

January 2001 Final Rule

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| 66 Fed. Reg. 6228 (Jan. 19, 2001), 42 C.F.R. | xx. |
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August 2001 Proposed Rule

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| 66 Fed. Reg. 43614 (Aug. 20, 2001), 42 C.F.R. | xx. |
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June 2002 Final Rule

67 Fed. Reg. 40989 (June 14, 2002), 42 C.F.R. §§ xx.

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| Information | : Enrollees and Potential enrollees be provided information on how to access b |
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| January | " | 438.10(d)(2)(ii)(E), (e)(2)(xii). |
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Maintains requirement, except that health plans do not have to provide any information on where and ho

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| Proposed | " | 438.10(e)(2)(ii)(E), (f)(6)(xii). |
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Same. State or contract representative must provide information to potential enrollees. State, contract

§§ 438.10(e)(2)(ii)(E), (f)(6)(xii); 438.102(a)(2), (c).

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| Information | : Certain required information (i.e. scope of benefits available under the state p |
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| January | " | 438.10(d)(1)(ii), (d)(2)(ii). |
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| Need only provide | <i>summary</i> | with more detail upon request. |
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Provision of information when beneficiary becomes eligible for or required to enroll in a managed care p

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| Proposed | " | 438.10(e)(1)(i), (e)(2)(ii). |
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Same. Information provided by state or contract representative. §§ 438.10(e)(1)(i), (e)(2)(ii).

States have option of providing more detailed information. 67 Fed. Reg. at 41013.

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| Information | : Enrollees to obtain information upon enrollment and annually thereafter. |
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Health plans responsible for providing information.

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| January | ' | 438.10(e)(1)(i). |
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Provision of information upon enrollment. Notice on right to request information annually, instead of auto

Deletes reference of responsible party for providing information. Thus, presumably, State must decide.

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| Proposed | , | 438.10(f)(2). |
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Same. Clarifies option for state, contract representative, or managed care plan to provide information u

Final § 438.10(f).

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| Information | : Enrollees to get information on the extent to which it had to provide information ab |
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| January | , | 438.10(e)(2)(vi). |
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Same, except deletes requirement that health plans provide information about how to get information ab

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| Proposed | , | 438.10(f)(6)(vii). |
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Same. Preamble clarifies that enrollees of all managed care programs (unless the obligation were even

Final § 438.10(f)(6)(vii); 67 Fed. Reg. at 41016.

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| Information | : Information specifically on pharmaceuticals, on how to obtain continued servi |
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| January | " | 438.10(e)(2)(i), (e)(2)(x), (e)(2)(xiii); 438.414(b)(5). |
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| Requirements deleted. |
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| Proposed | " | 438.10(f)(6)(iv), (f)(6)(v), (g). |
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| Same. |
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| Final §§ 438.10(f)(6)(iv), (f)(6)(v), (g). |
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| Information | : Health plans to give enrollees written notice 30 days prior to the effective date |
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| January | " | 438.10(e)(ii); 438.102(c)(1)(ii). |
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| Same. |
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| Proposed | " | 438.10(f)(4); | ' |
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| Same. Except notice can | be given by state, contract representative, or managed care plan. State has f |
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| Final §§ 438.10(f)(4); 438.102(b)(1)(ii)(B). |
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| Information | : Enrollees must be told of any limits on freedom of choice among network pro |
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| January | ' | 438.10(e)(2)(v). |
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Same. Includes explanation that this includes limits by choosing subnetworks under contract with the plan.

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| Proposed | ' | 438.10(f)(6)(ii); 66 Fed. Reg. at 43624 |
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Same. While did not include proposed rule preamble discussion in text of rules, did affirm that if there a

Final § 438.10(f)(6)(ii); 67 Fed. Reg. at 41015.

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| Information | : Right to disenroll | B | no provision. |
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Adds provision requiring States to notify enrollees of their disenrollment rights at least annually and at le

| | | |
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| Proposed | ' | 438.10(f)(1). |
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Same. Except modifies the requirement to inform enrollees 60 days prior to each open enrollment period

Final § 438.10(f)(1); 67 Fed. Reg. at 41014.

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| Marketing | : Marketing protections | apply to potential enrollees and current enrollees. |
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| January | ' | 438.104. |
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Marketing protections for potential enrollees only.

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| Proposed | ' | 438.104 |
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Same.

Final § 438.104

Marketing : State option to impose sanctions on plans that falsify or misrepresent information

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| January | ' | 438.700(b)(5). |
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Same.

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| Proposed | ' | 438.700(b)(5) |
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Same.

Final § 438.700(b)(5).

Enrollee-Provider Communication : Plans prohibited from limiting communications regarding medical care

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| January | ' | 438.102(b)(1). |
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Same.

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| Proposed | ' | 438.102(b)(1). |
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Same.

Final § 438.102(a)(1).

Enrollee-Provider Communication medical professionals to whom anti-gag rule applies.

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| January | ' | 438.102(a). |
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Includes same list.

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| Proposed | ' | 438.102(a). |
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Same. List of health care professionals moved to Final § 438.2.

