VIA ELECTRONIC SUBMISSION

March 4, 2009

Charlene Frizzera, Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2232-P
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Medicaid Program; State Flexibility for Medicaid Benefit Packages: Delay of Effective Date, **File Code CMS-2232-P**, 42 CFR Part 440

Dear Administrator Frizzera:

As leading patient, provider, public health, legal and grassroots organizations committed to protecting and advancing women's health, we are keenly aware of the important role that the Medicaid program plays for women, who make up 69% of all adult enrollees.[i] Indeed, more than 7 million women, or 12% of all U.S. women ages 15-44, rely on Medicaid (and related public programs) for health services.[ii] We therefore appreciate the opportunity to submit comments on the Centers for Medicare and Medicaid Services' (CMS) December 3, 2008, final rule on Medicaid benchmark benefit plans.

If implemented, the December 3, 2008, final rule on Medicaid benchmark benefit plans will allow states to exclude family planning services from alternative benefit packages, undermining long-standing beneficiary protections and negatively impacting access to basic health care for women. To protect access to these basic preventive services for millions of low-income women, we urge CMS:

- *To clarify in **§440.330** that Secretary-approved coverage for women of reproductive age can only be considered "appropriate for the population" if it includes family planning services and supplies, and*

- *To designate in **§440.335** family planning services and supplies as "appropriate preventive services" that must be covered in any benchmark-equivalent plans offered to women of reproductive age.*

The Deficit Reduction Act of 2005 (DRA) gave states increased flexibility to define the scope of covered medical assistance for certain categories of beneficiaries, while simultaneously giving the Secretary the authority to ensure that a state's plan meets the needs of beneficiaries.[iii] Under the DRA, states can enroll certain beneficiaries into alternative benefit plans, including "Secretary approved benchmark coverage" and "benchmark-equivalent coverage." For Secretary-approved benchmark coverage, the Secretary must determine that the coverage is "appropriate … for the population proposed to be to be provided such coverage."[iv] Similarly, for benchmark-equivalent

coverage, the plan must include specified categories of basic services, including "appropriate preventive services … as designated by the Secretary."[v] We urge the Secretary to exercise caution in approving "benchmark coverage" to ensure that beneficiaries' needs are paramount. Specifically, given the important role that family planning services play in maintaining and improving the health of women of reproductive age, a final rule on Medicaid benchmark benefit plans should make clear that Secretary-approved benchmark coverage and benchmark-equivalent coverage that lack these basic services will not be approved for this population.

Family planning is basic health care for women of reproductive age. When women have access to contraception, they can safely time and space their pregnancies—and prevent unintended pregnancies—which in turn reduces the incidence of maternal death, low birth weight babies, and infant mortality.[vi] Use of contraception is also linked to other key preventive health behaviors, such as regular health screenings that allow for early detection of breast and reproductive cancers, high blood pressure and diabetes, and sexually transmitted infections, including HIV. For health coverage to be considered appropriate for women of reproductive age, it must at a minimum include family planning services. Indeed, six in 10 women who get care at a family planning center, including three out of four who are poor, consider the center to be their usual source of health care.[vii]

By defining acceptable coverage in a benchmark plan as anything approved as "appropriate for the population" by the Secretary of Health and Human Services—without requiring that family planning services and supplies be included in the package—the December 3, 2008, final rule undermined the emphasis on family planning services that Medicaid has successfully held for over three decades and compromised the health of the approximately seven million women of reproductive age who rely on Medicaid for their health insurance.

To ensure that Medicaid beneficiaries have access to all appropriate health services, the final rule on Medicaid benchmark benefit plans should state explicitly that Secretary-approved benchmark coverage and benchmark-equivalent coverage must include coverage of family planning services for women of reproductive age. We urge CMS:

- *To clarify in **§440.330** that Secretary-approved coverage for women of reproductive age can only be considered "appropriate for the population" if it includes family planning services and supplies, and*

- *To designate in **§440.335** family planning services and supplies as "appropriate preventive services" that must be covered in any benchmark-equivalent plans offered to women of reproductive age.*

Thank you for your attention to these important concerns. If you have any questions, please contact Judy Waxman, Vice-President for Health and Reproductive Rights at the National Women's Law Center, at jwaxman@nwlc.org or 202-588-5180.

Sincerely,

Advocates for Youth
American Association of University Women (AAUW)
Center for Inquiry
Center for Reproductive Rights
National Council of Jewish Women
National Family Planning & Reproductive Health Association (NFPRHA)
National Health Law Program
National Partnership for Women and Families
National Women's Law Center
National Women's Health Network
Planned Parenthood Federation of America
Raising Women's Voices for the Health Care We Need
YWCA USA

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[i] Kaiser Family Found., Issue Brief: Medicaid's Role for Women 1 (Oct. 2007), *available at* http://www.kff.org/womenshealth/upload/7213_03.pdf.
[ii] Guttmacher Inst. & Kaiser Family Found., Issue Brief: Medicaid's Role in Family Planning 1 (Oct. 2007), *available at* http://www.guttmacher.org/pubs/IB_medicaidFP.pdf.
[iii] Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6044, 120 Stat. 4, 88 (2006).
[iv] 42 U.S.C. § 1396u-7(b)(1)(A)-(D) (2009).
[v] *Id.* at (b)(2)(A).
[vi] Agustin Conde-Agudelo et al., *Birth Spacing and Risk of Adverse Perinatal Outcomes, A Meta-Analysis*, 295 J. AM. MED. ASS'N 1809 (2006); David M. Stamilio et al., *Short Interpregnancy Interval: Risk of Uterine Rupture and Complications of Vaginal Birth After Cesarean Delivery*, 110 OBSTETRICS & GYNECOLOGY 1075 (2007).
[vii] RACHEL BENSON GOLD ET AL., GUTTMACHER INST., NEXT STEPS FOR AMERICA'S FAMILY PLANNING PROGRAM: LEVERAGING THE POTENTIAL OF MEDICAID AND TITLE X IN AN EVOLVING HEALTH CARE SYSTEM (2009), *available at* http://www.guttmacher.org/pubs/NextSteps.pdf.