

PUBLICATION

CMS Instructs Teaching Hospitals on Reporting FICA Tax Refunds for Medical Residents [Ober|Kaler]

January 25, 2012

On March 10, 2010, the IRS determined that medical residents are exempt from FICA taxes based on the student exception, for tax periods ending before April 1, 2005. Although the refunds apply to tax periods ending before April 1, 2005, hospitals actually received these refunds during their FYs 2009, 2010 and 2011 cost years. Because hospital wage data from FYs 2009, 2010 and 2011 will be used to develop wage indexes for federal fiscal years (FFYs) 2013, 2014 and 2015, respectively, CMS recently issued instructions directing its contractors to inform teaching hospitals how they should report these refunds. CMS Pub. 100-20, Transmittal 1010, Change Request 7685, Dec. 30, 2011 [PDF].

CMS has instructed that the refund must be reported in a way that does not impact a hospital's wage-related costs for wage index purposes. Hospitals have **until January 30, 2012** to submit revisions to the reporting of their FY 2009 costs, which is currently being reviewed to develop the FFY 2013 wage index.

The FICA refund consists of two parts: (I) the refund to the hospital of the employer's share and (II) the refund to the hospital of the resident employee's share, which the hospital must return to the resident.

FICA Refund I - The Hospital's Share

For cost reporting purposes, hospitals must report the employer's share of the refund on Worksheet A of the cost report as a reduction of the current cost of the employer portion of FICA taxes. However, for wage index purposes, the FICA refund should not be used to reduce the current year employer's portion of the FICA expense, as it is important that the employer's portion of the expense incurred for that year is properly reflected. The refund is attributable to an earlier year, and it would distort the wage index if the refund was offset against the current year's FICA costs.

FICA Refund II - The Hospital Resident Employee's Share

If the hospital has already reported the resident's share of the refund as an accrued expense, then the hospital must make a revenue offset equal to that expense, with a resulting net of zero. However, if the hospital has not reported the resident's share of the refund as an expense or has not filed a cost report in which the employee's portion of the refund is received, then the hospital should report the refund as an offset of the actual or accrued employee portion of the refund expense, again resulting in a net of zero.

Timing

The effective date of these instructions is January 30, 2012. Since the initial due date for providers to submit their wage index costs to their Medicare contractors was December 5, 2011, **CMS is allowing providers until January 30, 2012 to submit revisions** to their wage related costs, as part of the wage index reconciliation process for the FFY 2013 wage index.

Ober|Kaler's Comments

The CMS Transmittal gives very little time for providers to revise the reporting of their FICA refunds, so that the refund does not improperly reduce a hospital's calculation of its wage-related costs and ultimately its wage index. Providers should carefully review the more particular instructions on the reporting of the refund in the CMS Transmittal.