

**§ 422.210**

**42 CFR Ch. IV (10–1–06 Edition)**

of the patient panel and may be a combined policy or consist of separate policies for professional services and institutional services. In determining patient panel size, the patients may be pooled in accordance with paragraph (g) of this section.

(iii) Stop-loss protection must cover 90 percent of the costs of referral services that exceed the per patient deductible limit. The per-patient stop-loss deductible limits are as follows:

| Panel size          | Single combined deductible | Separate institutional deductible | Separate professional deductible |
|---------------------|----------------------------|-----------------------------------|----------------------------------|
| 1–1,000 .....       | \$6,000                    | \$10,000                          | \$3,000                          |
| 1,001–5,000 .....   | 30,000                     | 40,000                            | 10,000                           |
| 5,001–8,000 .....   | 40,000                     | 60,000                            | 15,000                           |
| 8,001–10,000 .....  | 75,000                     | 100,000                           | 20,000                           |
| 10,001–25,000 ..... | 150,000                    | 200,000                           | 25,000                           |
| >25,000 .....       | ( <sup>1</sup> )           | ( <sup>1</sup> )                  | ( <sup>1</sup> )                 |

<sup>1</sup> None.

(g) *Pooling of patients.* Any entity that meets the pooling conditions of this section may pool commercial, Medicare, and Medicaid enrollees or 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.

[63 FR 35085, June 26, 1998, as amended at 65 FR 40325, June 29, 2000; 70 FR 4724, Jan. 28, 2005; 70 FR 52026, Sept. 1, 2005]

**§ 422.210 Assurances to CMS.**

(a) Assurances to CMS. Each organization will provide assurance satisfac-

tory to the Secretary that the requirements of § 422.208 are met.

(b) Disclosure to Medicare Beneficiaries. Each MA organization must provide the following information to any Medicare beneficiary who requests it:

(1) Whether the MA organization uses a physician incentive plan that affects the use of referral services.

(2) The type of incentive arrangement.

(3) Whether stop-loss protection is provided.

[70 FR 52026, Sept. 1, 2005]

**§ 422.212 Limitations on provider indemnification.**

An MA organization may not contract or otherwise provide, directly or indirectly, for any of the following individuals, organizations, or entities to indemnify the organization against any civil liability for damage caused to an enrollee as a result of the MA organization's denial of medically necessary care:

(a) A physician or health care professional.

(b) Provider of services.

(c) Other entity providing health care services.

(d) Group of such professionals, providers, or entities.

**§ 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