

(3) Make all collected data available to the State and upon request to CMS, as required in this subpart.

### Subpart E—External Quality Review

SOURCE: 68 FR 3635, Jan. 24, 2003, unless otherwise noted.

#### § 438.310 Basis, scope, and applicability.

(a) *Statutory basis.* This subpart is based on sections 1932(c)(2), 1903(a)(3)(C)(ii), and 1902(a)(4) of the Act.

(b) *Scope.* This subpart sets forth requirements for annual external quality reviews of each contracting managed care organization (MCO) and prepaid inpatient health plan (PIHP), including—

(1) Criteria that States must use in selecting entities to perform the reviews;

(2) Specifications for the activities related to external quality review;

(3) Circumstances under which external quality review may use the results of Medicare quality reviews or private accreditation reviews; and

(4) Standards for making available the results of the reviews.

(c) *Applicability.* The provisions of this subpart apply to MCOs, PIHPs, and to health insuring organizations (HIOs) that began on or after January 1, 1986 that the statute does not explicitly exempt from requirements in section 1903(m) of the Act.

#### § 438.320 Definitions.

As used in this subpart—

*EQR* stands for external quality review.

*EQRO* stands for external quality review organization.

*External quality review* means the analysis and evaluation by an EQRO, of aggregated information on quality, timeliness, and access to the health care services that an MCO or PIHP, or their contractors furnish to Medicaid recipients.

*External quality review organization* means an organization that meets the competence and independence requirements set forth in § 438.354, and performs external quality review, other

EQR-related activities as set forth in § 438.358, or both.

*Financial relationship* means—

(1) A direct or indirect ownership or investment interest (including an option or nonvested interest) in any entity. This direct or indirect interest may be in the form of equity, debt, or other means and includes any indirect ownership or investment interest no matter how many levels removed from a direct interest; or

(2) A compensation arrangement with an entity.

*Quality*, as it pertains to external quality review, means the degree to which an MCO or PIHP increases the likelihood of desired health outcomes of its enrollees through its structural and operational characteristics and through the provision of health services that are consistent with current professional knowledge.

*Validation* means the review of information, data, and procedures to determine the extent to which they are accurate, reliable, free from bias, and in accord with standards for data collection and analysis.

#### § 438.350 State responsibilities.

Each State that contracts with MCOs or PIHPs must ensure that—

(a) Except as provided in § 438.362, a qualified EQRO performs an annual EQR for each contracting MCO or PIHP;

(b) The EQRO has sufficient information to use in performing the review;

(c) The information used to carry out the review must be obtained from the EQR-related activities described in § 438.358.

(d) For each EQR-related activity, the information must include the elements described in § 438.364(a)(1)(i) through (a)(1)(iv);

(e) The information provided to the EQRO in accordance with paragraph (c) of this section is obtained through methods consistent with the protocols established under § 438.352; and

(f) The results of the reviews are made available as specified in § 438.364.

#### § 438.352 External quality review protocols.

Each protocol must specify—

(a) The data to be gathered;