

the enrollee, is responsible for determining when the enrollee is sufficiently stabilized for transfer or discharge, and that determination is binding on the entities identified in paragraph (c) of this section as responsible for coverage and payment.

(f) *Coverage and payment: Post-stabilization services.* Post-stabilization care services are covered and paid for in accordance with provisions set forth at § 422.113(c) of this chapter. In applying those provisions, reference to “M+C organization” must be read as reference to the entities responsible for Medicaid payment, as specified in paragraph (c) of this section.

**§ 438.116 Solvency standards.**

(a) *Requirement for assurances.* (1) Each MCO and PHP that is not a Federally qualified HMO (as defined in section 1310 of the Public Health Service Act) must provide assurances satisfactory to the State showing that its provision against the risk of insolvency is adequate to ensure that its Medicaid enrollees will not be liable for the MCO’s or PHP’s debts if the entity becomes insolvent.

(2) Federally qualified HMOs, as defined in section 1310 of the Public Health Service Act, are exempt from this requirement.

(b) *Other requirements.*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, a MCO and a PHP must meet the solvency standards established by the State for private health maintenance organizations, or be licensed or certified by the State as a risk-bearing entity.

(2) *Exception.* Paragraph (b)(1) of this section does not apply to an MCO or PHP that meets any of the following conditions:

- (i) Does not provide both inpatient hospital services and physician services.
- (ii) Is a public entity.
- (iii) Is (or is controlled by) one or more Federally qualified health centers and meets the solvency standards established by the State for those centers.
- (iv) Has its solvency guaranteed by the State.

**Subpart D—Quality Assessment and Performance Improvement**

**§ 438.200 Scope.**

This subpart implements section 1932(c)(1) of the Act and sets forth specifications for quality assessment and performance improvement strategies that States must implement to ensure the delivery of quality health care by all MCOs and PHPs. It also establishes standards that States, MCOs and PHPs must meet.

**§ 438.202 State responsibilities.**

Each State contracting with an MCO or PHP must—

- (a) Have a strategy for assessing and improving the quality of managed care services offered by all MCOs and PHPs;
- (b) Document the strategy in writing.
- (c) Provide for the input of recipients and other stake-holders in the development of the strategy, including making the strategy available for public comment before adopting it in final;
- (d) Ensure compliance with standards established by the State, consistent with this subpart; and
- (e) Conduct periodic reviews to evaluate the effectiveness of the strategy, and update the strategy as often as the State considers appropriate, but at least every 3 years.

(f) Submit to CMS the following:

- (1) A copy of the initial strategy, and a copy of the revised strategy, whenever significant changes are made.

- (2) Regular reports on the implementation and effectiveness of the strategy, consistent with paragraph (e), at least every 3 years.

**§ 438.204 Elements of State quality strategies.**

At a minimum, State strategies must include the following—

- (a) MCO and PHP contract provisions that incorporate the standards specified in this subpart.
- (b) Procedures for assessing the quality and appropriateness of care and services furnished to all Medicaid enrollees under the MCO and PHP contracts. These include, but are not limited to—
  - (1) Procedures that—
    - (i) Identify enrollees with special health-care needs; and