

January 2001 Final Rule

66 Fed. Reg. 6228 (Jan. 19, 2001), 42 C.F.R.	xx.
--	-----

August 2001 Proposed Rule

66 Fed. Reg. 43614 (Aug. 20, 2001), 42 C.F.R.	xx.
---	-----

June 2002 Final Rule

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

Information	: Enrollees and Potential	enrollees be provided information on how to access b
-------------	---------------------------	--

January	"	438.10(d)(2)(ii)(E), (e)(2)(xii).
---------	---	-----------------------------------

Maintains requirement, except that health plans do not have to provide any information on where and ho

Proposed	"	438.10(e)(2)(ii)(E), (f)(6)(xii).
----------	---	-----------------------------------

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).

Information	: Certain required information (i.e. scope of benefits available under the state p
--------------------	--

January	"	438.10(d)(1)(ii), (d)(2)(ii).
---------	---	-------------------------------

Need only provide	<i>summary</i>	with more detail upon request.
-------------------	----------------	--------------------------------

Provision of information when beneficiary becomes eligible for or required to enroll in a managed care p

Proposed	"	438.10(e)(1)(i), (e)(2)(ii).
----------	---	------------------------------

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.

Information	: Enrollees to obtain information upon enrollment and annually thereafter.
--------------------	--

Health plans responsible for providing information.

January	'	438.10(e)(1)(i).
---------	---	------------------

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.

Proposed	,	438.10(f)(2).
----------	---	---------------

Same. Clarifies option for state, contract representative, or managed care plan to provide information u

Final § 438.10(f).

Information	: Enrollees to get information on the extent to which it had to provide information ab
-------------	--

January	,	438.10(e)(2)(vi).
---------	---	-------------------

Same, except deletes requirement that health plans provide information about how to get information ab

Proposed	,	438.10(f)(6)(vii).
----------	---	--------------------

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.

Information	: Information specifically on pharmaceuticals, on how to obtain continued servi
-------------	---

January	"	438.10(e)(2)(i), (e)(2)(x), (e)(2)(xiii); 438.414(b)(5).
---------	---	--

Requirements deleted.

Proposed	"	438.10(f)(6)(iv), (f)(6)(v), (g).
----------	---	-----------------------------------

Same.

Final §§ 438.10(f)(6)(iv), (f)(6)(v), (g).
--

Information	: Health plans to give enrollees written notice 30 days prior to the effective date
-------------	---

January	"	438.10(e)(ii); 438.102(c)(1)(ii).
---------	---	-----------------------------------

Same.

Proposed	"	438.10(f)(4);	'
----------	---	---------------	---

Same. Except notice can	be given by state, contract representative, or managed care plan. State has f
-------------------------	---

Final §§ 438.10(f)(4); 438.102(b)(1)(ii)(B).
--

Information	: Enrollees must be told of any limits on freedom of choice among network pro
-------------	---

January	'	438.10(e)(2)(v).
---------	---	------------------

Same. Includes explanation that this includes limits by choosing subnetworks under contract with the plan.

Proposed	'	438.10(f)(6)(ii); 66 Fed. Reg. at 43624
----------	---	---

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.

Information	: Right to disenroll	B	no provision.
--------------------	----------------------	---	---------------

Adds provision requiring States to notify enrollees of their disenrollment rights at least annually and at le

Proposed	'	438.10(f)(1).
----------	---	---------------

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.

Marketing	: Marketing protections	apply to potential enrollees and current enrollees.
------------------	-------------------------	---

January	'	438.104.
---------	---	----------

Marketing protections for potential enrollees only.

Proposed	'	438.104
----------	---	---------

Same.

Final § 438.104

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

January	'	438.700(b)(5).
---------	---	----------------

Same.

Proposed	'	438.700(b)(5)
----------	---	---------------

Same.

Final § 438.700(b)(5).

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

January	'	438.102(b)(1).
---------	---	----------------

Same.

Proposed	'	438.102(b)(1).
----------	---	----------------

Same.

Final § 438.102(a)(1).

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

January	'	438.102(a).
---------	---	-------------

Includes same list.

Proposed	'	438.102(a).
----------	---	-------------

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

Proposed	'	438.102(b)(3).
----------	---	----------------

Same.

January	'	438.102(b)(2)
---------	---	---------------

Same.

Final § 438.102(a)(2).

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

January	'	438.102(c)(2).
---------	---	----------------

Deleted.

Proposed	'	438.102(c)(2).
----------	---	----------------

Same.

Final. §§ 438.102(b)(2).

Enrollee-Provider Communication/Moral Religious Provision	State plan services which are not included
--	--

January	'	438.206(c).
---------	---	-------------

Deleted. State	=	s responsibility to ensure continued access discus
----------------	---	--

Proposed	'	438.206; 66 Fed. Reg. at 43629.
----------	---	---------------------------------

Same. Preamble also states	that providers are not precluded from providing information on how and w
----------------------------	--

Final § 438.102(c); 67 Fed.	Reg. at 41025, 41026.
-----------------------------	-----------------------

Enrollee-Provider Communication/Moral Religious Provision	policy to exclude applications for Medical s
--	--

January	'	438.102(c)(1)(i).
---------	---	-------------------

Same.

Proposed	'	438.102(c)(1)(i).
----------	---	-------------------

Same.

Final § 438.102(b)(1)(i).

Enrollee-Provider Communication/Moral Religious Provision	potential enrollees within specific time
--	--

January	'	438.102(c)(1)(ii).
---------	---	--------------------

Same.

Proposed	'	438.102(c)(1)(ii).
----------	---	--------------------

Same.

