(2) May contract with additional EQROs to conduct EQR-related activities as set forth in §438.358.

(b) Each EQRO must meet the competence requirements as specified in §438.354(b).

(c) Each EQRO is permitted to use subcontractors. The EQRO is accountable for, and must oversee, all subcontractor functions.

(d) Each EQRO and its subcontractors performing EQR or EQR-related activities must meet the requirements for independence, as specified in §438.354(c).

(e) For each contract, the State must follow an open, competitive procurement process that is in accordance with State law and regulations and consistent with 45 CFR part 74 as it applies to State procurement of Medicaid services.

§438.358 Activities related to external quality review.

(a) General rule. The State, its agent that is not an MCO or PIHP, or an EQRO may perform the mandatory and optional EQR-related activities in this section.

(b) Mandatory activities. For each MCO and PIHP, the EQR must use information from the following activities:

(1) Validation of performance improvement projects required by the State to comply with requirements set forth in §438.240(b)(1) and that were underway during the preceding 12 months.

(2) Validation of MCO or PIHP performance measures reported (as required by the State) or MCO or PIHP performance measure calculated by the State during the preceding 12 months to comply with requirements set forth in §438.240(b)(2).

(3) A review, conducted within the previous 3-year period, to determine the MCO’s or PIHP’s compliance with standards (except with respect to standards under §§438.240(b)(1) and (2), for the conduct of performance improvement projects and calculation of performance measures respectively) established by the State to comply with the requirements of §438.204(g).

(c) Optional activities. The EQR may also use information derived during the preceding 12 months from the following optional activities:

(1) Validation of encounter data reported by an MCO or PIHP.

(2) Administration or validation of consumer or provider surveys of quality of care.

(3) Calculation of performance measures in addition to those reported by an MCO or PIHP and validated by an EQRO.

(4) Conduct of performance improvement projects in addition to those conducted by an MCO or PIHP and validated by an EQRO.

(5) Conduct of studies on quality that focus on a particular aspect of clinical or nonclinical services at a point in time.

(d) Technical assistance. The EQRO may, at the State’s direction, provide technical guidance to groups of MCOs or PIHPs to assist them in conducting activities related to the mandatory and optional activities that provide information for the EQR.

§438.360 Nonduplication of mandatory activities.

(a) General rule. To avoid duplication, the State may use, in place of a Medicaid review by the State, its agent, or EQRO, information about the MCO or PIHP obtained from a Medicare or private accreditation review to provide information otherwise obtained from the mandatory activities specified in §438.358 if the conditions of paragraph (b) or paragraph (c) of this section are met.

(b) MCOs or PIHPs reviewed by Medicare or private accrediting organizations. For information about an MCO’s or PIHP’s compliance with one or more standards required under §438.204(g), (except with respect to standards under §§438.240(b)(1) and (2), for the conduct of performance improvement projects and calculation of performance measures respectively) the following conditions must be met:

(1) The MCO or PIHP is in compliance with standards established by CMS for Medicare+Choice or a national accrediting organization. The CMS or national accreditation standards are comparable to standards established by the State to comply with §438.204(g).