

October 19, 2001

Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attn: CMS-2104-P  
P.O. Box 8016  
Baltimore, MD 21244-8016

**Re: CMS-2104-P  
Medicaid Managed Care; Proposed Rule**

Dear Sir or Madam:

The National Health Law Program is a private, non-profit organization which advocates on behalf of low-

### **The Delay of the Final Rules**

On January 19, 2001, the Centers for Medicare and Medicaid Services (CMS) issued final regulations in

CMS' notice of "further delay of effective date" issued in August, and the previous delays, violate the Ad

### **Informing**

The proposed rule omits Proposed § 438.10(b)(2)(ii)(E), (f)(6)(iv). This omission eliminates any

We strongly urge at the least that health plans be required to provide a referral to a state-sponsored toll-

Also of concern is the scope of information provided to beneficiaries prior to enrollment. Whereas the January rules

In addition, the proposed rules further delay when potential enrollees can get this information by requiring

As under the January rules, the proposed rules require that soon after enrollment, certain information be

The January rules also required that the information be provided annually. The information under the proposed

In the discussion regarding the requirement that enrollees be told of any limits on freedom of choice and

The proposed rules add § 438.10(f) to require States to notify enrollees of their disenrollment rights at le

## Enrollee-Provider Communication

A significant omission is a requirement that health plans that exclude coverage of certain counseling or r

## Disenrollment

The proposed rules include certain reasons for disenrollment for cause that were included in the January

- (1) the plan does not, because of moral or religious objections, cover the service the enrollee seeks;
- (2) the enrollee needs related services (for example a cesarean section and tubal ligation) to be performed;
- (3) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the plan.

See proposed § 438.56(d)(2); January § 438.56(d)(2).

### Free Choice of Provider

We support the clarifying language that, under the BBA, beneficiaries have the right to a free choice of provider.

### Out-of-Network Access

The proposed rule includes a requirement in § 438.206(b)(4) that if the network cannot provide the necessary services, the plan must cover out-of-network services.

In addition, whereas the proposed rule requires states to directly ensure that health plans meet the requirements, the January rule requires states to ensure that health plans meet the requirements through their contracts.

The proposed rule includes a requirement that the out-of-network services do not result in greater costs than in-network services.

For beneficiaries in rural areas, the January rule would have allowed individuals to access out-of-network services if the network cannot provide the necessary services.

Under the January rules, out-of-plan access also was available in cases of a medical emergency. CMS stated that the rule would apply to all enrollees, regardless of whether they are in a rural area.

The proposed rules also maintain the right of rural enrollees to access services out-of-network where (1)

However, we are concerned about the confusing and seemingly contradictory discussion in the preamble

## Availability of Services

Section 438.206 of the proposed rule requires each State to § 438.206 that with covered services are available

Second, the proposed rule does not include the proposed § 438.206 that with services under the state plan

Implementation of this provision would avoid confusion and delay in assisting enrollees to access these

Specific delivery network requirements also were proposed. The proposed § 438.203(b) rules do not require States to

## Direct Access to Women's Health Specialists

The proposed rule includes language regarding direct access to women's health specialists for female

What is not included is a definition of what constitutes "routine and preventive services" which female

## Screening, Assessment, and Treatment Planning

**Identification** : The January rules listed individuals who must be identified

The proposed rule would require only that "individuals with special health care needs, as specified by the

**Screenings and Assessments** In the January rule, CMS differentiated between the term

The proposed rule makes no distinction between screenings and assessments. The fact that CMS would

**Time frames** : Under the January rules, each health plan would have 1

For any screened enrollee identified as being pregnant or having special needs, the health plan would h

None of these time frames ~~is~~ **compare** included in the proposed rule § 438.208(c) with January

**Treatment Planning:** January § 438.208(f) set forth rules for health plans to develop and implement t

The proposed rule does not include any of these requirements and instead only requires States to § 438.208

In response to concerns about individuals with ongoing health care needs, including pregnant women, w

The proposed rules make the requirement to develop treatment plans of little or no value. They give hea

**Liability and Cost Sharing**

The proposed rules include language clarifying that enrollees may not be held liable for covered services.

A separate cost sharing provision makes clear that a January 1, 2018, proposed rule regarding the cost

In addition, services that are accessed out-of-network due to the health plan's inability to provide needed

## Specification of Contract Benefits

Section 438.210(a) of the January 1, 2018, proposed rule requires contracts to clearly specify the services included in the

## Prior Authorization Request Processing

The proposed rule fails to include any requirements that January 1, 2018, proposed rule contractors have in place

## Limitations on Payments to Providers

In order for a State to pay providers for family planning and other services that are included in the plan of

## Confidentiality

The proposed rule requires that January 1, 2018, proposed rule "shall clearly and State" that for medical records and

## Conclusion

The proposed regulations, if implemented, would significantly weaken protections and responsibility for c

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Please contact Lourdes Rivera, 310-204-6010 x 3011, [rivera@healthlaw.org](mailto:rivera@healthlaw.org), or Mara Youdelman, 202-2

## Submitted on behalf of

The Alan Guttmacher Institute  
American Civil Liberties Union  
American Federation of State, County and Municipal Employees  
Birthing Project USA  
California Pan Ethnic Health Network  
California Women's Law Center  
Citizen Action of New York  
Community Healthcare Network (New York, NY)  
Family Planning Advocates of New York State  
Gay Men's Health Crisis (New York, NY)  
Greater Upstate Law Project, Inc.  
Medical and Health Research Association of New York City, Inc.  
Merger Watch  
Mexican American Legal Defense and Educational Fund  
Michigan Association for Children with Emotional Disorders  
Michigan Association for Infant Mental Health  
National Abortion and Reproductive Rights Action League, NY Affiliate (NARAL/NY)  
National Center for Youth Law  
National Health Law Program

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