Final § 438.102(b)(1)(ii), (c).

Disenrollment	: Cause to disenroll at any time includes plan does not provide a service or a
----------------------	--

January	'	438.56(d)(2).
---------	---	---------------

Same.

Proposed	'	438.56(d)(2).
----------	---	---------------

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.

January	'	431.51(a)(4), (5), (6).
---------	---	-------------------------

Same.

Proposed	"	431.51(a)(4), (5), (6).
----------	---	-------------------------

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.

January	'	438.206(d)(5), 66 Fed. Reg. at 6262.
---------	---	--------------------------------------

Same, except related services not addressed. Also, where January rules required States to directly ensure services, related services not addressed.

Proposed	'	438.206(b)(4).
----------	---	----------------

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.

January	'	438.206(d)(8).
---------	---	----------------

Same.

Proposed	'	438.206(b)(5).
----------	---	----------------

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).

Same, except	A	type of provider	@
--------------	---	------------------	---

Proposed	'	438.52(b)(2)(ii)(A).
----------	---	----------------------

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

January	'	438.52(b)(2)(ii)(B).
---------	---	----------------------

Out-of-network access for pre-existing providers limited to 60days, then enrollee must choose (or be ass

Proposed	'	438.52(b)(2)(ii)(B).
----------	---	----------------------

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

January	"	438.52(b)(2)(ii)(C), (b)(2)(ii)(D), (b)(2)(ii)(E).
---------	---	--

Same, except preamble says that, except for (1), the state need not have a fee-for-service system and t

Proposed	"	438.52(b)(2)(ii)(C), (b)(2)(ii)(D), (b)(2)(ii)(E);
----------	---	--

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

January	'	438.206(d).
---------	---	-------------

Deleted.

Proposed	'	438.206(b).
----------	---	-------------

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.

Direct Access to Women	s Health Specialists	: Female enrollees must ha
-------------------------------	-----------------------------	----------------------------

January	'	438.206(d)(2); 66 Fed. Reg. at 6305-06.
---------	---	---

Same, except there is no mention of the issues discussed in the January rules	Preamble
---	----------

Proposed	'	438.206(b)(2).
----------	---	----------------

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.

Identification of Persons With Special Needs	women be identified among persons with special nee
---	--

January,	'	438.208(b)(3); 66 Fed. Reg. at 6308.
----------	---	--------------------------------------

Deleted.

Proposed	'	438.208(b).
----------	---	-------------

Same. States have discretion to define and develop mechanism for identifying special needs groups. C

Final § 438.208(c)(1); 67 Fed. Reg. at 41043.

Screenings and Assessments	Differentiates	A	initial screening	@
-----------------------------------	----------------	---	-------------------	---

January	'	438.208(b)(3), (d); 66 Fed. Reg. at 6309.
---------	---	---

Deletes distinction and del	As pregnant women from	screening individuals who must	@	be screened and requi
-----------------------------	------------------------	--------------------------------	---	-----------------------

Proposed	'	438.208(c), 66 Fed. Reg. at 43635.
----------	---	------------------------------------

Deletes "screen" and equates with "identification." Requires health plans to conduct assessments of

Final §§ 438.208(c)(1), (c)(2); 67 Fed. Reg. at 41042, 41043.

Screenings and Assessments	Contains specific time frames in which screens and assessments must be do
-----------------------------------	---

January,	'	438.208(d), (e).
----------	---	------------------

Deleted.

January	'	438.208(d), (e).
---------	---	------------------

Same. Within State discretion to develop in consultation with beneficiaries and other stakeholders.

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

Treatment planning	: Sets forth rules for health plans to develop and implement treatment plans for
---------------------------	--

January	"	438.208(f), 66 Fed. Reg. at 6312
---------	---	----------------------------------

Deleted. Requires States only to ensure that health plans have a mechanism in place for individuals det

Proposed	'	438.208(d).
----------	---	-------------

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.

Liability and Cost Sharing	Enrollees may not be held liable for covered services attributable to family plan
-----------------------------------	---

January	'	438.106; 66 Fed. Reg. at 6281-82.
---------	---	-----------------------------------

Same, but no preamble discussion.

Proposed	'	438.106.
----------	---	----------

Same.

Final § 438.106.

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

January	'	438.108, 66 Fed. Reg. at 6282-83,	4
---------	---	-----------------------------------	---

Same, except that there is no discussion clarifying cost sharing for non-emergency services access in the

Proposed	'	438.108, 66 Fed. Reg. at 43630.
----------	---	---------------------------------

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

January	'	447.53(e).
---------	---	------------

Same.

Proposed	'	447.53(e).
----------	---	------------

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 covered.

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

January	'	438.210(b)(1).
---------	---	----------------

Same, except policies and procedures do not have to reflect current standards of medical practice.

Proposed,	'	438.210(b)(1).
-----------	---	----------------

Same. Except preamble disavows intent to imply that policies/practices contrary to current standards of

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

January	'	438.60; 66 Fed. Reg. at 6267.
---------	---	-------------------------------

Same.

Proposed	'	438.60.
----------	---	---------

Confidentiality : In addition to following state and federal confidentiality and disclosure laws, the

- 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 health plan;
- permit each enrollee to request and receive a copy of records and information pertaining to the enrollee;
- permit each enrollee to request and receive information on how the health plan uses and discloses information.

January	'	438.224.
---------	---	----------

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

Proposed	'	438.224.
----------	---	----------

Same.

Final § 438.224.

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

January	'	438.50(b)(4).
---------	---	---------------

Same.

Proposed	'	438.50(b)(4).
----------	---	---------------

Same.

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