Enrollee-Provider Communication/Moral Religious Provision reimburse for, or provide coverage of a c

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| Proposed | ' | 438.102(b)(3). |
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Same.

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| January | ' | 438.102(b)(2) |
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Same.

Final § 438.102(a)(2).

Enrollee-Provider Communication/Moral Religious Provision individuals with information on how to

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| January | ' | 438.102(c)(2). |
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| Deleted. |
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| Proposed | ' | 438.102(c)(2). |
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| Same. |
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| Final. §§ 438.102(b)(2). |
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| Enrollee-Provider Communication/Moral Religious Provision | Enrollee-Provider Communication/Moral Religious Provision | State plan services which are not included |
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| January | ' | 438.206(c). |
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| Deleted. State | = | s responsibility to ensure continued access discus |
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| Proposed | ' | 438.206; 66 Fed. Reg. at 43629. |
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| Same. Preamble also states | that providers are not precluded from providing information on how and w |
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| Final § 438.102(c); 67 Fed. | Reg. at 41025, 41026. |
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| Enrollee-Provider Communication/Moral Religious Provision | Enrollee-Provider Communication/Moral Religious Provision | policy to exclude applications for Medical s |
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| January | ' | 438.102(c)(1)(i). |
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Same.

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| Proposed | ' | 438.102(c)(1)(i). |
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Same.

Final § 438.102(b)(1)(i).

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| Enrollee-Provider Communication/Moral Religious Provision | potential enrollees within specific time |
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| January | ' | 438.102(c)(1)(ii). |
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Same.

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| Proposed | ' | 438.102(c)(1)(ii). |
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Same.

Final § 438.102(b)(1)(ii), (c).

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| Disenrollment | : Cause to disenroll at any time includes plan does not provide a service or a |
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| January | ' | 438.56(d)(2). |
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Same.

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| Proposed | ' | 438.56(d)(2). |
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Same. Preamble states that States may include other reasons, such as homelessness, for disenrollment.

Final § 438.56(d)(2); 67 Fed. Reg. at 41022.

Free-Choice of Provider: Enrollees have right to a free choice of provider for family planning services.

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| January | ' | 431.51(a)(4), (5), (6). |
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Same.

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| Proposed | " | 431.51(a)(4), (5), (6). |
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Same, except does not apply to PIHPs and PAHPs. The federal statute extends this right to beneficiaries.

Final § 431.51(a)(4), (5), (6).

Out-of-Network Access: If health plan cannot provide necessary contract services, services must be covered.

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| January | ' | 438.206(d)(5), 66 Fed. Reg. at 6262. |
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Same, except related services not addressed. Also, where January rules required States to directly ensure services, related services not addressed.

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| Proposed | ' | 438.206(b)(4). |
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Same. Additional language added to require States to regularly monitor and evaluate the MCO and its performance.

See Final § 438.206(b)(4); 67 Fed. Reg. at 41036.

Out-of-Network Access: Out-of-Network access is not to result in additional costs to the enrollee.

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| January | ' | 438.206(d)(8). |
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Same.

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| Proposed | ' | 438.206(b)(5). |
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Same. Preamble explains that health plan is responsible for negotiating payment to out-of-plan provider

Final § 438.206(b)(5); 67 Fed. Reg. at 41038.

Out-of-Network Access/Rule: Out-of-network access permitted where service or type of provider not available

January 438.52(b)(2)(ii)(A).

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| Same, except | A | type of provider | @ |
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| Proposed | ' | 438.52(b)(2)(ii)(A). |
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Same.

Final § 438.52(b)(2)(ii)(A).

Out-of-Network Access/Right Out-of-network access for individuals with pre-existing relationships with a pro

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| January | ' | 438.52(b)(2)(ii)(B). |
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Out-of-network access for pre-existing providers limited to 60days, then enrollee must choose (or be ass

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| Proposed | ' | 438.52(b)(2)(ii)(B). |
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Same. Thus, pregnant women whose providers do not choose or do not quality to join health plan mus

Final § 438.52(b)(2)(ii)(B).

Out-of-Network Access/Right Right to access out-of-network providers when (1) the primary care provider or a

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| January | " | 438.52(b)(2)(ii)(C), (b)(2)(ii)(D), (b)(2)(ii)(E). |
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Same, except preamble says that, except for (1), the state need not have a fee-for-service system and t

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| Proposed | " | 438.52(b)(2)(ii)(C), (b)(2)(ii)(D), (b)(2)(ii)(E); |
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66 Fed. Reg. at 43627.

Same. Preamble clarifies that State is not relieved from FFS in order to comply with out-of-network acc

Final §§ 438.52(b)(2)(ii)(C), (b)(2)(ii)(D), (b)(2)(ii)(E); 67 Fed. Reg. at 41021.

Availability of Services : Each health plan is to pay particular attention to pregnant women and other in

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| January | ' | 438.206(d). |
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Deleted.

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| Proposed | ' | 438.206(b). |
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Same. Preamble states that provision of specific groups need not be included because needs of all en

Final § 438.206(b).; 67 Fed. Reg. at 41037.

