

(k) *Additional rules for contracts with PCCMs.* A PCCM contract must meet the following requirements:

(1) Provide for reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment for emergency medical conditions.

(2) Restrict enrollment to recipients who reside sufficiently near one of the manager's delivery sites to reach that site within a reasonable time using available and affordable modes of transportation.

(3) Provide for arrangements with, or referrals to, sufficient numbers of physicians and other practitioners to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care.

(4) Prohibit discrimination in enrollment, disenrollment, and re-enrollment, based on the recipient's health status or need for health care services.

(5) Provide that enrollees have the right to disenroll from their PCCM in accordance with § 438.56(c).

(l) *Subcontracts.* All subcontracts must fulfill the requirements of this part that are appropriate to the service or activity delegated under the sub-contract.

(m) *Choice of health professional.* The contract must allow each enrollee to choose his or her health professional to the extent possible and appropriate.

[67 FR 41095, June 14, 2002, as amended at 76 FR 32837, June 6, 2011]

§ 438.8 Provisions that apply to PIHPs and PAHPs.

(a) The following requirements and options apply to PIHPs, PIHP contracts, and States with respect to PIHPs, to the same extent that they apply to MCOs, MCO contracts, and States for MCOs.

(1) The contract requirements of § 438.6, except for requirements that pertain to HIOs.

(2) The information requirements in § 438.10.

(3) The provision against provider discrimination in § 438.12.

(4) The State responsibility provisions of subpart B of this part except § 438.50.

(5) The enrollee rights and protection provisions in subpart C of this part.

(6) The quality assessment and performance improvement provisions in subpart D of this part to the extent that they are applicable to services furnished by the PIHP.

(7) The grievance system provisions in subpart F of this part.

(8) The certification and program integrity protection provisions set forth in subpart H of this part.

(b) The following requirements and options for PAHPs apply to PAHPs, PAHP contracts, and States.

(1) The contract requirements of § 438.6, except requirements for—

(i) HIOs.

(ii) Advance directives (unless the PAHP includes any of the providers listed in § 489.102) of this chapter.

(2) All applicable portions of the information requirements in § 438.10.

(3) The provision against provider discrimination in § 438.12.

(4) The State responsibility provisions of subpart B of this part except § 438.50.

(5) The provisions on enrollee rights and protections in subpart C of this part.

(6) Designated portions of subpart D of this part.

(7) An enrollee's right to a State fair hearing under subpart E of part 431 of this chapter.

(8) Prohibitions against affiliations with individuals debarred by Federal agencies in § 438.610.

[67 FR 41095, June 14, 2002, as amended at 67 FR 65505, Oct. 25, 2002]

§ 438.10 Information requirements.

(a) *Terminology.* As used in this section, the following terms have the indicated meanings:

Enrollee means a Medicaid recipient who is currently enrolled in an MCO, PIHP, PAHP, or PCCM in a given managed care program.

Potential enrollee means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO, PIHP, PAHP, or PCCM.

(b) *Basic rules.* (1) Each State, enrollment broker, MCO, PIHP, PAHP, and

§ 438.10

42 CFR Ch. IV (10–1–11 Edition)

PCCM must provide all enrollment notices, informational materials, and instructional materials relating to enrollees and potential enrollees in a manner and format that may be easily understood.

(2) The State must have in place a mechanism to help enrollees and potential enrollees understand the State's managed care program.

(3) Each MCO and PIHP must have in place a mechanism to help enrollees and potential enrollees understand the requirements and benefits of the plan.

(c) *Language.* The State must do the following:

(1) Establish a methodology for identifying the prevalent non-English languages spoken by enrollees and potential enrollees throughout the State. "Prevalent" means a non-English language spoken by a significant number or percentage of potential enrollees and enrollees in the State.

(2) Make available written information in each prevalent non-English language.

(3) Require each MCO, PIHP, PAHP, and PCCM to make its written information available in the prevalent non-English languages in its particular service area.

