

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 433 and 438

[CMS-2015-F]

RIN 0938-AJ06

Medicaid Program; External Quality Review of Medicaid Managed Care Organizations

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

ACTION: Final rule.

SUMMARY: This final rule establishes requirements and procedures for external quality review (EQR) of Medicaid managed care organizations (MCOs) and prepaid inpatient health plans (PIHPs). It defines who qualifies to conduct EQR and what activities can be conducted as part of EQR. In addition, under certain circumstances, this rule allows State agencies to (1) use findings from particular Medicare or private accreditation review activities to avoid duplicating review activities, or (2) exempt certain Medicare MCOs and PIHPs from all EQR requirements. Also, this rule allows the payment of enhanced Federal financial participation (FFP) at the 75 percent rate for the administrative costs of EQRs or EQR activities that are conducted by approved entities.

EFFECTIVE DATE: These regulations are effective on March 25, 2003. Provisions that must be implemented through contracts with MCOs, PIHPs, and external quality review organizations (EQROs) are effective with contracts entered into or revised on or after 60 days following the publication date. States have up until March 25, 2004 to bring contracts into compliance with the final rule provisions.

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I. Background

A. The Balanced Budget Act of 1997

The Balanced Budget Act of 1997 (BBA) added to the Social Security Act (the Act) a new section 1932 that pertains to Medicaid managed care. Most of the provisions of section 1932 of the Act will be implemented in accordance with the Medicaid managed care final rule that was published in the **Federal Register** on June 14, 2002 (67 FR 40988).

Section 1932(c) of the Act, added by section 4705 of the BBA, describes how quality measurement and performance improvement methods should be applied to Medicaid managed care programs through two specific approaches:

- All State agencies must develop and implement a quality assessment and improvement strategy that includes—(1) Standards for access to care; (2) examination of other aspects of care and services related to improving quality; and (3) monitoring procedures for regular and periodic review of the strategy. (This requirement was addressed in the Medicaid managed care final rule published June 14, 2002.)
- State agencies that contract with Medicaid managed care organizations (MCOs) must provide for an annual external, independent review of the quality outcomes, timeliness of, and access to the services included in the contract between the State agency and the MCO. (This requirement is addressed in this rule.)

Section 1932(c) of the Act also requires the Secretary—

In consultation with the States, to establish a method for identifying entities qualified to conduct external quality review (EQR) (section 1932(c)(2)(A)(ii) of the Act); and

In coordination with the National Governors Association (NGA), to contract with an independent quality review organization to develop the protocols to be used in EQRs (section 1932(c)(2)(A)(iii) of the Act).

Two other provisions of section 1932(c) of the Act are pertinent to this rule. They are (1) the requirement that

the results of EQRs be made available to participating health care providers, enrollees and potential enrollees (section 1932(c)(2)(A)(iv) of the Act), and (2) the provision that a State agency may, at its option—

- Take steps to ensure that an EQR does not duplicate a review conducted either by a private independent accrediting organization or as part of an external review conducted under the Medicare program (section 1932(c)(2)(B) of the Act); and

- Exempt an MCO from EQR under certain specified conditions (section 1932(c)(2)(C) of the Act).

Section 4705(b) of the BBA amended section 1903(a)(3)(C) of the Act to provide for increased Federal financial participation (FFP) (75 percent) for the administrative costs the State incurs for EQR or EQR activities performed by specified entities under section 1932(c)(2)(A) of the Act.

B. Proposed Rule

On December 1, 1999 we published a proposed rule in the **Federal Register** (64 FR 67223) to implement the EQR statutory provisions. A summary of the specific provisions of the proposed regulations precedes each section of the comments and responses below. In the proposed rule, we discussed the two major purposes we had in developing the rule: (1) To provide flexibility for State agencies, and (2) to reflect the well-accepted advances in the technology of quality measurement and improvement. For a more detailed discussion of our basis and purpose for the approach taken in the December 1, 1999 proposed rule, see the preamble to that document at 64 FR 67223.

We received 29 comments from States, national and State organizations, health plans, advocacy groups, and other individuals on the December 1, 1999 proposed rule. The comments generally pertained to the types of entities that can be EQROs, EQR activities, nonduplication and exemption provisions, and dissemination of EQR rules. We carefully reviewed and considered all the comments we received.

C. Agency Information Collection Activities

On November 23, 2001 we published a notice in the **Federal Register** (66 FR 58741) to comply with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995. We invited public comment regarding the burden estimate or any other aspect of the EQR protocols we developed in accordance with section 1932(c)(2)(A)(iii) of the Act. This