November 29, 2012

The Honorable Kathleen Sebelius
Secretary of the Department of Health and Human Services
U.S. Department of Health and Human Services (HHS)
Hubert H. Humphrey Building, 200 Independence Avenue SW
Washington, DC 20201

Cc: Mr. Gary Cohen, Director, Center for Consumer Information and Insurance Oversight

RE: Recommendations from Florida Consumer and Patient Advocates Concerning Partnership and Federally Facilitated Exchanges

Dear Madame Secretary:

The undersigned organizations, collectively representing the interests of millions of Florida patients and consumers, are writing with regard to HHS' development of new guidance related to the start-up and operation of Health Insurance Exchanges and other Exchange-related decisions that HHS will make during the coming year.

Given the recent changes made by HHS to the Exchange declaration letter and blueprint submission timeline as well as remarks from state leaders, we are currently unsure at this time whether Florida will default to a purely Federally Facilitated Exchange (FFE) or seek to operate a Partnership Exchange in collaboration with HHS.

Despite that uncertainty, we respectfully offer the following recommendations, recognizing that some may not apply to the Exchange model Florida ultimately chooses. These ideas are not new, however, and they reflect many of the same concerns we have had for the past 2½ years as we awaited movement by State leaders to engage in action to implement the Affordable Care Act (ACA). More specifically, we request that any process for Exchange implementation and operation in Florida be transparent and accountable, allow for meaningful public participation, be consumer-focused in approach, and have the capacity to meet the objectives of the ACA:

1. HHS should impose reasonable limits on state flexibility in order to ensure predictability that is essential to planning, public education, and outreach efforts.

HHS has been extremely flexible with states throughout the ACA implementation process to date, relaxing or eliminating numerous deadlines and requirements in recognition of the challenges that states have faced as well as the questions that states have posed. Most recently, HHS has allowed states to postpone the decision of whether or not to declare their intent to operate a Partnership Exchange (in lieu of defaulting to an FFE) an additional 3 months, until February 2013.

However, some deadlines must be firm in order to ensure that policy decisions can be finalized and resources can be allocated in reliance on certain fixed assumptions. Allowing Florida, which is not currently even at "square one" in the implementation process, to at to assemble the components of a

Partnership Exchange and link them with federal components in less than a year seems certain to result in serious confusion, wasted time and money, and negative branding of the Exchange that could persist for years.

For the same reasons, HHS should allow a state to change the nature of its Exchange model no more than once a year (e.g., in November 2013 for 2015).

2. HHS should conduct a reality-based assessment of the capacity of a state to perform its proposed responsibilities within any proposed Partnership Exchange model, and be prepared to require that Florida default to an FFE initially if that is the only viable option.

HHS should consider the inability of a state to submit a complete, comprehensive, and viable blueprint for a Partnership Exchange by the February deadline equivalent to a decision to default to an FFE, at least for 2014 and 2015. In Florida, state leaders are finally discussing Exchange-related options, and though they may wish to avoid defaulting to an FFE by expressing intent to establish a Partnership Exchange, such a determination must be accompanied by strong evidence that the state can actually perform the functions proposed. Consequently, upon submission of a blueprint for a Partnership Exchange, HHS should immediately conduct an assessment of the state's capacity to perform the functions proposed, to establish a linkage with the federally administered components, and to address any deficiencies in the time that remains.

3. HHS should ensure/require full transparency and ongoing opportunities for meaningful public participation in all Exchange-related program and policy decisions, regardless of whether Florida is served by a Partnership Exchange or an FFE.

The need for the state to meaningfully plan for its role in the operation of any Exchange that serves Florida and in particular to consider policy options that protect and benefit consumers as the Exchange's primary stakeholders cannot be overstated. Three months from now, by contrast, Florida may submit a blueprint proposing a Partnership Exchange model about which there has been no public planning process, consumer-focused discussion, or meaningful stakeholder input.

Regardless of the model ultimately selected, HHS should require a formal stakeholder input mechanism that is an integral part of the planning phase and remains active after the Exchange is launched. This should include in-person meetings with major stakeholder groups, particularly consumers and their advocates. HHS should also require representation and participation from relevant state agencies/entities in
the process, and should insist that HHS itself is included in the ongoing planning and dialogue.

Our concerns about the lack of transparency and opportunities for input are heightened further by the fact that the stakeholder input requirements that apply to the blueprint for State-Based Exchanges do not apply to Partnership Exchanges. If Florida proposes to operate a Partnership Exchange, HHS should take into consideration the fact that the State has done virtually nothing in the areas of public participation or transparency since the ACA was enacted, and in fact has actively resisted implementation at every turn until this month. Although the leadership's newly expressed interest in Exchange development is cause for encouragement, the fact that the State was inactive for

more than two years and is only starting its process now must impact HHS' assessment of how much the state can realistically accomplish in eight months. HHS should not excuse the state from due diligence in these areas, because it created its own impossibly short timeline.

