

III. Collection of Information

Requirements: November 23, 2001

Federal Register Notice: Discussion of Public Comments

Many of the comments we received in response to the November 23, 2001 **Federal Register** notice were issues pertaining to the December 1, 1999 proposed rule, as opposed to collection of information requirements or other issues concerning the protocols. Most of those issues were addressed in the previous section that responded to comments received on the December 1, 1999 proposed rule. This section addresses comments related to the burden estimates and any other aspect of the collection of information. We believe that burden estimates apply to the following sections of the regulation: EQR protocols (§ 438.352), Nonduplication of mandatory activities (§ 438.360), Exemption from EQR (§ 438.362), and EQR results (§ 438.364). We first address general comments.

A. General Comments

Comment: Several commenters did not agree with the methodology we used to estimate costs associated with implementing EQR. One commenter believes the methodology is flawed and our projected costs may be significantly lower than actual costs because our sample was too small and the range of estimates is too large for cost averaging. The commenter is also concerned that the methodology does not account for indirect costs such as rent, transportation, and medical record photocopies. The commenter recommended that indirect costs that account for geographic variation should be added to accurately predict the cost of using the protocols. One commenter stated that our approach did not include a determination of whether the function performed by the sampled EQROs approximated the functions that would need to be conducted in accordance with the protocols. The commenter further noted that because we estimated a range of hours for conducting EQR-related activities, we have not provided a representative assessment of the burden to perform the EQR activities. The commenter recommended we develop a more accurate projection of hours and costs associated with performing these activities consistent with the protocols.

Response: While the actual number of EQROs we interviewed was relatively small, as stated in our November 23, 2001 **Federal Register** notice, these EQROs had reviewed 16 managed care programs in 8 States (Arizona, California, the District of Columbia,

Maryland, New Mexico, Nevada, Tennessee, and West Virginia). Each of these States contract with a different number of MCOs to provide Medicaid services, ranging from States contracting with a few MCOs to States with several dozen MCOs. So, even though the number of EQROs we interviewed was small, we believe we chose EQROs that represented a broad range of experience in terms of the number of MCOs they review, as well as representing an adequate geographic mix.

We also recognize that using a broad range of hours given by the interviewed EQROs to estimate the average number of hours it will take to conduct each activity may overestimate or underestimate the actual costs. However, by showing the ranges of costs we averaged, we show the variability across States that are inherent when conducting quality review activities. As stated above, we believe the interviewed EQROs represent an adequate number of MCOs reviewed. In addition, even though we did not specifically ask each EQRO about the methodology that they used to conduct the EQR activities, the protocols represent generic activities and steps that are followed in both the public and private sector. We, therefore, believe that the activities for which we collected cost information were conducted using a methodology consistent with our protocols. Moreover, we have no reason to believe that the interviewed EQROs' estimates provided did not include indirect costs for conducting EQR activities. Because the commenters did not suggest a specific methodology or what other data should be used in such a methodology, we retain the methodology used in the November 23, 2001 **Federal Register** notice. We have updated the estimates based on more current data on the number of MCOs and PIHPs contracting with State Medicaid agencies to provide services to Medicaid beneficiaries.

Comment: One commenter objected to our not including the time necessary for MCOs to collect and submit the information necessary to perform the functions identified under § 438.358, activities related to EQR. The commenter recommended that we interview health plans to determine the estimates for this activity and include them in our analysis.

Response: We agree with the commenter and include burden estimates in this final rule to address the time and costs associated with MCO and PIHP submission of information necessary for the validation of performance measures, validation of performance improvement projects, and a review for compliance with structural

and operational standards. The protocols for all three of these activities require that documentation be provided by the MCO or PIHP. We do not anticipate, however, that new documentation will need to be developed. For example, the documentation review activity that occurs when a review for compliance with standards is conducted includes a review of reports, policies, and surveys that already exist. We believe that it will take each MCO or PIHP approximately 4 weeks of one full-time equivalent employee to prepare the information to be submitted for the three mandatory activities and we have added this estimate under § 438.352, the EQR protocols.

Comment: Two commenters believe the protocols will result in significant burdens in the areas of data collection, duplication of management oversight, and financial costs to the State and its contracting MCOs. One commenter estimated the new costs associated with the three mandatory activities and the overall EQR will be an additional \$250,000 per MCO. Another commenter believes the cost per MCO would be approximately \$424,000 for the three mandatory activities. The commenters noted there will be additional indirect cost incurred by the State to administer and oversee the EQRO contracts, and by the MCOs associated with the annual preparation for the three mandatory activities.

Response: We do not agree that the protocols will cause significant financial costs to MCOs and States, cause significant burdens in the areas of data collection, or duplicate other oversight activities. Many States already require their contracting MCOs and PIHPs to conduct performance improvement projects, calculate performance measures, and comply with State standards. The three mandatory activities that ensure compliance with these requirements are also already conducted by many States. However, States may not be contracting with their EQRO for the conduct of all these activities. As stated earlier in this preamble, the State can conduct these activities itself or contract with an EQRO or other entity for the conduct of the EQR-related activities. If the State contracts with an EQRO, it will receive the enhanced 75 percent FFP. If States are not currently contracting with their EQROs for these activities and decide to contract with their EQRO for EQR-related activities under this authority, it will decrease their costs related to quality activities, as opposed to increasing their costs.