(4) Make oral interpretation services available and require each MCO, PIHP, PAHP, and PCCM to make those services available free of charge to each potential enrollee and enrollee. This applies to all non-English languages, not just those that the State identifies as prevalent.

(5) Notify enrollees and potential enrollees, and require each MCO, PIHP, PAHP, and PCCM to notify its enrollees—

(i) That oral interpretation is available for any language and written information is available in prevalent languages; and

(ii) How to access those services.

(d) *Format.* (1) Written material must—

(i) Use easily understood language and format; and

(ii) Be available in alternative formats and in an appropriate manner that takes into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency.

(2) All enrollees and potential enrollees must be informed that information is available in alternative formats and how to access those formats.

(e) *Information for potential enrollees.*

(1) The State or its contracted representative must provide the information specified in paragraph (e)(2) of this section to each potential enrollee as follows:

(i) At the time the potential enrollee first becomes eligible to enroll in a voluntary program, or is first required to enroll in a mandatory enrollment program.

(ii) Within a timeframe that enables the potential enrollee to use the information in choosing among available MCOs, PIHPs, PAHPs, or PCCMs.

(2) The information for potential enrollees must include the following:

(i) General information about—

(A) The basic features of managed care;

(B) Which populations are excluded from enrollment, subject to mandatory enrollment, or free to enroll voluntarily in the program; and

(C) MCO, PIHP, PAHP, and PCCM responsibilities for coordination of enrollee care;

(ii) Information specific to each MCO, PIHP, PAHP, or PCCM program operating in potential enrollee's service area. A summary of the following information is sufficient, but the State must provide more detailed information upon request:

(A) Benefits covered.

(B) Cost sharing, if any.

(C) Service area.

(D) Names, locations, telephone numbers of, and non-English language spoken by current contracted providers, and including identification of providers that are not accepting new patients. For MCOs, PIHPs, and PAHPs, this includes at a minimum information on primary care physicians, specialists, and hospitals.

(E) Benefits that are available under the State plan but are not covered under the contract, including how and where the enrollee may obtain those benefits, any cost sharing, and how transportation is provided. For a counseling or referral service that the MCO, PIHP, PAHP, or PCCM does not cover

because of moral or religious objections, the State must provide information about where and how to obtain the service.

(f) *General information for all enrollees of MCOs, PIHPs, PAHPs, and PCCMs.* Information must be furnished to MCO, PIHP, PAHP, and PCCM enrollees as follows:

(1) The State must notify all enrollees of their disenrollment rights, at a minimum, annually. For States that choose to restrict disenrollment for periods of 90 days or more, States must send the notice no less than 60 days before the start of each enrollment period.

(2) The State, its contracted representative, or the MCO, PIHP, PAHP, or PCCM must notify all enrollees of their right to request and obtain the information listed in paragraph (f)(6) of this section and, if applicable, paragraphs (g) and (h) of this section, at least once a year.

(3) The State, its contracted representative, or the MCO, PIHP, PAHP, or PCCM must furnish to each of its enrollees the information specified in paragraph (f)(6) of this section and, if applicable, paragraphs (g) and (h) of this section, within a reasonable time after the MCO, PIHP, PAHP, or PCCM receives, from the State or its contracted representative, notice of the recipient's enrollment.

(4) The State, its contracted representative, or the MCO, PIHP, PAHP, or PCCM must give each enrollee written notice of any change (that the State defines as "significant") in the information specified in paragraphs (f)(6) of this section and, if applicable, paragraphs (g) and (h) of this section, at least 30 days before the intended effective date of the change.

(5) The MCO, PIHP, and, when appropriate, the PAHP or PCCM, must make a good faith effort to give written notice of termination of a contracted provider, within 15 days after receipt or issuance of the termination notice, to each enrollee who received his or her primary care from, or was seen on a regular basis by, the terminated provider.

