Medicare
Provider Reimbursement Manual
Part 1, Chapter 21

Department of Health & Human Services (DHHS)
Centers for Medicare & Medicaid Services (CMS)

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CLARIFIED/UPDATED MATERIAL--*EFFECTIVE DATE:* Cost reports beginning on or after October 1, 2011.

Section 2142.1 Defined Benefit Pension Plans: These changes to the pension rules are being made consistent with the policy set forth in the FY 2012 IPPS final rule (CMS-1518-F; 76 FR 51693 – 51697, August 18, 2011).

Section 2142.5 Pension Costs: These changes to the pension rules are being made consistent with the policy set forth in the FY 2012 IPPS final rule (CMS-1518-F; 76 FR 51693 – 51697, August 18, 2011).

Section 2142.6 Allowability of Payments: These changes to the pension rules are being made consistent with the policy set forth in the FY 2012 IPPS final rule (CMS-1518-F; 76 FR 51693 – 51697, August 18, 2011).

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Section 2142.3: Removed and Reserved: Section content deleted and the section number is reserved for future use.

Section 2142.4: Removed and Reserved: Section content deleted and the section number is reserved for future use.

Section 2142.7: Removed and Reserved: Section content deleted and the section number is reserved for future use.

DISCLAIMER: The revision date and transmittal number apply to the red italicized material only. All other material was previously published and remains unchanged.

- Prescribes the method for calculating all contributions to the fund established under the plan;

- Is funded in accordance with the provisions of §2140.3B;

- Provides for the protection of the plan's assets;

- Designates the requirements for vested benefits;

- Provides the methods and procedures for payment to the employee of the amount in the employee's account; and

- Is expected to continue despite normal fluctuations in the provider's economic experience.

A. Contributions.--The provisions of §2140.3A must be met.

B. Funding of Deferred Compensation Plans.--The provisions of §2140.3B must be met.

C. Plan's Assets.--

1. Transactions.--The provisions of §2140.3.C.1 must be met.

2. Individual Participant's Account.--The plan must provide for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account. This includes any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to each participant's account.

3. Loans Made From Deferred Compensation Fund.--The provisions of §2140.3.C.3 must be met.

D. Vested Benefits.--The deferred compensation plan must specify the time and the manner in which the benefits are to become vested, e.g., after a predetermined number of years of employment, after a specific age is attained, or some combination of the two. The benefits that accrue to an employee upon retirement, termination of services due to disability, or other reasons (or that accrue to the employee's survivor in case of death) must be incorporated into the plan.

The immediate vesting of benefits is not required. However, the deferred compensation plan must provide that vesting of provider contributions occurs on or before the normal retirement age established by the provider and as defined in the plan.

The unconditional vesting of benefits is not required. Unconditional vesting of benefits means that once a participant's benefits are vested in accordance with the normal vesting schedule, there are no conditions incorporated in the plan which deprives the participant of such benefits.

Employee benefits must become fully vested upon any of these occurrences:

- The normal retirement age established by the provider;

- Termination of the deferred compensation plan;

- Complete discontinuance of contributions under the deferred compensation plan;

- Termination of the provider's participation in the Medicare program; or

- Change of ownership of the provider when the successor provider is unwilling or unable to continue the deferred compensation plan or alters the existing plan in any way.

Excess funds arising from the termination of a deferred compensation plan are subject to the provisions of §2140.3.D.

2141.4 Requirements to Fund Plan.--The provisions of §2140.4 must be met.

2141.5 Reimbursement of Hospital-Based Physician Patient Care Services.-- Contracts or agreements between hospital-based physicians and hospitals involve a variety of arrangements under which the physician is compensated by the hospital for the full range of services within the institution. The allocation of the hospital-based physician's compensation (including any portion subject to deferment) between services benefiting the institution and direct patient care is subject to the review and approval of the hospital's intermediary. Medicare does not accept an allocation, which attributes the physician's deferred compensation entirely to one type of service and the current compensation to the other. The amount deferred must be allocated in the same ratio that physician's total compensation is allocated between the two types of service.

Arrangements between the physician and the provider in which the physician is compensated solely from patient charges, although the provider, serving merely as a billing agent, does the billing, cannot include a deferred compensation arrangement, which will be recognized by the program. In order to be recognized as a deferred compensation plan, the compensation costs must be initially borne by the provider.

2141.6 Guarantee Arrangements for Physician Emergency Room Services.--The provisions of §2140.6 must be met.

2141.7 Effective Date.--The provisions of this section are effective for defined contribution deferred compensation plans established in cost reporting periods beginning on or after March 1, 1976.

