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# Medicare

## Provider Reimbursement Manual

### Part 1, Chapter 21 – Costs Related to Patient Care

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

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<u>HEADER SECTION NUMBERS</u>	<u>PAGES TO INSERT</u>	<u>PAGES TO DELETE</u>
2162.2(Cont.)-2162.2(Cont.)	21-42.5 – 21-42.6 (2 pp.)	21-42.5 – 21.42.6 (2 pp.)

#### **REVISED MATERIAL--*EFFECTIVE DATE: November 11, 2010***

Section 2162.2, Insurance Purchased From a Limited Purpose Insurance Company, deletes paragraph A.4 in its entirety per the Circuit court decision in Catholic Health Initiatives v. Kathleen Sebelius. Paragraph A.4 described investment provisions applicable to limited purpose insurance companies that are set up as offshore captives.

All other provisions of Section 2162.2 remain in full force and effect and must be applied to determine the validity and reasonable costs associated with limited purpose insurance companies set up as offshore captives.

***Disclaimer: The revision date and transmittal number apply only to red italicized material. Any other material was previously published and remains unchanged.***

3. If you terminate from the Medicare program, you must obtain a final determination of the adequacy of premium reserves as of the date of termination. This determination must be obtained from an independent actuary, commercial insurance company or broker as described in §2162.7. Any reserves that are deemed excessive at the date of termination must be offset against your allowable costs in your final cost report. If reserves are deemed inadequate, additional premium payments subsequent to the date of termination are not allowable provider costs.

*4. RESERVED*

5. Loans or any transfer of funds by the insurance company to policy holders, owners of providers, or parties related to them are prohibited.

B. Capitalization Costs--The initial or any subsequent capital payments, as distinguished from supplemental premiums as described in subsection A, made by you to establish or maintain limited purpose (captive) insurance companies, including companies established by State hospital associations or others, are not allowable under Medicare. Such payments include the purchase of stock or surplus certificates (mutual insurance company), or other payments to establish capitalization levels such as special dues assessments paid by you to a hospital association which then establishes a captive insurance company.

2162.3 Self-Insurance--You may believe that it is more prudent to maintain a total self-insurance program (i.e., the assumption by you of the risk of loss) independently or as part of a group or pool rather than to obtain protection through purchased insurance coverage. If such a program meets the conditions specified in §2162.7, payments into such funds are allowable costs.

2162.4 Combination of Purchased Insurance and Self-Insurance--You may believe it appropriate to self insure some of the risk independently or as part of a group or pool and purchase insurance for the remainder of the risk. Where you decide to fund all or some of the risk covered through self-insurance, payments into a fiduciary fund are allowable costs if you or the pool sets up a program which meets the conditions specified in §2162.7. The cost of the insurance is also an allowable cost subject to the conditions of §2161.

2162.5 Allowability of Actual Losses Related to Deductibles or Coinsurance--Where you, at your option, are willing to commit your resources toward meeting first dollar losses through a deductible (as defined below), losses relating to the deductible are allowable costs in the year paid without funding if the aggregate deductible is no more than the greater of 10 percent of your (or, if appropriate, a chain organization's) net worth--fund balances as defined for Medicare cost reporting purposes--at the beginning of the insurance period or \$100,000 per provider. The same rule applies where you coinsure with an insurance carrier. This requirement is deemed a reasonable test as to whether you are acting prudently in this regard. So long as you stay within the above limitations, you can be assumed to be exercising sound judgment in deciding to meet first dollar losses or coinsurance payments out of available resources. This requirement also permits you to pay reasonable losses without incurring costs to fund such payments. If your deductible or coinsurance exceeds the above requirements and the provider does not make payments into a fiduciary fund as required by §2162.7, any losses paid by the provider in excess of the greater of 10 percent of the provider's or, if applicable, a chain organization's net worth, or \$100,000 per provider, are not allowable.