

income, diagnosis, and ethnic group. Because of the variability in the populations served by particular MCOs and PIHPs, we have provided States flexibility to determine the content of the results made available and the manner in which it is presented. To the extent that this information identifies quality issues pertaining to a specific population, the State may include that information in the results it makes available. However, we are not in the final rule requiring that EQR results be available by age groups, as this may not always be possible or appropriate for a given MCO or PIHP or for given data.

*Comment:* One commenter contended that not all quality improvement studies monitor quality, timeliness, and access. The commenter accordingly suggested that neither the State nor the EQRO should be required to summarize the strengths and weaknesses of the MCO or PIHP for each of these elements. The commenter also believed that if multiple studies are conducted, project time lines are not likely to coincide. In addition, the commenter recommended that proposed § 438.364(a)(5) be revised to require “An assessment of the degree to which each MCO has addressed effectively the recommendations for quality improvement as made by the EQRO during the previous measurement of the measure or of a similar measure, as appropriate to the study performed.”

*Response:* The commenter suggesting that the State or EQR should not be required to summarize strengths and weaknesses of an MCO or PIHP for “each of the elements” of quality, timeliness, and access implies that the results of the EQR process need not address all three of these areas. Because section 1932(c)(2)(A) of the Act requires that an annual EQR include all three of these elements, it is essential that strengths and weakness identified by the EQR process with regard to each are described in the results. Because there appears to be confusion on this point, we have revised § 438.364(a)(1) to specifically reference “timeliness and access.”

The commenter’s suggestion that § 438.364(a)(5) be revised to permit the use of a “previous measurement of a measure,” as opposed to the previous year’s EQR recommendations (as the baseline against which improvements in MCO or PIHP performance are assessed) is inconsistent with the clear direction of section 1932(c)(2) of the Act that EQR be an annual review. Further, the Medicaid managed care final rule requires performance measurement and improvement projects be underway on an annual basis. Consequently, we retain but modify the language of the

proposed rule requiring the EQR to contain an assessment, as opposed to a “detailed” assessment of the degree to which each MCO and PIHP has addressed effectively the recommendations for quality improvement, as made by the EQRO during the previous year’s EQR.

*Comment:* One commenter believed that the reference to “strengths and weaknesses” in proposed § 438.364(a)(2) implies a subjectivity that the commenter found inappropriate in carrying out the EQRO’s responsibilities. The commenter recommended that the EQRO be required to report objectively on the performance of each MCO based on the measures selected. This commenter also questioned whether having an EQRO make recommendations for improving care and assessing the degree to which an MCO has met the previous year’s recommendations are appropriate elements of the reports, because this is currently—and appropriately in the commenter’s view—the province of the State (that is, identifying deficiencies in contract performance and holding MCOs accountable for correcting these deficiencies). The commenter requested that we exclude from the EQR reports, an EQRO’s recommendations for improving care and assessing the degree to which the previous year’s recommendations were met. If we retain these provisions, the commenter asked that § 438.364(a)(3) be revised to (1) allow the MCO the opportunity to submit a corrective action plan, which, if accepted would be adopted by the EQRO as its recommendation or (2) at a minimum, have the opportunity to comment on the EQRO’s proposed recommendations. The commenter also suggested that § 438.364(a)(5) be revised so that the recommendations made by the EQRO are reviewed and approved by the State before finalizing the recommendations.

*Response:* We do not agree with the commenter that the report of EQR results should not address MCO and PIHP strengths and weaknesses. While we agree that the EQRO should consider the information produced by various EQR-related activities in an objective manner, the results of the analysis and evaluation of information will likely identify differences in the performance of MCOs and PIHPs with respect to issues under study. We believe that it is reasonable to expect the EQRO to be able to identify MCOs and PIHPs that had higher or lower scores on the State’s standardized performance measures, and MCOs and PIHPs that had stronger evidence of compliance with certain standards. It is also reasonable for

interested parties to expect this information to be publicly available. We note that this is common practice in the private sector where private accrediting organizations release comparative information on health plans.

We agree with the commenter that the State is the entity responsible for holding MCOs and PIHPs accountable for contract performance. The EQR is a source of information States can use to determine the adequacy of MCO and PIHP contractual performance regarding quality, timeliness, and access to services. The State may choose to require MCOs and PIHPs to submit corrective action plans based on the EQR results. In addition, as the State is the entity that holds the contract with the EQRO, the State may specify that it have the opportunity to review, comment, or approve the recommendations. The EQR results will be provided to us upon request, and will most often be requested and used by our regional office staff when conducting managed care program monitoring reviews. As a result, we retain the language included in the proposed rule.

*Comment:* One commenter concurred with proposed § 438.364, and specifically supported the requirement that EQR results (including assessments of MCO strengths and weaknesses and recommendations for improvement) be documented in sufficient detail and made publicly available. The commenter felt this was vital in order to allow interested parties to evaluate the conclusions of the EQR. Another commenter concurred with proposed § 438.364, and noted that the report required therein could be made available on the internet, to all interested parties, thus reducing the burden of report distribution.

*Response:* We agree with the commenters. Because the proposed language at § 438.364(b) could be interpreted to require the release of information in hard copy format only, in response to this comment we have modified the regulations text to indicate that the State must provide the information specified in paragraph (a) of this section, upon request, through print and electronic media, to interested parties.

*Comment:* One commenter noted that State staff currently perform the activities in paragraph (a)(2) of proposed § 438.364, and that requiring an EQRO to do this would increase the cost of the EQRO contract. The commenter also believed that the EQRO should not be making recommendations on improving the health care services furnished by each MCO, as specified under paragraphs (a)(3) and (a)(5) of proposed