With regard to Florida in particular, although the state may have pieces in place (within state agencies or quasi-state entities) that could ultimately play some role in a Partnership Exchange, it must be noted that, to date, none have conducted any formal planning activities or held any public discussions regarding the Exchange and their potential role in its operation. Indeed, up until now, they have been mandated to avoid such efforts.

If Florida does ultimately revert to an FFE, how it operates and interacts with relevant state agencies or entities (likely 3 or 4 different ones) will be largely spelled out informally, particularly through guidance and a Memorandum of Understanding (MOU) between HHS and the state.

Yet the FFE and the state must "coordinate closely to share information, create protocols to help consumers resolve issues, and ensure smooth handoffs among entities." The informality of the rules and standards in the FFE model does not diminish the significance of these decisions or the magnitude of the task. As a result:

- Stakeholders should have the opportunity to review and to provide input into the MOU between HHS and the state prior to its finalization.
- HHS should establish and update a webpage where state-specific details about the FFE, including documents, reports, corrective action requests, program data, etc. related to the various business functions of the Exchange are posted.
- HHS should appoint an FFE Administrator for each state who would be recognized by the state, stakeholders, and the public as HHS' point person regarding Exchange implementation there.

4. HHS should establish and enforce strong accountability standards in the areas of public participation, consumer assistance and protection, and Qualified Health Plan performance.

From enactment of the ACA until this month, Florida's elected leadership blocked all ACA implementation and provided no Exchange-related public participation opportunities whatsoever. Strong standards are needed within both the Partnership and FFE models to ensure accountability on the part of stateswith respect to seeking meaningful input from consumers and allowing meaningful participation by consumer organizations in the design and operation of exchanges. HHS should also establish a mechanism by which stakeholders can report alleged failures on the part of the state to adhere to applicable regulations, guidance, or provisions of the MOU. HHS should act on reports that rise to a level of significant concern in a timely fashion. Finally, HHS should develop a contingency plan in an effort to hold consumers harmless in the event of delays in implementation, problems linking with federal system components, and other problems unilaterally caused by the state.

With respect to the specific functions to be coordinated among the state and HHS in a Partnership Exchange, the need for access to information about and opportunities to participate in the development of the state's role is just as critical as if the State were operating a State-Based Exchange. In particular, under a Partnership Exchange, we assume that Florida would seek to assume

significant responsibilities in the areas of consumer assistance and Qualified Health Plan certification, management, and oversight.

Florida's refusal to develop a public process to determine which exchange model to adopt has also precluded meaningful engagement of community-based stakeholders in the design of consumer assistance programs. Therefore, HHS should not permit states to partner with HHS on consumer assistance functions unless they demonstrate that they are formally and meaningfully engaging these stakeholders. Further, even after Navigator and Assister programs have been established, HHS and its partner states should regularly evaluate the performance of these joint efforts to reach and assist consumers. Finally, since HHS will award the grants to Navigators under both the Partnership Exchange and FFE models, HHS becomes the entity responsible for ensuring that a sufficient number and diversity of grants are awarded to maximize the likelihood that all of the identifiable populations needing assistance are reached.

With respect to certification, management, and oversight of Qualified Health Plans (QHPs), Medicaid managed care plans have a problematic track record in Florida with respect to accountability and access. At a minimum, HHS should require that states employ appropriate, strong mechanisms that ensure accountability to consumers and taxpayers, including but not limited to: accreditation requirements; provider network adequacy standards; independent evaluation of the sufficiency of benefit packages; availability of clear, meaningful, user-friendly performance data in the areas of access and quality; standardized and transparent financial reporting; and strong corrective action requirements and sanctions for non-compliance. None of these requirements are fully implemented and working effectively in Florida's Medicaid managed care system today, although managed care has been part of the Florida Medicaid landscape for almost two decades. HHS should ensure that, if Florida seeks to partner on QHP management and oversight, the same lingering problems do not serve to undermine the goals of the ACA.

Thank you in advance for your consideration of this input as you work to provide support and develop additional tools and guidance for states that will have Partnership or Federally Facilitated Exchanges serving their residents, and in particular for your consideration of the unique challenges we face in Florida related to those issues.

Sincerely,

Catalyst Miami
Center for Independent Living of South Florida
Democratic Women's Club of Florida
Doctors for America- FL Chapter
Farmworker Association of Florida
Florida Alliance of Planned Parenthood Affiliates
Florida Center for Fiscal and Economic Policy
Florida CHAIN
Florida Education Association
Florida National Organization for Women
Florida PICO

Lillesand and Associates, PA
NAMI Florida
Organize Now
Progress Florida
SEIU 1199
The AIDS Institute
The Family Café