Medicare
Provider Reimbursement Manual –

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

Part 1 Chapter 21 – Cost Related to Patient Care

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NEW/REVISED MATERIAL--EFFECTIVE DATE: Not Applicable

Section 2122 is revised in accordance with the FY 2011 IPPS Final Rule, published on August 16, 2010, which clarified policy with respect to the treatment of the taxes incurred by providers and reported on the Medicare cost report. This clarification is consistent with the current and longstanding statutory, regulatory, and policy provisions.

REVISED ELECTRONIC SPECIFICATIONS EFFECTIVE DATE: Not Applicable

DISCLAIMER: The revision date and transmittal number apply to the red italicized material only. Any other material was previously published and remains unchanged. However, if this revision contains a table of contents, you will receive the new/revised information only, and not the entire table of contents.

For patients who are enrolled under Part B, as indicated by the Reply to the Notice of Admission, the provider will be reimbursed for 80 percent of the cost of providing these services. The provider should collect 20 percent of the per diem rate for the services of residents and interns covered under Part B times the number of inpatient days provided. As long as the patient is entitled to Part A benefits, no determination of the patient's deductible liability need be made for inpatient Part B interns' and residents' services.

Patients not enrolled under Part B will be liable for the entire cost of Part B interns' and residents' services. The provider must maintain a record of the inpatient days of these individuals so that this cost may be excluded from the amount of program obligation at the time of retroactive cost adjustment.

2l22. TAXES

2l22.l General Rule.--The general rule is that taxes assessed against the provider, in accordance with the levying enactments of the several States and lower levels of government and for which the provider is liable for payment, are allowable costs. Tax expense should not include fines and penalties. *Taxes are allowable costs to the extent they are actually incurred and related to the care of beneficiaries.*

Whenever exemptions to taxes are legally available, the provider is expected to take advantage of them. If the provider does not take advantage of available exemptions, the expenses incurred for such taxes are not recognized as allowable costs under the program.

2122.2 Taxes Not Allowable as Costs.--Certain taxes which are levied on providers are not allowable costs. These taxes *include*:

A. Federal income and excess profit taxes, including any interest or penalties paid thereon (see § 1217).

B. State or local income and excess profit taxes (see § 1217).

C. Taxes in connection with financing, refinancing, or refunding operations, such as taxes on the issuance of bonds, property transfers, issuance or transfer of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.

D. Taxes from which exemptions are available to the provider.

E. Special assessments on land which represent capital improvements such as sewers, water, and pavements should be capitalized and depreciated over their estimated useful lives.

F. Taxes on property which is not used in the rendition of covered services.

G. Taxes, such as sales taxes, levied against the patient and collected and remitted by the provider.

H. Self-employment (FICA) taxes applicable to individual proprietors, partners, members of a joint venture, etc.

2l22.3 Employment-Related Taxes--Provider-Based Physicians.--Employment-related taxes, i.e., FICA, Workers' Compensation and Unemployment Compensation, which are paid by a provider on behalf of a provider-based physician, are considered business expenses of the employer and not fringe benefits (§ 2l08.3Cl). Hence, they are includable in their entirety as part of the administrative cost of the provider, without allocation to the physician's professional component, and reimbursable to the provider on a reasonable cost basis.

2l22.4 Franchise Taxes.--A franchise tax is a periodic assessment levied by a State or local taxing authority on the operation of a business within the borders of that governmental entity. The basis used to compute the amount of the franchise tax varies among taxing authorities. Where the amount of the franchise tax is based upon the net income of the provider,

with a minimum amount stated, the following criteria will be used to determine whether and in what amount a franchise tax is an allowable cost:

A. Where a provider has no net income but is required to pay a minimum franchise tax, the franchise tax is an allowable cost.

B. Where a provider realized net income which is not sufficient to incur a tax in excess of the minimum tax and the minimum tax is levied, then only the difference between the minimum franchise tax and the tax computed on net income is allowable cost. For example, if the minimum tax is $500 and the tax computed on the net income is $400, then the $400 is an income tax and only the excess ($500 - $400) or $100 is an allowable cost.

