(F) Provider Network Management.
(G) Program Integrity/Compliance.
(ii) Service delivery, including—
(A) Case management/care coordination/service planning.
(B) Quality improvement.
(C) Utilization review.
(iii) Financial management, including—
(A) Financial reporting and monitoring.
(B) Financial solvency.
(iv) Systems management, including—
(A) Claims management.
(B) Encounter data and enrollment information management.

(e)(1) The State must submit to CMS no later than 180 days after each contract year, a report on each managed care program administered by the State, regardless of the authority under which the program operates.

(i) The initial report will be due after the contract year following the release of CMS guidance on the content and form of the report.

(ii) For States that operate their managed care program under section 1115(a) of the Act authority, submission of an annual report that may be required by the Special Terms and Conditions of the section 1115(a) demonstration program will be deemed to satisfy the requirement of this paragraph (e)(1) provided that the report includes the information specified in paragraph (e)(2) of this section.

(2) The program report must provide information on and an assessment of the operation of the managed care program on, at a minimum, the following areas:

(i) Financial performance of each MCO, PIHP, and PAHP, including MLR experience.

(ii) Encounter data reporting by each MCO, PIHP, or PAHP.

(iii) Enrollment and service area expansion (if applicable) of each MCO, PIHP, PAHP, and PCCM entity.

(iv) Modifications to, and implementation of, MCO, PIHP, or PAHP benefits covered under the contract with the State.

(v) Grievance, appeals, and State fair hearings for the managed care program.

(vi) Availability and accessibility of covered services within the MCO, PIHP, or PAHP contracts, including network adequacy standards.

(vii) Evaluation of MCO, PIHP, or PAHP performance on quality measures, including as applicable, consumer report card, surveys, or other reasonable measures of performance.

(viii) Results of any sanctions or corrective action plans imposed by the State or other formal or informal intervention with a contracted MCO, PIHP, PAHP, or PCCM entity to improve performance.

(ix) Activities and performance of the beneficiary support system.

(x) Any other factors in the delivery of LTSS not otherwise addressed in (e)(2)(i)–(ix) of this section as applicable.

(3) The program report required in this section must be:

(i) Posted on the Web site required under § 438.10(c)(3).

(ii) Provided to the Medical Care Advisory Committee, required under § 431.12 of this chapter.

(iii) Provided to the stakeholder consultation group specified in § 438.70, to the extent that the managed care program includes LTSS.

(f) *Applicability*. States will not be held out of compliance with the requirements of paragraphs (a) through (d) of this section prior to the rating period for contracts starting on or after July 1, 2017, so long as they comply with the corresponding standard(s) codified in 42 CFR 438.66 contained in the 42 CFR, parts 430 to 481, edition revised as of October 1, 2015.

§ 438.68 Network adequacy standards.

(a) *General rule*. A State that contracts with an MCO, PIHP or PAHP to deliver Medicaid services must develop and enforce network adequacy standards consistent with this section.

(b) *Provider-specific network adequacy standards*. (1) At a minimum, a State must develop time and distance standards for the following provider types, if covered under the contract:

(i) Primary care, adult and pediatric.
(ii) OB/GYN.
(iii) Behavioral health (mental health and substance use disorder), adult and pediatric.

(iv) Specialist, adult and pediatric.

(v) Hospital.

(vi) Pharmacy.

(vii) Pediatric dental.

(viii) Additional provider types when it promotes the objectives of the Medicaid program, as determined by CMS, for the provider type to be subject to time and distance access standards.

(2) *LTSS.* States with MCO, PIHP or PAHP contracts which cover LTSS must develop:

(i) Time and distance standards for LTSS provider types in which an enrollee must travel to the provider to receive services; and

(ii) Network adequacy standards other than time and distance standards for LTSS provider types that travel to the enrollee to deliver services.

(3) *Scope of network adequacy standards.* Network standards established in accordance with paragraphs (b)(1) and (2) of this section must include all geographic areas covered by the managed care program or, if applicable, the contract between the State and the MCO, PIHP or PAHP. States are permitted to have varying standards for the same provider type based on geographic areas.

(c) *Development of network adequacy standards.* (1) States developing network adequacy standards consistent with paragraph (b)(1) of this section must consider, at a minimum, the following elements:

(i) The anticipated Medicaid enrollment.

(ii) The expected utilization of services.

(iii) The characteristics and health care needs of specific Medicaid populations covered in the MCO, PIHP, and PAHP contract.

(iv) The numbers and types (in terms of training, experience, and specialization) of network providers required to furnish the contracted Medicaid services.

(v) The numbers of network providers who are not accepting new Medicaid patients.

(vi) The geographic location of network providers and Medicaid enrollees, considering distance, travel time, the means of transportation ordinarily used by Medicaid enrollees.

(vii) The ability of network providers to communicate with limited English proficient enrollees in their preferred language.

