

recommended that the element be simplified to call for the EQRO to review MCO credentialing policies and procedures for conformance with State contract requirements.

*Response:* We disagree with the commenter. We believe that a review of policies and procedures alone, when the opportunity exists to review documents providing direct evidence of compliance or noncompliance with the policies and procedures, is a more effective review mechanism. This is consistent with the approach used by private sector accrediting bodies and in the Medicare program.

### 3. Staff Planning/Education/Development

*Comment:* One commenter suggested that the requirement for the MCO to produce staff handbooks and information about staff training and orientation be dropped for lack of specificity or rewritten to make clear what criteria the auditors are to use in reviewing the required materials.

*Response:* We indicate on the list of documents the regulatory provisions to which each document applies. In this instance, staff handbooks and information about staff training and orientation pertain to the requirement that staff be educated about the enrollee's right to receive adequate information; for example, information on disenrollment rights and hearing and appeals. We have specified interview questions for MCO/PIHP leadership, provider and contract services staff, and enrollee services staff concerning how appropriate staff are informed regarding the enrollee right to information. We believe this provides sufficient clarity with respect to the criteria reviewers are looking for and we retain the references to the staff handbook, staff training, and orientation.

*Comment:* One commenter suggested that the interview questions include probes to determine how staff are trained to comply with Federal and State laws, and how staff advise enrollees of their rights. The commenter recommended further that interview questions address the content, frequency, and thoroughness of the training to confirm no major area of law is overlooked.

*Response:* We have specified staff handbooks, and orientation and training curriculum, in the list of documents to be reviewed and included interview questions to confirm MCO/PIHP compliance with the regulatory requirements pertaining to enrollee rights and compliance with Federal and State laws. However, if issues arise during the document review concerning

the adequacy of the staff's training regarding these provisions, reviewers are directed to explore them during the interviews. We believe this direction affords the reviewers the flexibility necessary to appropriately tailor the review activity. Further, we do not believe it is possible, given the diversity among States and MCO/PIHPs and the scope of the review itself, to include in the list of potential interview questions probes to explore all applicable State laws.

### 4. Consumer Protections

*Comment:* One commenter recommended that the protocol include the monitoring of the Medicaid managed care final rule provisions related to consumer protections. The commenter specified for inclusion provisions addressing: the free choice of providers for family planning services (§ 431.51); prohibition on provider discrimination (§ 438.12); availability of out-of-network providers in rural areas (§ 438.52(b)); disenrollment rights as a result of grievance procedures, and related notice and appeal rights (§ 438.56(d) and (f)); enrollee rights regarding treatment, second opinions, and medical record access and correction (§ 438.100); marketing activities (§§ 438.104, 438.700(b)); liability for payment beyond what is legally allowable (§ 438.106); program integrity requirements (§ 438.608); imposition of sanctions (§ 438.700); and multiple charges and denial of services for inability to pay cost sharing (§ 447.53).

*Response:* We have listed in the protocol documents for review to determine compliance with regulatory provisions related to prohibition on provider discrimination; disenrollment rights as a result of grievance procedures, and related notice and appeal rights (§ 438.56(d)); and enrollee rights regarding treatment, second opinions, and medical record access and correction. We further agree with the commenter and have amended the protocol to include review of the MCO/PIHP's relevant policies and procedures to assess compliance with the regulatory requirements pertaining to the free choice of providers for family planning services; liability for payment beyond what is legally allowable; and multiple charges and denial of services for inability to pay cost sharing. However, the provisions concerning availability of out-of-network providers in rural areas; marketing activities (§ 438.700(b)); program integrity requirements (§ 438.608); and imposition of sanctions (§ 438.700) are responsibilities of the State and not the MCO/PIHP and,

therefore, we have not included them as a focus of this protocol. The regulatory requirements in § 438.104, while they pertain to MCO/PIHP marketing activities, are contract requirements that do not directly provide information on quality and are more particular to a State responsibility. Because the protocol is designed to determine MCO/PIHP compliance, we believe it would not be appropriate to monitor these latter activities through the protocol.

### 5. Enrollee Services

*Comment:* One commenter believes a State can contract with the MCO to provide information to potential enrollees, and recommends the protocol monitor the MCO's compliance with these informational requirements.

*Response:* In the August 20, 2001 Medicaid managed care proposed rule, we stated that "it would be unreasonable to require every MCO/PIHP to provide the relevant information to all potential enrollees." We believe the MCO/PIHP should not be contracted by the State to undertake this responsibility, and explained in the proposed rule that "the State agency is the more appropriate entity to do" the potential enrollee informing. This requirement was, therefore, not included in our Medicaid managed care final rule and we are not changing the protocol to monitor the MCO's/PIHP's compliance with providing information to potential enrollees.

*Comment:* One commenter recommended the protocol include a standard reflecting the regulatory requirement for the provision to enrollees of information on services not provided due to moral or religious objections.

*Response:* We agree with the commenter. The protocol identifies the section of the regulation that requires enrollees to be provided with information about services that are not provided by the MCO or PIHP because of moral or religious objections. It also identifies relevant documents to be reviewed to determine compliance (see pages 22 and 77 of the protocol). These documents include Medicaid enrollee service policies and procedures, statement of enrollee rights, and marketing materials.

*Comment:* One commenter believes the protocol should include guidance on how to measure the adequacy of the MCO's activities to inform enrollees. The commenter recommends the protocol include additional guidance on the fourth grade reading-level standard for materials, and confirmation that written materials are at an understandable grade level and in