

August 4, 2015

Centers for Medicare & Medicaid Services  
Office of Strategic Operations and Regulatory Affairs  
US Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

ATTN: CMS-10561

Re: **Essential Community Provider Data Collection to Support QHP Certification for PY 2017**

Dear Sir or Madam:

The National Family Planning & Reproductive Health Association (NFPRHA) is pleased to respond to the information collection request issued by the Department of Health and Human Services' (HHS) Centers for Medicare & Medicaid Services (CMS) regarding essential community provider (ECP) data collection.

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 nearly 5,000 health centers and service sites that provide high-quality family planning and other preventive health services to millions of low-income, uninsured, or underinsured individuals in 50 states and the District of Columbia. Services are provided through state, county, and local health departments as well as hospitals, family planning councils, Planned Parenthoods, federally qualified health centers and other private non-profit organizations.

NFPRHA appreciates the strong commitment of HHS and CMS to ensure that implementation of the Affordable Care Act (ACA) considers the needs of safety-net providers, including providers of publicly funded family planning, and the individuals that they serve.

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NFPRHA appreciates CMS' efforts to ensure the accuracy of HHS' non-exhaustive list of available ECPs and to achieve one standardized list for all of the issuers in a particular service

area. Given the information in the supporting statement that the “majority of issuers have relied more heavily on ECP write-ins than on ECPs from the HHS list to satisfy the 30% standard,” NFPFHA also applauds the elimination of the write-in option and CMS’ commitment to plan compliance with the ECP standard. While we support the spirit and intention of this proposed data collection process, we have some concerns about the general approach and about some of the specific data points which the petition would require ECPs to provide.

**NFPFHA requests that CMS revise the ECP petition to align with ECP statute and regulations.**

The ACA statute defines ECPs as providers that “serve low-income, medically-underserved individuals, such as health care providers defined in section 340B(a)(4) of the Public Health Service Act; or described in section 1927(c)(1)(D)(i)(IV) of the Act.” In the regulation, as revised in the 2016 Benefit and Payment Parameters final rule, the definition of ECP also explicitly clarifies that section 1927 includes “a State-owned family planning service site, or governmental family planning service site, or not-for-profit family planning service site that does not receive Federal funding under special programs, including under Title X of the Public Health Service Act.” The section 1927 language in the ECP statute was included expressly to cover these state-owned, governmental, or not-for-profit family planning service sites that do not receive Title X funds. Requiring provision of data points that would effectively exclude these same providers from the ECP list is contrary to the legislative intent.

As it is currently drafted, the proposed ECP petition would effectively impose requirements for inclusion in the ECP list that are not currently in statute or regulation, and that do not align with the intent of the ECP statute. By requiring that all data fields in the petition be completed, and that certain questions be answered in a particular fashion, this proposed data collection rises to the level of creating additional ECP eligibility criteria. Not only would these added eligibility criteria be a problem for many existing ECPs, but they also set the precedent for future administrations to limit ECP participation by including additional criteria through the petition process.

Nowhere in this definition is it required that ECPs be located in a “low-income zip code or Health Professional Shortage Area (HPSA) zip code,” nor is that a requirement to be a 340B-covered entity or to be an entity covered under section 1927. Federally qualified health centers (FQHCs) and FQHC look-alikes have automatic HPSA designation, but other providers, including Title X-funded health centers and their “look-alikes,” do not have the same automatic designation and are thus not required to be located in a HPSA. However, in the proposed ECP petition, field “1” asks if the provider is located in either of these type of zip codes, and the instructions expressly state that “[S]electing NO to this question means that you do not qualify as an ECP for purposes of being added to the ECP list, unless you have been included in one of the verified datasets from our federal partners (i.e., HRSA, IHS, OASH/OPA, SAMSHA) and you appear on the Draft 2017 ECP list or have been deemed by HRSA to be a rural health clinic.” It is our belief that CMS included this question in an effort to be able to better verify ECP status for

those providers that fall under section 1927. However, being located in a HPSA or low-income zip code is not a sufficient proxy for whether or not a provider would qualify as an ECP under section 1927.

