

(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) and the EQR-related activity under § 438.358(b)(3).

(2) Compliance with the standards is determined either by—

(i) CMS or its contractor for Medicare; or

(ii) A private national accrediting organization that CMS has approved as applying standards at least as stringent as Medicare under the procedures in § 422.158.

(3) The MCO or PIHP provides to the State all the reports, findings, and other results of the Medicare or private accreditation review applicable to the standards provided for in § 438.204(g); and the State provides the information to the EQRO.

(4) In its quality strategy, the State identifies the standards for which the EQR will use information from Medicare or private accreditation reviews, and explains its rationale for why the standards are duplicative.

(c) *Additional provisions for MCOs or PIHPs serving only dually eligibles.* The State may use information obtained from the Medicare program in place of information produced by the State, its agent, or EQRO with respect to the mandatory activities specified in § 438.358 (b)(1) and (b)(2) if the following conditions are met:

(1) The MCO or PIHP serves only individuals who receive both Medicare and Medicaid benefits.

(2) The Medicare review activities are substantially comparable to the State-specified mandatory activities in § 438.358(b)(1) and (b)(2).

(3) The MCO or PIHP provides to the State all the reports, findings, and other results of the Medicare review from the activities specified under § 438.358(b)(1) and (b)(2) and the State provides the information to the EQRO.

(4) In its quality strategy, the State identifies the mandatory activities for which it has exercised this option and explains its rationale for why these activities are duplicative.

**§ 438.362 Exemption from external quality review.**

(a) *Basis for exemption.* The State may exempt an MCO or PIHP from EQR if the following conditions are met:

(1) The MCO or PIHP has a current Medicare contract under part C of title XVIII or under section 1876 of the Act, and a current Medicaid contract under section 1903(m) of the Act.

(2) The two contracts cover all or part of the same geographic area within the State.

(3) The Medicaid contract has been in effect for at least 2 consecutive years before the effective date of the exemption and during those 2 years the MCO or PIHP has been subject to EQR under

this part, and found to be performing acceptably with respect to the quality, timeliness, and access to health care services it provides to Medicaid recipients.

(b) *Information on exempted MCOs or PIHPs.* When the State exercises this option, the State must obtain either of the following:

(1) *Information on Medicare review findings.* Each year, the State must obtain from each MCO or PIHP that it exempts from EQR the most recent Medicare review findings reported on the MCO or PIHP including—

(i) All data, correspondence, information, and findings pertaining to the MCO's or PIHP's compliance with Medicare standards for access, quality assessment and performance improvement, health services, or delegation of these activities;

(ii) All measures of the MCO's or PIHP's performance; and

(iii) The findings and results of all performance improvement projects pertaining to Medicare enrollees.

(2) *Medicare information from a private, national accrediting organization that CMS approves and recognizes for Medicare+Choice deeming.*

(i) If an exempted MCO or PIHP has been reviewed by a private accrediting organization, the State must require the MCO or PIHP to provide the State with a copy of all findings pertaining to its most recent accreditation review if that review has been used for either of the following purposes:

(A) To fulfill certain requirements for Medicare external review under subpart D of part 422 of this chapter.

(B) To deem compliance with Medicare requirements, as provided in § 422.156 of this chapter.

(ii) These findings must include, but need not be limited to, accreditation review results of evaluation of compliance with individual accreditation standards, noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements.

**§ 438.364 External quality review results.**

(a) *Information that must be produced.* The State must ensure that the EQR produces at least the following information:

(1) A detailed technical report that describes the manner in which the data from all activities conducted in accordance with § 438.358 were aggregated and analyzed, and conclusions were drawn as to the quality, timeliness, and access to the care furnished by the MCO or PIHP. The report must also include the following for each activity conducted in accordance with § 438.358:

(i) Objectives.

(ii) Technical methods of data collection and analysis.

(iii) Description of data obtained.

(iv) Conclusions drawn from the data.

(2) An assessment of each MCO's or PIHP's strengths and weaknesses with respect to the quality, timeliness, and access to health care services furnished to Medicaid recipients.

(3) Recommendations for improving the quality of health care services furnished by each MCO or PIHP.

(4) As the State determines, methodologically appropriate, comparative information about all MCOs and PIHPs.

(5) An assessment of the degree to which each MCO or PIHP has addressed effectively the recommendations for quality improvement made by the EQRO during the previous year's EQR.

(b) *Availability of information.* The State must provide copies of the information specified in paragraph (a) of this section, upon request, through print or electronic media, to interested parties such as participating health care providers, enrollees and potential enrollees of the MCO or PIHP, recipient advocacy groups, and members of the general public. The State must make this information available in alternative formats for persons with sensory impairments, when requested.

(c) *Safeguarding patient identity.* The information released under paragraph (b) of this section may not disclose the identity of any patient.

**§ 438.370 Federal financial participation.**

(a) FFP at the 75 percent rate is available in expenditures for EQR (including the production of EQR results) and EQR-related activities set forth in § 438.358 conducted by EQROs and their subcontractors.