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**Title 42: Public Health****PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION****Subpart B—General Administrative Requirements**[Browse Previous](#) | [Browse Next](#)**§ 431.51 Free choice of providers.**

(a) *Statutory basis.* This section is based on sections 1902(a)(23), 1902(e)(2), and 1915(a) and (b) and 1932(a)(3) of the Act.

(1) Section 1902(a)(23) of the Act provides that recipients may obtain services from any qualified Medicaid provider that undertakes to provide the services to them.

(2) Section 1915(a) of the Act provides that a State shall not be found out of compliance with section 1902(a)(23) solely because it imposes certain specified allowable restrictions on freedom of choice.

(3) Section 1915(b) of the Act authorizes waiver of the section 1902(a)(23) freedom of choice of providers requirement in certain specified circumstances, but not with respect to providers of family planning services.

(4) Section 1902(a)(23) of the Act provides that a recipient enrolled in a primary care case management system or Medicaid managed care organization (MCO) may not be denied freedom of choice of qualified providers of family planning services.

(5) Section 1902(e)(2) of the Act provides that an enrollee who, while completing a minimum enrollment period, is deemed eligible only for services furnished by or through the MCO or PCCM, may, as an exception to the deemed limitation, seek family planning services from any qualified provider.

(6) Section 1932(a) of the Act permits a State to restrict the freedom of choice required by section 1902(a)(23), under specified circumstances, for all services except family planning services.

(b) *State plan requirements.* A State plan, except the plan for Puerto Rico, the Virgin Islands, or Guam, must provide as follows:

(1) Except as provided under paragraph (c) of this section and part 438 of this chapter, a recipient may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is—

(i) Qualified to furnish the services; and

(ii) Willing to furnish them to that particular recipient.

This includes an organization that furnishes, or arranges for the furnishing of, Medicaid services on a prepayment basis.

(2) A recipient enrolled in a primary care case-management system, a Medicaid MCO, or other similar entity will not be restricted in freedom of choice of providers of family planning services.

(c) *Exceptions.* Paragraph (b) of this section does not prohibit the agency from—

- (1) Establishing the fees it will pay providers for Medicaid services;
  - (2) Setting reasonable standards relating to the qualifications of providers; or
  - (3) Subject to paragraph (b)(2) of this section, restricting recipients' free choice of providers in accordance with one or more of the exceptions set forth in §431.54, or under a waiver as provided in §431.55; or
  - (4) Limiting the providers who are available to furnish targeted case management services defined in §440.169 of this chapter to target groups that consist solely of individuals with developmental disabilities or with chronic mental illness. This limitation may only be permitted so that the providers of case management services for eligible individuals with developmental disabilities or with chronic mental illness are capable of ensuring that those individuals receive needed services.
- (d) *Certification requirement*—(1) *Content of certification*. If a State implements a project under one of the exceptions allowed under §431.54 (d), (e) or (f), it must certify to CMS that the statutory safeguards and requirements for an exception under section 1915(a) of the Act are met.
- (2) *Timing of certification*. (i) For an exception under §431.54(d), the State may not institute the project until after it has submitted the certification and CMS has made the findings required under the Act, and so notified the State.
- (ii) For exceptions under §431.54 (e) or (f), the State must submit the certificate by the end of the quarter in which it implements the project.

[56 FR 8847, Mar. 1, 1991, as amended at 67 FR 41094, June 14, 2002; 72 FR 68091, Dec. 4, 2007]

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