Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(284)(i)(D) to read as follows:

§ 52.220 Identification of plan.

(c) * * *

(284) * * *

(i) * * *

[D] Ventura County Air Pollution Control District


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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431 and 438

[CMS–2104–F2]

RIN—0938–AK96

Medicaid Program; Medicaid Managed Care: New Provisions Correcting Amendment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correcting amendment.

SUMMARY: In the June 14, 2002 issue of the Federal Register (67 FR 40989), we published a final rule implementing the Medicaid managed care provisions of the Balanced Budget Act of 1997. The effective date of the final rule was August 13, 2002. This document corrects a limited number of technical and typographical errors identified in the June 14, 2002 final rule.

EFFECTIVE DATE: This correcting amendment is effective November 25, 2002.

FOR FURTHER INFORMATION CONTACT: Bruce Johnson, (410) 786–0615.

SUPPLEMENTARY INFORMATION:

Background

Need for Corrections

In FR Doc. 02–14747 of June 14, 2002, (67 FR 40989), we published final regulations that implemented the statutory provisions from the Balanced Budget Act of 1997 (BBA) related to Medicaid managed care. As published, a provision of § 431.220, and several provisions of the new part 438, contained technical errors. The errors included typographical errors, incorrect cross-references, incorrectly designated paragraphs, and contradictions. We are in this final rule correcting the identified errors.

Summary of Technical Corrections to the Regulations Text of the June 14, 2002 Medicaid Managed Care Final Rule

Section 431.220 identifies when the State agency must grant a fair hearing to a beneficiary, and was amended by the June 14, 2002 final rule to add new reasons or circumstances under which a State fair hearing must be granted. Section 438.56(f)(2) specifies that an enrollee may request a State fair hearing, for example, if the enrollee is dissatisfied with the State agency’s determination that there is not good cause for disenrollment. The preamble to the final rule makes clear that it was CMS’ intent that these new rights be provided.

However, we inadvertently neglected to include a cross-reference to this new right in § 431.220, under the heading “When a hearing is required”. This is corrected by adding a new item (7) to § 431.220, identifying the new circumstance when a State fair hearing must be granted as related to disenrollment.

In § 438.8, which identifies provisions that apply to PIHPs and PAHPs, paragraph (b) identifies provisions of part 438 that apply to prepayment ambulatory health plans (PAHPs). In this provision, we inadvertently omitted a reference to prohibitions against affiliations with individuals debarred by Federal agencies in § 438.610. Again, it is clear from the preamble, and from the text of § 438.610, that this provision was intended to apply to PAHPs. This error is corrected by adding a new item (8) to § 438.8(b) to reference prohibited affiliations with individuals debarred by Federal agencies in § 438.610.

In § 438.10, which sets forth requirements relating to information, in subparagraph (e)(1)(ii) the term “PHIP” and in subparagraph (i)(3) the term “potential enrollee,” are in the singular form, but should be plural to conform with other nouns that are plural in the provision. These grammatical errors are corrected by making the terms plural.

In several paragraphs, there were inaccurate cross-references to other provisions of the regulations text. In § 438.10(f)(6)(v), the reference to “§ 438.10(h)” should be “§ 438.10(h)(1)”. In § 438.52(d), the reference in paragraphs “(b)(2) or (b)(3)” should be “(b) or (c)”. In § 438.100(b)(iii), the reference to “§ 438.10(f)(6)(xii)” should be “§ 438.10(f)(6)(x)”. In § 438.102(c), the reference to “§ 438.10(e)(2)(iii)” should be “§ 438.10(e)(2)(ii)(E)”.

In § 438.114, governing emergency and post-stabilization services, the requirements in paragraphs (a) through (e) were intended to apply to all types of managed care programs. It is clear from the preamble to the final rule that this was CMS’s intent. However, in paragraph (d)(ii), “PHIP” and “PAHP” inadvertently were omitted.

This is corrected in this final rule by including a reference to “PHIP” and “PAHP”.

Paragraph (b)(2)(i) of § 438.116, which sets forth solvency standards, creates an exception to the solvency standard in paragraph (b) for entities that do not provide both inpatient hospital and physician services. By definition, PAHPs would not provide inpatient services. Therefore, the references to PAHPs in paragraph (b) are extraneous. This is corrected in this final rule by removing the two references to PAHPs in paragraphs (b)(1) and (2).

In two places, paragraphs are incorrectly designated. In § 438.214, on provider selection, there are two paragraphs designated “(a)”. This is corrected in this final rule by redesignating the second paragraph as “(b)”. In § 438.810, on expenditures for enrollment broker services, the last paragraph (c) is actually a continuation of paragraph (b) specifying conditions that enrollment brokers must meet. This is corrected in this final rule by removing the two references to PAHPs in paragraphs (b)(1) and (2).

In § 438.730, on sanctions by CMS, subparagraphs (e)(1) and (e)(2), the term “HMO” is used. The BBA replaced the term “Health Maintenance Organization (HMO)” with “Managed Care Organization (MCO)”. The obsolete references to HMO in paragraph (e) of § 438.730 are corrected in this final rule by removing “HMO” and replacing it with the new acronym “MCO”.

In § 438.810, governing expenditures for enrollment broker services, a reference to PAHPs was inadvertently omitted from the definition of “Choice counseling” in paragraph (a), even though the text in the remainder of the provisions in § 438.810 includes such a reference. This is corrected in this final
PART 438—MANAGED CARE

1. The authority citation for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 438.8 [Corrected]
2. In § 438.8, add a new paragraph (b)(8) to read as follows:

§ 438.8 Provisions that apply to PIHPs and PAHPs.
* * * * *
(b) * * *
(8) Prohibitions against affiliations with individuals debarred by Federal agencies in § 438.610.

§ 438.10 [Corrected]
3. In § 438.10(e)(1)(ii), “PIHP” is revised to read “PIHPs”.
4. In § 438.10(f)(6)(iv), the last reference to “§ 438.10(h)” is revised to read “§ 438.10(b)(1)”.
5. In § 438.10(i)(3), the last reference to “potential enrollee” is revised to read “potential enrollees”.

§ 438.52 [Corrected]
6. In § 438.52(d), the reference to “(b)(2) or (b)(3)” is revised to read “(b) or (c)”.

§ 438.100 [Corrected]
7. In § 438.100(b)(2)(iii), the reference to “§ 438.10(f)(6)(xiii)” is revised to read “§ 438.10(f)(6)(xiii)”.

§ 438.102 [Corrected]
8. In § 438.102(b)(2), “§ 438.10(e) and (f)” is revised to read “§ 438.10, paragraphs (e) and (f)”.
9. In § 438.102(c), “§ 438.10(e)(2)(ii) and (f)(6)(xiii)” is revised to read “§ 438.10, paragraphs (e)(2)(ii)(E) and (f)(6)(xiii)”.

§ 438.114 [Corrected]
10. In § 438.114(d)(1)(ii), the phrase “PIHP, PAHP” is added between “MCO” and “or applicable State entity”.

§ 438.116 [Corrected]
11. In § 438.116(b)(1), “MCO, PIHP, and PAHP” is revised to read “MCO or PIHP”.
12. In § 438.116(b)(2), “MCO, PIHP, or PAHP” is revised to read “MCO or PIHP”.

§ 438.703 [Corrected]
13. In § 438.703(e)(1) and (e)(2), the term “HMO” is revised to read “MCO”.

§ 438.810 [Corrected]
14. In § 438.810(a), in the definition of “Choice counseling”, “PAHP,” is added between “PIHP,” and “or PCCM”. 15. In § 438.810, paragraph (c) is redesignated as paragraph (b)(3).