the MSPP build on the criteria outlined in the state-based exchange rule. The final rule should require health plans in the MSPP to explicitly include family planning providers that deliver sensitive sexual 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."[2] 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 health plans in the MSPP should be explicitly required to include them.

**OPM should prohibit discrimination against family planning providers by health plans in the MSPP.**

In the final state-based exchange rule, QHPs are required to maintain "a provider network that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay."[3] 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."[4] The state-based exchange rule includes several provisions designed to protect reproductive health providers from discrimination and those policies should be replicated by OPM for the MSPP. Further guidance on the MSPP 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.

OPM should also prohibit health plans in the MSSP from implementing 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 rates based on the provider's status as an ECP. Family planning health centers and the clinicians they employ are frequently presented

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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.

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 rates means, at a minimum the rate offered to similar situated providers who are not essential community providers."[6] The MSPP should include the same clarification and make plan acceptance subject to oversight of the contracts offered to ECPs. 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 by OPM.

**OPM should encourage at least one MSP to offer a plan in the Medicaid program in each state.**

HHS is working to ensure that individuals seeking to obtain health insurance under the ACA will experience "no wrong door" to coverage. This is particularly important for poor and low-income individuals who are expected to cycle between public and commercial insurance as their incomes fluctuate (otherwise known as "churning"). Low-income individuals are at an increased risk of falling through the cracks as they cycle between coverage options. OPM should encourage the MSPs to offer a plan in the state's Medicaid programs that would enable those individuals who fall off of commercially sponsored insurance to stay within their health plan. Those individuals would then continue to access the benefits and provider network they were familiar with as a beneficiary in the MSP's commercial plan.

**OPM should clarify processes relating to abortion coverage in order to place the least burden on women.**

NFPRHA opposes the singling out of abortion coverage in health plans operating in insurance exchanges including any MSP, and we strongly urge OPM to set standards that protects patients from the burden of making separate payments for health coverage that includes abortion. OPM should establish reasonable compliance standards for the collection of separate payments; this may include allowing one payment mechanism per enrollee (e.g. one check), rather than separate payment mechanisms or physically separate payments. If enrollees are required to submit separate payment mechanisms, health plans will likely face increased administrative burdens, which could reduce access to abortion coverage.

The intent of the abortion coverage restriction was to prohibit federal funds from being used to pay for abortion care. OPM should clarify that individuals who do not receive premium assistance credits should not be required to submit separate payments for coverage they

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[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.

purchase with their own money. In addition, OPM should make clear that health plans in the MSPP may not impose requirements beyond the current federal restrictions on coverage. Section 1303 of the ACA reflects a compromise that followed an exhaustive legislative debate. Allowing health plans in the MSPP to impose additional restrictions will drive up administrative costs for both insurers and beneficiaries, and creates another opportunity for opponents of the ACA to undermine this law.

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NFPRHA appreciates the opportunity to comment on the proposed rule from the Office of Personnel Management (OPM) establishing the Multi-State Plan Program for the upcoming insurance exchanges. If you require additional information about the issues raised in this letter, please contact Nici Paterson at 202-293-3114.

Sincerely,

Clare Coleman
President & CEO