2142. DEFINED BENEFIT PENSION PLANS

2142.1 Definition.--A defined benefit pension plan is a type of deferred compensation plan, which is established and maintained by the employer primarily to provide *definitely determinable benefits* to its employees usually over a period of years, or for life, after retirement. *Pension plan benefits are generally measured by, and based on, such factors as age of employees, years of service, and compensation received by the employees. This section applies only to defined benefit pension plans which are qualified pension plans under Section 401 (a) of the Internal Revenue Code. A qualified pension plan is for the exclusive benefit of employees or their beneficiaries and qualifies for special tax benefits, such as tax deferral for employer contributions. Defined benefit pension plans which are not qualified plans are treated as deferred compensation plans under §2140.*

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2142.5 Pension Costs.—

A. Current Period Pension Cost.--The current period pension cost is the sum of the provider contribution payments made to a defined benefit pension plan during the current cost reporting period in accordance with §2142.6(A) plus any carry forward contributions determined in accordance with §2142.5(E), such total for the current year may not exceed the pension cost limitation described in §2142.5(B).

B. Pension Cost Limitation.--Except as provided in §2142.5(D), the current period pension cost may not exceed 150% of the provider's average contribution payments made to the plan during the three (3) consecutive cost reporting periods out of the last five (5) consecutive cost reporting periods (ending with the current reporting period) which produce the highest average.

(1) For purposes of determining the pension cost limitation, provider contribution payments for each applicable cost reporting period shall be determined on a cash basis in accordance with §2142.6(A), without regard to any pension cost limitation determined under §2142.5(B) for the period during which the contributions were made, and excluding any contributions deposited in a prior period and treated as carry forward contributions under §2142.5(E).

(2) The averaging period used to determine the pension cost limitation shall be determined without regard to a provider's period of participation in the Medicare program. Periods which are not Medicare cost reporting periods (e.g. periods prior to the hospital's participation in the Medicare program) shall be defined as consecutive twelve month periods ending immediately prior to the provider's initial Medicare cost reporting period.

(3) The averaging period used to determine the pension cost limitation shall exclude all periods ending prior to the initial effective date of the pension plan (or a predecessor pension plan in the case of a merger as explained in 2142.5(C)).

C. Multiple Pension Plans and Successor Plans.--In general, the current period pension cost and pension cost limitation shall be computed and applied separately for each defined benefit pension plan offered by a provider. In the case of a plan merger, the contribution payments made by a provider to a predecessor pension plan and reflected in the assets subsequently transferred to a successor plan shall be treated as contribution payments made to the successor plan.

D. Request for Adjustment to Pension Cost Limitation.--A provider may request an adjustment to the pension cost limitation otherwise determined under section §2142.5(B) for the current period by submitting documentation, prior to the filing deadline for its current period cost report, to show that all or a portion of the contributions in excess of the pension cost limitation are reasonable and necessary to satisfy a current period's actuarially determined pension liability. Examples of situations when an adjustment to the pension cost limitation may be justified would include, but are not limited to, excess contributions required by law or to avoid benefit restrictions under ERISA. Requests for a limitation adjustment and any documentation should be sent to Pension@cms.hhs.gov with a copy to the Medicare contractor. The CMS central office will approve or disapprove these requests.

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E. Carry Forward Contributions.--Carry forward contributions represent contributions made in a prior cost reporting period which were not allowable pension costs in any prior cost reporting period. Carry forward contributions may be included as a current period pension cost in accordance §2142.5(A).

F. Data Required.--The provider must have available data to show the amount(s) and date(s) of contribution payments made to a defined benefit pension plan during the current reporting period and any applicable prior periods. If the pension costs included in the cost report for a period differ from the pension contribution payments made during the reporting period (i.e. as a result of carry forward contributions), the provider must also have data available to track and reconcile the difference.

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2142.6 Allowability of Payments.--

A. *Payment Requirements.--Provider contribution payments made to a defined benefit pension plan are allowable only to the extent that costs are actually incurred by the provider. Such costs are found to have been incurred only if paid directly to participants or beneficiaries under the terms of the plan or paid to a pension fund which meets the applicable tax qualification requirements under Section 401(a) of the Internal Revenue Code.*

Provider payments to a pension plan for a cost reporting period shall be measured on a cash-basis without regard to §2305. Payment must be made by check or other negotiable instrument, cash, or legal transfer of assets such as stocks, bonds, real property, etc. A contribution payment shall be deemed to occur on the date it is credited to the fund established for the pension plan, or for provider payments made directly to a plan participant or beneficiary, on the date the provider's account is debited.

B. *Reasonable Compensation.--The payments made by the provider together with all other compensation paid to the employee must be reasonable in amount.*

2142.7 *Removed and Reserved - Section content deleted and the section number is reserved for future use.*