C. Where a provider has net income sufficient to incur a tax greater than the minimum franchise tax, the entire tax is considered and income tax and no part of the tax is an allowable cost. For example, if the minimum tax is $500 and the tax computed on income is $600, then the entire $600 is a nonallowable cost.

D. Where the amount of the franchise tax is based upon several criteria, one of which is net income, the amount of the franchise tax computed on net income is not an allowable cost. For example, if the minimum tax is $500, the tax computed on net income is $400, and the tax levy on capital stock is $600, then $400 remains an income tax and only the excess ($600 - $400) or $200 is an allowable cost.

2122.5 Unemployment Compensation Insurance Costs for Nonprofit Providers Under Public Law 91-373.--

A. General.--Under PL 91-373, most nonprofit providers and State hospitals are required to cover certain employees under their respective State unemployment compensation laws.

This Federal law also provides that each nonprofit provider must be permitted by State law the option of (1) paying regular State unemployment compensation taxes, or (2) reimbursing the State direct, on a dollar-for-dollar basis, for unemployment compensation benefits paid to former employees attributable to service with the provider--a form of self-insurance. Those providers which elect to pay benefits direct by self-insuring must also be allowed to participate in a joint program with other nonprofit organizations to establish a pool for reimbursing the State. See § 2162ff for provisions governing pool arrangements for unemployment compensation and workers' compensation insurance coverage.

B. Payment of the State Tax.--Where a nonprofit provider elects to pay regular State unemployment compensation taxes, such payments are recognized as an allowable cost.

C. Self-Insurance Program.--Where a nonprofit provider chooses to self-assure by establishing its own reserve account, contributions to this reserve account are not allowable costs under the Medicare program. Where a nonprofit chain organization (or related organization) centrally operates an unemployment insurance reserve fund for some or all of its member (related) providers, the fund is considered a self-insurance program and payments made to it by the participating providers are not allowable costs under the Medicare program. This is because such a fund is simply an arrangement among related providers with the chain maintaining control over the fund. Thus, payments to the fund are not actually incurred costs, but rather a provision for establishing a central reserve from which unemployment costs are met as they are incurred. Moreover, any income earned from investment of the funds of the reserve account must be used to offset a provider's allowable interest expense under the Medicare program.

Certain costs associated with a self-insurance program are allowable, whether paid from the fund or directly by the provider. They are:

1. Any amounts paid to reimburse the State for unemployment compensation payments actually made by the State to the former employees of the provider.

2. Any premium costs for the purchase of commercial insurance which protects against catastrophic loss, provided the type, extent, and cost of coverage are not substantially out of line with those of other similar institutions in the same area.

3. The fees paid to an outside individual or firm (if any) to administer the program, to the extent such fees are considered reasonable for the services rendered. Such administration may consist of completing the claims forms from the State unemployment office, representing the provider at the appeals level, etc.

4. Any other reasonable administrative costs incurred by the provider in establishing and administering the program.

These costs are allowable for a chain organization program to the extent the costs are properly allocated among the providers which incurred them, e.g., unemployment compensation payments should be directly allocated to the provider whose unemployed employees were paid. (See § 2l62ff for other self-insurance provisions.)

2122.6 Self-Insurance Program for Unemployment Compensation and Workers' Compensation Insurance Using a Reserve for Funding.--Where a provider or a group of providers, whether proprietary or nonprofit and whether related or not, chooses to self-insure against unemployment compensation and/or workers' compensation risks by establishing its own reserve account, the provisions of preceding §2122.5C apply. See §2162.7, which explains the self-insurance requirements that must be met before payments made into a trust can be included in allowable costs.

2122.7 Review of Reasonable Costs, Including Taxes. -- In general, reasonable costs claimed by a provider, including taxes, must be actually incurred. While a tax may fall under a category that is generally accepted as an allowable Medicare cost, the provider may only treat the net tax expense as the reasonable cost actually incurred for Medicare payment purposes. The net tax expense is the tax paid by the provider, reduced by payments the provider received that are associated with the assessed tax. Contractors will continue to determine whether taxes and other expenses are allowable based on reasonable cost principles set forth in the Medicare statute and regulations.