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| Direct Access to Women | s Health Specialists | : Female enrollees must ha |
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| January | ' | 438.206(d)(2); 66 Fed. Reg. at 6305-06. |
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| Same, except there is no mention of the issues discussed in the January rules | Preamble |
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| Proposed | ' | 438.206(b)(2). |
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Same. Preamble states that " routine and preventive" is sufficient to categorize the types of services th

Final § 438.206(b)(2); 67 Fed. Reg. at 41037.

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| Identification of Persons With Special Needs | women be identified among persons with special nee |
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| January, | ' | 438.208(b)(3); 66 Fed. Reg. at 6308. |
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| Proposed | ' | 438.208(b). |
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Same. States have discretion to define and develop mechanism for identifying special needs groups. C

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| Final § 438.208(c)(1); 67 Fed. Reg. at 41043. |
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| Screenings and Assessments | Differentiates | A | initial screening | @ |
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| January | ' | 438.208(b)(3), (d); 66 Fed. Reg. at 6309. |
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| Deletes distinction and del | As pregnant women from | listing individuals who must | be screened and requi |
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| Proposed | ' | 438.208(c), 66 Fed. Reg. at 43635. |
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Deletes "screen" and equates with "identification." Requires health plans to conduct assessments of

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| Final §§ 438.208(c)(1), (c)(2); 67 Fed. Reg. at 41042, 41043. |
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| Screenings and Assessments | Contains specific time frames in which screens and assessments must be do |
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| January, | ' | 438.208(d), (e). |
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Deleted.

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| January | ' | 438.208(d), (e). |
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Same. Within State discretion to develop in consultation with beneficiaries and other stakeholders.

Final § 438.208(c); 67 Fed. Reg. at 41044.

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| Treatment planning | : Sets forth rules for health plans to develop and implement treatment plans for |
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| January | " | 438.208(f), 66 Fed. Reg. at 6312 |
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Deleted. Requires States only to ensure that health plans have a mechanism in place for individuals det

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| Proposed | ' | 438.208(d). |
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Same. Except deletes treatment plan developed only if health plan requests it. State given authority to

Final § 438.208(c)(3); 67 Fed. Reg. at 41045.

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| Liability and Cost Sharing | Enrollees may not be held liable for covered services attributable to family plan |
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| January | ' | 438.106; 66 Fed. Reg. at 6281-82. |
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Same, but no preamble discussion.

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| Proposed | ' | 438.106. |
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Same.

Final § 438.106.

Liability and Cost Sharing Any cost sharing must comply with fee-for-service cost sharing requirements,

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| January | ' | 438.108, 66 Fed. Reg. at 6282-83, | 4 |
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Same, except that there is no discussion clarifying cost sharing for non-emergency services access in the

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| Proposed | ' | 438.108, 66 Fed. Reg. at 43630. |
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Same, except that preamble says that coverage of services sought in the emergency room may be de

Final § 438.108; 67 Fed. Reg. at 41028.

Liability and Cost Sharing Providers may not deny care due to an eligible individuals inability to pay for t

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| January | ' | 447.53(e). |
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Same.

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| Proposed | ' | 447.53(e). |
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Same.

Final § 447.53(e)

Liability and Cost Sharing Services accessed out-of-network due to health plan inability to provide needed services.

January, ' 438.206(d)(8), 66 Fed. Reg. at 6303.

Same, except no discussion on related services.

Proposed ' 438.206(b)(5).

Same. Health plans responsible for negotiating payment with out-of-plan provider to which the plan may refer.

Final § 438.206(b)(5)

Specification of Contract Benefits Contracts with MCOs, PHPs, and PCCMs must clearly specify those services and benefits.

January ' 438.210(a).

Same, except exempts PCCM and PAHP contracts.

Proposed, ' 438.210(a).

Same.

Final § 438.210(a).

Prior Authorization Requests Health plans and subcontractors must have in place and follow written policies

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| January | ' | 438.210(b)(1). |
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Same, except policies and procedures do not have to reflect current standards of medical practice.

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| Proposed, | ' | 438.210(b)(1). |
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Same. Except preamble disavows intent to imply that policies/practices contrary to current standards o

Final § 438.210(b)(1); 67 Fed. Reg. at 41049.

Limitations on Payments to Providers State to pay out-of-network providers for services included in the

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| January | ' | 438.60; 66 Fed. Reg. at 6267. |
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Same.

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| Proposed | ' | 438.60. |
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Confidentiality : In addition to following state and federal confidentiality and disclosure laws, th

- maintain medical records and information in a timely and accurate manner;
- specify for what purposes the health plan uses the information and to what entities outside of the h
- permit each enrollee to request and receive a copy of records and information pertaining to the enr
- permit each enrollee to request and receive information on how the health plan uses and discloses

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| January | ' | 438.224. |
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Deleted. Now requires that States, through their contracts, ensure that health plans have procedures in

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| Proposed | ' | 438.224. |
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Same.

Final § 438.224.

Public Participation : States must specify in the state plan the process used to involve the public b

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| January | ' | 438.50(b)(4). |
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Same.

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| Proposed | ' | 438.50(b)(4). |
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Same.

Final § 438.50(b)(4); 67 fed. Reg. at 41019.