(6) The State, its contracted representative, or the MCO, PIHP, PAHP,

or PCCM must provide the following information to all enrollees:

(i) Names, locations, telephone numbers of, and non-English languages spoken by current contracted providers in the enrollee's service area, including identification of providers that are not accepting new patients. For MCOs, PIHPs, and PAHPs this includes, at a minimum, information on primary care physicians, specialists, and hospitals.

(ii) Any restrictions on the enrollee's freedom of choice among network providers.

(iii) Enrollee rights and protections, as specified in § 438.100.

(iv) Information on grievance and fair hearing procedures, and for MCO and PIHP enrollees, the information specified in § 438.10(g)(1), and for PAHP enrollees, the information specified in § 438.10(h)(1).

(v) The amount, duration, and scope of benefits available under the contract in sufficient detail to ensure that enrollees understand the benefits to which they are entitled.

(vi) Procedures for obtaining benefits, including authorization requirements.

(vii) The extent to which, and how, enrollees may obtain benefits, including family planning services, from out-of-network providers.

(viii) The extent to which, and how, after-hours and emergency coverage are provided, including:

(A) What constitutes emergency medical condition, emergency services, and poststabilization services, with reference to the definitions in § 438.114(a).

(B) The fact that prior authorization is not required for emergency services.

(C) The process and procedures for obtaining emergency services, including use of the 911-telephone system or its local equivalent.

(D) The locations of any emergency settings and other locations at which providers and hospitals furnish emergency services and poststabilization services covered under the contract.

(E) The fact that, subject to the provisions of this section, the enrollee has a right to use any hospital or other setting for emergency care.

§ 438.10

42 CFR Ch. IV (10–1–11 Edition)

(ix) The poststabilization care services rules set forth at § 422.113(c) of this chapter.

(x) Policy on referrals for specialty care and for other benefits not furnished by the enrollee's primary care provider.

(xi) Cost sharing, if any.

(xii) How and where to access any benefits that are available under the State plan but are not covered under the contract, including any cost sharing, and how transportation is provided. For a counseling or referral service that the MCO, PIHP, PAHP, or PCCM does not cover because of moral or religious objections, the MCO, PIHP, PAHP, or PCCM need not furnish information on how and where to obtain the service. The State must provide information on how and where to obtain the service.

(g) *Specific information requirements for enrollees of MCOs and PIHPs.* In addition to the requirements in § 438.10(f), the State, its contracted representative, or the MCO and PIHP must provide the following information to their enrollees:

(1) Grievance, appeal, and fair hearing procedures and timeframes, as provided in §§ 438.400 through 438.424, in a State-developed or State-approved description, that must include the following:

(i) For State fair hearing—

(A) The right to hearing;

(B) The method for obtaining a hearing; and

(C) The rules that govern representation at the hearing.

(ii) The right to file grievances and appeals.

(iii) The requirements and timeframes for filing a grievance or appeal.

(iv) The availability of assistance in the filing process.

(v) The toll-free numbers that the enrollee can use to file a grievance or an appeal by phone.

(vi) The fact that, when requested by the enrollee—

(A) Benefits will continue if the enrollee files an appeal or a request for State fair hearing within the timeframes specified for filing; and

(B) The enrollee may be required to pay the cost of services furnished while

the appeal is pending, if the final decision is adverse to the enrollee.

(vii) Any appeal rights that the State chooses to make available to providers to challenge the failure of the organization to cover a service.

(2) Advance directives, as set forth in § 438.6(i)(2).

(3) Additional information that is available upon request, including the following:

(i) Information on the structure and operation of the MCO or PIHP.

(ii) Physician incentive plans as set forth in § 438.6(h) of this chapter.

(h) *Specific information for PAHPs.* The State, its contracted representative, or the PAHP must provide the following information to their enrollees:

(1) The right to a State fair hearing, including the following:

(i) The right to a hearing.

(ii) The method for obtaining a hearing.

(iii) The rules that govern representation.

(2) Advance directives, as set forth in § 438.6(i)(2), to the extent that the PAHP includes any of the providers listed in § 489.102(a) of this chapter.

(3) Upon request, physician incentive plans as set forth in § 438.6(h).

