

the MCOs' projects without necessarily having access to the raw data. One of the commenters suggested that there be continued discussions with the QIO community about the need for raw data files from MCOs in order to evaluate the performance improvement projects and performance measures. The commenter also felt that EQR performance measures should be standardized and consistent to allow comparisons among the States, and among the MCOs operating in more than one State. Another commenter recommended that the final rule require that EQR activities be carried out by the EQRO. If the information provided for the EQR is collected by the State or another agency, the commenter suggested that the EQRO be required to validate the data or information before analyzing it or forming conclusions about quality, timeliness, and access.

*Response:* In order to receive the enhanced 75 percent Federal match provided for in section 1903(a)(3)(C)(ii) of the Act, we believe most States will use an EQRO to conduct the mandatory EQR-related activities. However, in order to provide flexibility to States to coordinate their quality oversight activities, we permit States or their agents to perform the mandatory EQR activities, and only require that States use an EQRO for the conduct of EQR (as defined under § 438.320) and for the production of the EQR results as specified under § 438.364. If a State chooses not to have an EQRO conduct the mandatory activities, the State still needs to use, or have its contractor use, our protocols or protocols that are consistent with ours when conducting these activities. The State will also need to provide the EQRO with the information specified under § 438.364(a)(1)(i) through paragraph (iv) for each of the EQR-related activities as required in § 438.350(b). We believe this last requirement may not have been clear in our proposed rule, and we have therefore provided a cross-reference to § 438.364(a)(1)(i) through paragraph (iv) in § 438.350(d) in this final rule. This clarification addresses the comments above by identifying the types of information we expect to be provided to an EQRO if the State or a contractor other than the EQRO is conducting the EQR-related activity. We also provide clarifying language in a new § 438.358(a) of this final rule, which sets forth a general rule making clear that a State can conduct, or have another State contractor or the EQRO conduct, the mandatory and optional EQR-related activities that provide information for the EQR function.

We do not agree that the EQRO must revalidate activities already validated by

the State or another State contractor that uses our protocols. We believe the use of the protocols will ensure that each of the activities, including an assessment of the underlying data systems, is conducted using reliable and valid methods.

We are not requiring standardized performance measures. In our Medicaid managed care final rule, we require States to require MCOs and PIHPs to use standard measures. The Medicaid managed care final rule also gives CMS the authority to prescribe standard measures in consultation with States and other stakeholders. Currently, States have the flexibility to determine which measures they will require of their MCOs and PIHPs. The CMS protocol for performance measures sets out a standard method to validate performance measures. We have also developed a protocol for calculating performance measures, as this is an optional EQR-related activity.

*Comment:* One commenter believed that allowing the use of information obtained by the State or its agent for EQR means the information is not truly independent. The commenter further contended that the methods used by the State or its agent do not have to be consistent with the EQR protocols, since the State or its agent is not an EQRO.

*Response:* Consistent with provisions at § 438.350(b) and (c), whoever conducts the mandatory or optional EQR-related activities must use the protocols or methods consistent with the protocols. We have made this clear in the final rule.

*Comment:* Several commenters noted that the activities under § 438.358 are currently in some cases conducted by the State, the county, or both. They added that having the EQRO perform this same activity, or even review these activities would be redundant and costly. One of these commenters suggested that we allow these activities to be done directly through the State or county survey process.

*Response:* EQR-related activities may be conducted by the State or by any State contractor other than the MCO or PIHP as long as the activities are conducted consistent with our protocols. However, if a State chooses to have its EQRO conduct these activities it can obtain the enhanced 75 percent Federal match under section 1903(a)(3)(C)(ii) of the Act.

*Comment:* One commenter asked that we clarify whether information derived from optional activities performed by other fiscal government agencies could be used by the EQRO.

*Response:* As long as the other agency uses our protocols or methods

consistent with the protocols, the information derived from EQR-related activities performed by other State agencies can be used as part of EQR. The State, however, would not be able to receive the enhanced 75 percent Federal match unless the other government agency qualified as an EQRO, and the contract to conduct the activities was procured consistent with § 438.356(e). We clarify in this final rule that the information obtained from optional EQR-related activities must be from information derived from optional activities conducted within the preceding 12 months.

*Comment:* Several commenters believed that MCOs should be required to report on standardized performance measures for specific conditions. One of these commenters also recommended that MCOs be required to report on aggregate measures of changes in health status for all people who meet a definition of disability. The commenter further urged that the development of these measures be a priority for both quality assurance and reimbursement purposes.

*Response:* As stated previously, the Medicaid managed care final rule provides States with the authority to specify what performance measures to require their MCOs and PIHPs to calculate and report. We are allowing this flexibility because State Medicaid managed care programs differ in the services they contract for and the populations served by MCOs and PIHPs. We think it is important that States be able to make comparisons across their contracting MCOs and PIHPs and, where this information is available, we require that it be provided as part of the EQR results as specified in § 438.364(a)(4). However, while the Medicaid managed care final rule provides CMS with the ability to prescribe performance measures in consultation with States and other stakeholders, at this time we are not requiring the collection of comparative data nationwide.

We are also not requiring that States collect health status information from their MCOs and PIHPs. States are free to do this if they choose, and an increasing number of States are assessing the health status of MCO and PIHP enrollees for purposes of risk adjusting payments, or for quality activities. This rule also allows States to have their EQRO administer consumer surveys and obtain an enhanced Federal match of 75 percent. Approximately 30 States currently administer consumer surveys, primarily the CAHPS survey, which collects health status information from the perspective of consumers.