

Proposed § 438.358 also would allow States to have their EQROs provide technical guidance to groups of MCOs and PIHPs to assist them in conducting the mandatory and optional EQR-related activities.

*Comment:* One commenter requested that States be required to provide technical support to MCOs to ensure that pediatric measures are implemented. The commenter also expressed a concern that the proposed EQR regulations did not separately address children with special health care needs, noting that it was critical that CMS require State Medicaid managed care programs to provide adequate protections and considerations for these children.

*Response:* States have the flexibility to provide technical support to MCOs and PIHPs on pediatric measures as well as generic measures, preventive care measures, measures for disabled adults, or any other measures. This rule does not require this technical support, however, because we do not believe that it would be necessary in all cases.

With respect to special needs children, this regulation implements the BBA EQR provisions by specifying who is qualified to conduct EQR and what information should be included in such a review. The Medicaid managed care final rule requires States to have quality strategies that must include procedures that assess the quality and appropriateness of services provided to all Medicaid enrollees under MCO and PIHP contracts. This includes children with special health care needs. The EQR will evaluate activities undertaken by MCOs and PIHPs in accordance with the State strategies. States can elect to have their MCOs and PIHPs determine what measures to collect or States can require MCOs and PIHPs to collect specified measures appropriate to the populations served.

*Comment:* One commenter strongly recommended that these regulations mandate that States require MCOs to develop and administer a provider satisfaction survey. The commenter thought this would allow the MCOs to use the results of the surveys to identify additional approaches to enhance quality of care. It also would allow States to identify MCOs that may be poised to experience a rapid withdrawal of providers, which could place beneficiaries at risk of having difficulty accessing care, or otherwise disrupt their medical home. Another commenter felt that the validation of consumer or provider surveys would be difficult. This commenter asked whether we were proposing that EQROs contact respondents to ask them if the

answers that were recorded were the answers given.

*Response:* This rule does not require that States have their MCOs and PIHPs develop or administer consumer or provider surveys. It does, however, allow States to have their EQRO administer or validate a consumer or provider survey, and receive the 75 percent enhanced match for this activity as long as the EQR survey protocol or a consistent protocol to the one we developed is used. The EQR survey protocol does not require that respondents be contacted to validate survey responses. We agree that this would be costly and burdensome. The survey protocols outlines generic steps that must be followed to ensure reliable and valid methodological approaches to administer and validate surveys.

*Comment:* One commenter recommended that we require that EQROs measure and report the participation of pediatricians, pediatric medical subspecialists, and pediatric surgical specialists when conducting activities related to the establishment of provider networks.

*Response:* EQRO reviews for compliance with structural and operational standards will include a review of the delivery network. The review will ensure, consistent with the Medicaid managed care final rule, that MCOs and PIHPs maintain and monitor a network of appropriate providers to furnish services covered under the contract and that they consider the anticipated Medicaid enrollment with particular attention to the needs of enrolled children; the expected utilization of services; and the geographic location of providers and enrollees. When developing and maintaining their provider network, MCOs and PIHPs will also need to consider the characteristics and health care needs of enrollees.

*Comment:* One commenter believed that while it arguably was reasonable to require external auditing of broad, publicly disclosed quality performance measures, the same mandate should not be imposed on other quality improvement data such as the findings of focused clinical studies. In this commenter's view, these types of data are intended to promote MCO self-assessment and stimulate quality improvement activities, and should not be subject to an external audit.

*Response:* We do not agree with the commenter that the findings of focused studies or other quality improvement projects should not be subject to an EQR. Our Medicaid managed care final rule requires MCOs and PIHPs that contract with States to provide

Medicaid services to conduct performance improvement projects, calculate performance measures, and comply with structural and operational standards. In order to ensure compliance with these requirements, we believe a review of all these activities is essential to determine the quality, timeliness, and access to services provided to Medicaid beneficiaries. However, § 438.364 requires that only the aggregated findings of the EQRO analysis of all information derived from the EQR activities be produced, and it is only this summary information that is to be made available to the public upon request.

*Comment:* One commenter believed that it was vital to include in EQR a range of activities beyond "focused studies" and medical record review. This commenter felt that the mandatory activities proposed would require the collection and use of data from multiple sources, and that we may want to consider mandating the validation of primary data sources such as encounter data and survey data. Another commenter asked that focused studies be a mandatory activity, and that MCOs be required to show measurable improvement in them. One commenter supported our establishing mandatory activities as well as the optional activities that are eligible for the 75 percent matching rate.

*Response:* We are aware of the importance of the integrity of the MCO's and PIHP's underlying information systems for the conduct of some EQR activities, and we address this issue in the protocols for review for compliance with structural and operational standards, performance measures, and encounter data. We do not include focused studies as one of the mandatory activities in this regulation because the Medicaid managed care final rule requires that MCOs and PIHPs conduct performance improvement projects. A performance improvement project begins with a focused study to select a clinical or nonclinical topic and measure performance in that area, but takes steps beyond a focused study to implement activities to improve performance. This regulation requires that the State include information regarding the validation of these studies as part of EQR.

*Comment:* Several commenters were concerned that this rule potentially would permit EQROs to analyze and evaluate data collected by a party not subject to the same conflict of interest requirements as the EQRO. These commenters were concerned that the EQRO would be held accountable for the validity, accuracy, and reliability of