

*Comment:* Several commenters asked that the provisions in this section not be restricted to Medicaid MCOs that have M+C contracts. The commenters believe that the BBA does not restrict the nonduplication provision to these organizations.

*Response:* We agree with the commenters that the BBA does not require that an M+C contract be in place in order for the nonduplication provisions to apply. In response to these comments, we have changed the final rule to allow States, under certain circumstances, to elect not to review structural and operational standards of an MCO or PIHP that has been accredited by a national accrediting organization approved by CMS under the procedures in 42 CFR 422.158 as applying standards at least as stringent as Medicare, where the standards are comparable to those imposed by the State under § 438.204(g). The EQRO must review the reports, findings, and other results of the accreditation review to use in the EQR.

*Comment:* Several commenters recommended that we amend our regulations to permit accreditation programs that address only a portion of the § 438.358(a)(2) requirements. One commenter wanted us to retain the provision that allows an EQRO to use a review conducted by a private accrediting organization, or as part of an external review conducted under the Medicare program. Another commenter suggested that we revise § 438.360(b) to allow a State to exempt an MCO from a review of the mandatory activities, as opposed to exempting the MCO from the mandatory activities.

*Response:* We agree with the commenters that a State should be permitted to use only certain portions of a Medicare or accreditation review in place of a portion of a Medicaid review. As stated above, the final rule provides States with the option of using a Medicare or (if approved by CMS under § 422.158) private accreditation review to serve as the Medicaid compliance review of any or all of the standards required to meet provisions under § 438.204(g) as long as the MCO or PIHP meets the requirements of § 438.360(b) or (c). Because we received numerous comments on the applicability of this provision, we have revised the language in this section to more clearly explain our intent to apply it to MCOs and PIHPs that have been reviewed by an accrediting organization approved under § 422.158. We also clarified the regulations text to better identify the activities and standards to which this section applies, and what information

needs to be provided to States and us to comply with this provision.

*Comment:* One commenter did not agree with provisions in § 438.360(b)(3) or (c)(3) requiring that a State receive a copy of all findings pertaining to the most recent accreditation review. The commenter contended that standard-specific information is adequate and that all review materials such as noted deficiencies, corrective action plans, and summaries of unmet accreditation requirements are excessive and unnecessary. The commenter suggested that we require MCOs to provide the State with applicable reports, findings, and results. Many commenters agreed that we should require that States receive and review information from the Medicare review or accreditation review.

*Response:* We agree that requiring all reports, findings, and other results of the Medicare review or accreditation review could be excessive. We have revised the language § 438.360(b)(3) and (c)(3) to reflect that the reports, findings, and results provided can be limited to those applicable to the standards for which the Medicare or accreditation review or quality activities will substitute for the Medicaid review activities.

*Comment:* One commenter asked us to clarify whether the nonduplication provision exempts the MCO from a review for compliance with standards, such as enrollee rights, maintaining a grievance system, or using practice guidelines. One commenter recommended that we allow deeming of credentialing and recredentialing requirements if the MCO is NCQA certified.

*Response:* We provide that the State may permit the findings from other allowable reviews to substitute for a duplicate review of the structure and operations of the MCO or PIHP. Under this provision, an MCO or PIHP is not exempted from a review of standards under § 438.204(g). Rather, States are permitted the option of using Medicare reviews or accreditation findings, including a review of credentialing and recredentialing procedures, instead of conducting a separate (and potentially duplicative) review, as long as the provisions under § 438.360 are met. This would apply to information on compliance with standards such as the requirements set forth in proposed § 438.358(a)(2)(i) through (a)(2)(xiii) cited by the commenter.

*Comment:* Many commenters agreed that external reviews need to validate performance measures specific to the Medicaid population in the case of Medicaid contracts. In contrast, one

commenter recommended that an MCO fully accredited by a private accrediting organization should also be exempt from calculating performance measures (for example, HEDIS). The commenter believed that this would eliminate the need for new-capacity building or criteria to ensure consistency.

*Response:* We do not agree that an accredited MCO or PIHP should be exempt from a validation of performance measures calculated under § 438.358(a)(1) unless it provides services to dual eligibles only. As stated in our December 1, 1999 proposed rule, we believe the types of data collected, measures calculated, and studies conducted, on the Medicare population would differ from those for the Medicaid population unless the MCO or PIHP served only dually eligible Medicare and Medicaid beneficiaries. We believe this argument is also valid when applied to the commercial population. We, therefore, retain the language as written in the December 1, 1999 proposed rule. We note that if the accrediting organization, acting as the EQRO of the State, validates the performance measures required of the MCO or PIHP by the State, the State can obtain the 75 percent match under section 1903(a)(3)(C)(ii) of the Act for having the accrediting organization conduct that activity.

*Comment:* One commenter recommended that we revise the regulation to give State agencies discretion to determine what EQR activities are duplicative.

*Response:* We do not agree that States should have discretion to determine what EQR activities are duplicative. Except in the case of an MCO or PIHP that provides services to dual eligibles only, we limit the nonduplication provisions to the structure and operational standards reviewed under § 438.358(b)(3).

*Comment:* Several commenters noted that accrediting organizations differ in how they characterize the status conferred when MCOs meet their accreditation standards. For example, these commenters pointed out that not all accrediting organizations use the term “full accreditation.” One commenter recommended that we clarify proposed § 438.360(b)(2)(ii) to avoid confusion regarding what accreditation level must be attained to meet the requirements of the paragraph. Another commenter asked us to clarify “fully accredited” and recommended that we negotiate with accreditors seeking to be recognized under this section to determine what type of accreditation would meet the intent of this section.