May 13, 2011

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9987-P
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Application, Review, and Reporting Process for Waivers for State Innovation

The National Association of Community Health Centers, Inc. (NACHC) is pleased to respond to the request for comments from the Department of Health and Human Services (HHS) on its proposed rule entitled "Application, Review, and Reporting Process for Waivers for State Innovation" as published on March 14, 2011 (76 Fed Reg 13553 et seq). As these proposed rules include those proposed both by HHS and the Department of Treasury (DOT), NACHC will reference both sets of rules, where applicable. NACHC is the national membership organization for federally qualified health centers (hereinafter interchangeably referred to as "health centers" or "FQHCs") throughout the country, and is a Section 501(c)(3) tax exempt non-profit organization.

Today, there are, at present, more than 1200 FQHCs with more than 8000 sites serving over 20 million patients nationwide. Most of these FQHCs receive federal grants under Section 330 of the Public Health Service (PHS) Act (42 U.S.C. 254b) from the Bureau of Primary Health Care (BPHC), within the Health Resources and Services Administration (HRSA) of HHS. Under this authority, health centers fall into four general categories (1) those centers serving medically underserved areas, (2) those serving homeless populations within a particular community or geographic area, (3) those serving migrant or seasonal farmworker populations within similar community or geographic areas, and (4) those serving residents of public housing.

To qualify as a Section 330 grantee, a health center must be located in a designated medically underserved area or serve a medically underserved population. In addition, a health center's board of directors must be made up of at least fifty-one percent (51%) users of the health center and the health center must offer services to all persons in its area, regardless of one's ability to pay. BPHC's grants are intended to provide funds to assist health centers in covering the otherwise uncompensated costs of providing comprehensive preventive and primary care and enabling services (such as translation, transportation services, smoking cessation classes, etc) to uninsured and underinsured indigent patients, as well as to maintain the health center's infrastructure. Patients from eligible communities, who are not indigent and are able to pay or who have insurance, whether public or private, are expected to pay for the services rendered. Approximately 35 percent of health center patients are Medicaid recipients,

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approximately 7.5 percent are Medicare beneficiaries, and approximately 40 percent are uninsured. NACHC estimates that the Medicaid expansions mandated in the ACA will result in health centers serving approximately 18.4 million Medicaid recipients by 2015.

COMMENTS ON PROPOSED RULE

NACHC has signed onto, supports, and incorporates the comments on this proposed rule submitted on May 13, 2011 by the Georgetown Center for Children and Families, the Center for Budget and Policy Priorities, and a broad list of national and state consumer and provider organizations. However, as we did last year in supporting comments by these same organizations in response to HHS/CMS' proposed rule relating to the review and approval process for Section 1115 Medicaid Demonstration waivers, NACHC is also submitting several additional comments that relate specifically to FQHCs. We make these additional suggestions for the same reason as we filed similar suggestions in response to the proposed Section 1115 transparency rule and that is that, historically, all too often FQHC statutory protections have been undercut by frequent and successful state requests to have these requirements waived as an element of a state's proposed Section 1115 demonstration project. Because of this experience with Section 1115 waivers and the harm that it can cause to the delivery of FQHC services, we respectfully request that CMS closely monitor these waivers to ensure fair and adequate access and payment for FQHC services.

NACHC is particularly concerned that the FQHC protections in Section 1311(c)(1)(C)) of the Affordable Care Act (ACA)and Section 10104(b)(2) of the ACA (adding (g) to Section 1311 of the ACA)) not be compromised in any waiver granted to a state under Section 1332. Section 1311(c)(1)(C) provides that the HHS Secretary's regulations relating to certification of Qualified Health Plans (QHP) for participation in Health Benefit Exchanges must contain criteria that such plan include "essential community providers" that serve "predominantly low-income individuals". This provision includes in its definition of essential community providers the safety net providers listed in Section 340B(a)(4) of the Public Health Service (PHS**), which include FQHCs**. Section 10104(b)(2) of the ACA provides that a QHP contracting with a FQHC for the provision of items or services covered by the plan, must pay the FQHC no less for such services or items than the center would have been paid under section 1902(bb) of the Social Security Act(SSA). Section 1902(bb) of the SSA contains Medicaid's FQHC reimbursement requirements. To safeguard these FQHC protections, we request that the following changes/additions be added to the final rule and that the final rule be drafted such that these new provisions would be applicable in the event that an initial Section 1332 proposal would seek to waive FQHC contracting or reimbursement requirements:

> In the public notice required in 31 CFR 33.108(a)(2)(iii)(C)(3) and 45 CFR 155.1308(a)(2)(iii)(C)(3), the state would be required to identify the specific provisions of the law it seeks to waive, as well as a description of why it is seeking to waive each provision. We recommend that with regard to any waiver request concerning FQHCs and/or essential community providers (ECP), such public notice be sent directly (electronically and by mail) to each FQHC in the state as well as to the state Primary Care Association (PCA). In the public hearings required in this rule, the

PCA and at least two FQHCs (one urban and one rural) should to be accorded reasonable and adequate time to speak.

The state application would have to describe the specific FQHC and/or ECP waivers being sought; the rationale and justification for such waivers; if and why such waivers are necessary for the project to achieve its goals and how the demonstration would be adversely affected if the FQHC and/or ECP waiver were not approved; the financial impact on the FQHCs and/or ECP and their ability to provide services to their patients if the FQHC and/or ECP waivers were approved; and the written responses and testimony provided by FQHCs and other interested parties during the state public notice process.

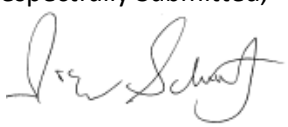
HHS'/DOT's electronic mailing to "interested parties" would include the Primary Care Association of the state which is seeking to waive the FQHC protections. HHS/DOT would provide written responses to public comments relating to waiver of the FQHC/ECP contracting protections and FQHC payment protections; in the event that HHS/DOT approves such waiver requests, an explanation as to the considerations and conclusions reached by HHS/DOT that resulted in the agency granting such waivers and particularly the conclusions reached by HHS/DOT as to the impact such waivers would have on the viability of the FQHCs and/or ECPs and their continuing capacity to serve it patients.

NACHC understands that the above additions to the proposed transparency rules would provide an additional administrative burden on both the states and federal agencies in implementing and considering such projects. However, we believe that Congress' continued and repeated legislative support of these service and payment protections for FQHCs in Medicaid and in other programs, necessitates HHS/DOT operating under the presumption that waiving these protections is contrary to Congressional mandate and intent and therefore HHS/DOT must apply a higher standard of review and scrutiny in reviewing these proposals. Too often in the past, such a standard was missing in the Section 1115 waiver approval process and health centers and their patients suffered as a result.

NACHC appreciates the opportunity to comment on these proposed rules. We request that HHS/DOT seriously consider the concerns we have raised and our proposals regarding the need for a high degree of scrutiny and justification before any waiver of FQHC and/or ECP contracting and payment requirements would be approved in a Section 1332 demonstration waiver application.

If HHS/DOT have any questions or wish to follow-up with further communication on these comments, please contact me at 202-296-0158 by email at rschwartz@nachc.org.

Respectfully Submitted,



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