the enrollees of several MA organizations with which a physician or physician group has contracts. The conditions for pooling are as follows:

1. It is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or physician group.
2. The physician or physician group is at risk for referral services with respect to each of the categories of patients being pooled.
3. The terms of the compensation arrangements permit the physician or physician group to spread the risk across the categories of patients being pooled.
4. The distribution of payments to physicians from the risk pool is not calculated separately by patient category.
5. The terms of the risk borne by the physician or physician group are comparable for all categories of patients being pooled.

(h) Sanctions. An MA organization that fails to comply with the requirements of this section is subject to intermediate sanctions under subpart O of this part.


§ 422.214 Special rules for services furnished by noncontract providers.

(a) Services furnished by non-section 1861(u) providers. (1) Any provider (other than a provider of services as defined in section 1861(u) of the Act) that does not have in effect a contract establishing payment amounts for services furnished to a beneficiary enrolled in an MA coordinated care plan, an MSA plan, or an MA private fee-for-service plan must accept, as payment in full, the amounts that the provider could collect if the beneficiary were enrolled in original Medicare.

(2) Any statutory provisions (including penalty provisions) that apply to payment for services furnished to a beneficiary not enrolled in an MA plan also apply to the payment described in paragraph (a)(1) of this section.

(b) Services furnished by section 1861(u) providers of service. Any provider of services as defined in section 1861(u) of the Act that does not have in effect a contract establishing payment amounts for services furnished to a beneficiary enrolled in an MA coordinated care plan, an MSA plan, or an MA private fee-for-service plan must accept, as payment in full, the amounts (less any payments under §§ 412.105(g) and 413.76 of this chapter) that it could collect if the beneficiary were enrolled in original Medicare. (Section 412.105(g) concerns indirect medical education payment to hospitals for managed care enrollees. Section 413.76 concerns calculating payment for direct medical education costs.)

(c) Deemed request for Medicare payment rate. A noncontract section 1861(u) of the Act provider of services that furnishes services to MA enrollees and submits the same information that it