(viii) The ability of network providers to ensure physical access, reasonable accommodations, culturally competent communications, and accessible equipment for Medicaid enrollees with physical or mental disabilities.

(ix) The availability of triage lines or screening systems, as well as the use of telemedicine, e-visits, and/or other evolving and innovative technological solutions.

(2) States developing standards consistent with paragraph (b)(2) of this section must consider the following:

(i) All elements in paragraphs (c)(1)(i) through (ix) of this section.

(ii) Elements that would support an enrollee's choice of provider.

(iii) Strategies that would ensure the health and welfare of the enrollee and support community integration of the enrollee.

(iv) Other considerations that are in the best interest of the enrollees that need LTSS.

(d) *Exceptions process.* (1) To the extent the State permits an exception to any of the provider-specific network standards developed under this section, the standard by which the exception will be evaluated and approved must be:

(i) Specified in the MCO, PIHP or PAHP contract.

(ii) Based, at a minimum, on the number of providers in that specialty practicing in the MCO, PIHP, or PAHP service area.

(2) States that grant an exception in accordance with paragraph (d)(1) of this section to a MCO, PIHP or PAHP must monitor enrollee access to that provider type on an ongoing basis and include the findings to CMS in the managed care program assessment report required under § 438.66.

(e) *Publication of network adequacy standards.* States must publish the standards developed in accordance with paragraphs (b)(1) and (2) of this section on the Web site required by § 438.10. Upon request, network adequacy standards must also be made available at no

cost to enrollees with disabilities in alternate formats or through the provision of auxiliary aids and services.

§ 438.70 Stakeholder engagement when LTSS is delivered through a managed care program.

The State must ensure the views of beneficiaries, individuals representing beneficiaries, providers, and other stakeholders are solicited and addressed during the design, implementation, and oversight of a State's managed LTSS program. The composition of the stakeholder group and frequency of meetings must be sufficient to ensure meaningful stakeholder engagement.

§ 438.71 Beneficiary support system.

(a) *General requirement.* The State must develop and implement a beneficiary support system that provides support to beneficiaries both prior to and after enrollment in a MCO, PIHP, PAHP, PCCM or PCCM entity.

(b) *Elements of the support system.* (1) A State beneficiary support system must include at a minimum:

(i) Choice counseling for all beneficiaries.

(ii) Assistance for enrollees in understanding managed care.

(iii) Assistance as specified for enrollees who use, or express a desire to receive, LTSS in paragraph (d) of this section.

(2) The beneficiary support system must perform outreach to beneficiaries and/or authorized representatives and be accessible in multiple ways including phone, Internet, in-person, and via auxiliary aids and services when requested.

(c) *Choice counseling.* (1) Choice counseling, as defined in § 438.2, must be provided to all potential enrollees and enrollees who disenroll from a MCO, PIHP, PAHP, PCCM or PCCM entity for reasons specified in § 438.56(b) and (c).

(2) If an individual or entity provides choice counseling on the State's behalf under a memorandum of agreement or contract, it is considered an enrollment broker as defined in § 438.810(a) and must meet the independence and freedom from conflict of interest standards in § 438.810(b)(1) and (2).

(3) An entity that receives non-Medicaid funding to represent beneficiaries at hearings may provide choice counseling on behalf of the State so long as the State requires firewalls to ensure that the requirements for the provision of choice counseling are met.

(d) *Functions specific to LTSS activities.* At a minimum, the beneficiary support system must provide the following support to enrollees who use, or express a desire to receive, LTSS:

(1) An access point for complaints and concerns about MCO, PIHP, PAHP, PCCM, and PCCM entity enrollment, access to covered services, and other related matters.

(2) Education on enrollees' grievance and appeal rights within the MCO, PIHP or PAHP; the State fair hearing process; enrollee rights and responsibilities; and additional resources outside of the MCO, PIHP or PAHP.

(3) Assistance, upon request, in navigating the grievance and appeal process within the MCO, PIHP or PAHP, as well as appealing adverse benefit determinations by the MCO, PIHP, or PAHP to a State fair hearing. The system may not provide representation to the enrollee at a State fair hearing but may refer enrollees to sources of legal representation.

(4) Review and oversight of LTSS program data to provide guidance to the State Medicaid Agency on identification, remediation and resolution of systemic issues.

§ 438.74 State oversight of the minimum MLR requirement.

(a) *State reporting requirement.* (1) The State must annually submit to CMS a summary description of the report(s) received from the MCO(s), PIHP(s), and PAHP(s) under contract with the State, according to § 438.8(k), with the rate certification required in § 438.7.

(2) The summary description must include, at a minimum, the amount of the numerator, the amount of the denominator, the MLR percentage achieved, the number of member months, and any remittances owed by each MCO, PIHP, or PAHP for that MLR reporting year.

(b) *Repayment of Federal share of remittances.* (1) If a State requires a MCO, PIHP, or PAHP to pay remittances