(i) *Special rules: States with mandatory enrollment under State plan authority—*

(1) *Basic rule.* If the State plan provides for mandatory enrollment under § 438.50, the State or its contracted representative must provide information on MCOs and PCCMs (as specified in paragraph (i)(3) of this section), either directly or through the MCO or PCCM.

(2) *When and how the information must be furnished.* The information must be furnished as follows:

(i) For potential enrollees, within the timeframe specified in § 438.10(e)(1).

(ii) For enrollees, annually and upon request.

(iii) In a comparative, chart-like format.

(3) *Required information.* Some of the information is the same as the information required for potential enrollees under paragraph (e) of this section and for enrollees under paragraph (f) of this section. However, all of the information in this paragraph is subject to the timeframe and format requirements of

paragraph (i)(2) of this section, and includes the following for each contracting MCO or PCCM in the potential enrollees and enrollee's service area:

- (i) The MCO's or PCCM's service area.
- (ii) The benefits covered under the contract.
- (iii) Any cost sharing imposed by the MCO or PCCM.
- (iv) To the extent available, quality and performance indicators, including enrollee satisfaction.

[67 FR 41095, June 14, 2002; 67 FR 65505, Oct. 25, 2002]

§ 438.12 Provider discrimination prohibited.

(a) *General rules.* (1) An MCO, PIHP, or PAHP may not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification. If an MCO, PIHP, or PAHP declines to include individual or groups of providers in its network, it must give the affected providers written notice of the reason for its decision.

(2) In all contracts with health care professionals, an MCO, PIHP, or PAHP must comply with the requirements specified in § 438.214.

(b) *Construction.* Paragraph (a) of this section may not be construed to—

- (1) Require the MCO, PIHP, or PAHP to contract with providers beyond the number necessary to meet the needs of its enrollees;
- (2) Preclude the MCO, PIHP, or PAHP from using different reimbursement amounts for different specialties or for different practitioners in the same specialty; or
- (3) Preclude the MCO, PIHP, or PAHP from establishing measures that are designed to maintain quality of services and control costs and are consistent with its responsibilities to enrollees.

Subpart B—State Responsibilities

§ 438.50 State Plan requirements.

(a) *General rule.* A State plan that requires Medicaid recipients to enroll in managed care entities must comply

with the provisions of this section, except when the State imposes the requirement—

- (1) As part of a demonstration project under section 1115 of the Act; or
- (2) Under a waiver granted under section 1915(b) of the Act.

(b) *State plan information.* The plan must specify—

- (1) The types of entities with which the State contracts;
- (2) The payment method it uses (for example, whether fee-for-service or capitation);
- (3) Whether it contracts on a comprehensive risk basis; and
- (4) The process the State uses to involve the public in both design and initial implementation of the program and the methods it uses to ensure ongoing public involvement once the State plan has been implemented.

(c) *State plan assurances.* The plan must provide assurances that the State meets applicable requirements of the following statute and regulations:

- (1) Section 1903(m) of the Act, for MCOs and MCO contracts.
- (2) Section 1905(t) of the Act, for PCCMs and PCCM contracts.
- (3) Section 1932(a)(1)(A) of the Act, for the State's option to limit freedom of choice by requiring recipients to receive their benefits through managed care entities.
- (4) This part, for MCOs and PCCMs.
- (5) Part 434 of this chapter, for all contracts.
- (6) Section 438.6(c), for payments under any risk contracts, and § 447.362 of this chapter for payments under any nonrisk contracts.

(d) *Limitations on enrollment.* The State must provide assurances that, in implementing the State plan managed care option, it will not require the following groups to enroll in an MCO or PCCM:

- (1) Recipients who are also eligible for Medicare.
- (2) Indians who are members of Federally recognized tribes, except when the MCO or PCCM is—
 - (i) The Indian Health Service; or
 - (ii) An Indian health program or Urban Indian program operated by a tribe or tribal organization under a contract, grant, cooperative agreement