The questions in fields “J” and “K” also apply new eligibility criteria on ECPs that are not included in statute or regulation. NFPRHA requests that the questions in fields “I,” “J,” and “K” be eliminated and replaced with questions that better assess whether or not a provider meets the ECP definition, as it is set out in statute and regulation. If the intent of these questions is to better identify those providers who are eligible to be ECPs under section 1927, NFPRHA proposes that fields “I,” “J,” and “K” be replaced with the following question:

- Do you attest, under penalty of perjury, that you are a state-owned, governmental, or not-for-profit family planning service site that does not receive Title X funds, but provides the same services to the same population as a Title X-funded health center?

If CMS deems this revision to be unworkable, NFPRHA requests that a NO answer to any or all of fields “I,” “J,” or “K” not be a disqualifying answer.

#### **NFPRHA requests that fields “M,” “O,” and “P” of the proposed petition be made voluntary**

NFPRHA is concerned with the burden put on providers by the questions in fields “M,” “O,” and “P.” Field “M” asks for the “number of FTEs representing MDs, DOs, PAs, NPs authorized by the state to independently treat and prescribe within the listed facility.” Title X grantees report this data for the Family Planning Annual Report (FPAR), but the data is aggregated across their entire grantee network. Providers often split their time across multiple service sites or are practicing under a volunteer agreement, so calculating FTE at the service site level may pose difficulties and this field may be too burdensome for some providers to complete.

Fields “O” and “P” ask questions about the number of contracts with QHP issuers executed or offered but rejected. NFPRHA is concerned that this information would be burdensome for many safety-net family planning providers to furnish. The same companies are issuers of QHPs, other individual market plans, group health insurance plans, and sometimes even Medicaid managed care plans. Providers may not always be able to distinguish contracts with QHP issuers from their other existing third-party payer contracts. In addition, we do not believe that the tracking of offered and rejected contracts is a reality for most, if not all, NFPRHA members. Requiring that these questions be answered in order to be included in the ECP list would be overly burdensome. NFPRHA requests that fields “M,” “O,” and “P” be voluntary, not required.

**NFPRHA requests clarification on the prohibition of third-party entities submitting petitions on behalf of providers.**

NFPRHA is concerned that the prohibition of third-party entities submitting ECP petitions on behalf of the provider, and more specifically the types of entities listed as third parties in the supporting statement, might be overly burdensome in the context of the Title X family planning program. State departments of health are listed among the types of third parties that would not be able to submit petitions on behalf of providers. However, state and local health departments make up over half (53% in 2013) of the Title X grantee network, and many of those state health departments are service providers themselves. NFPRHA requests clarification on what role state health departments which are also Title X grantees can play in the ECP provider petition process. Further, NFPRHA requests, given this prohibition on third-party submissions, that the ECP provider petition process mirror the process currently used during the annual 340B recertification process for Title X. In this process, while each service site must recertify to maintain their participation in the 340B program, staff at state health departments have been allowed to serve as the authorizing official for all of their local health department sites. Additionally, during the recertification process, NFPRHA is provided with regular updates from HRSA's Office of Pharmacy Affairs on which sites have not yet recertified. This gives NFPRHA the opportunity to follow up with its member organizations and help ensure that recertification is completed.

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NFPRHA applauds the efforts of CMS to create a standardized process for identification and verification of ECPs. However, this proposed data collection process seems to be shifting the onus of verification of ECP status away from the issuers and onto safety-net providers, many of whom are repeatedly asked to "do more with less" in the face of rapidly declining public investments. By doing so, CMS is risking the ECP status of many safety-net family planning providers who are unable to complete the provider petition as proposed, and thus jeopardizing access to essential family planning and sexual health care services for millions of women and men in need.

NFPRHA appreciates the opportunity to comment on this information collection request. If you require additional information about the issues raised in this letter, please contact Mindy McGrath at 202-293-3114 ext. 206 or at [mmcgrath@nfprha.org](mailto:mmcgrath@nfprha.org).

Sincerely,



Clare Coleman  
President & CEO