

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services



News Flash – The Centers for Medicare & Medicaid Services (CMS) has made changes to the Medicare Overpayment Notification Process. If an outstanding balance has not been resolved, providers previously received three notification letters regarding Medicare Overpayments, an Initial Demand Letter (1st Letter), a Follow-up-Letter (2nd Letter), and an Intent to Refer Letter (3rd Letter). CMS would send the second demand letter to providers 30 days after the initial notification of an overpayment. Recent review has determined that the majority of providers respond to the initial demand letter and pay the debt. Currently recoupment action happens 41 days after the initial letter. The remittance advice which describes this action serves as another notice to providers of the overpayment. Therefore, effective Tuesday, November 1, 2011, the second demand letters are no longer being sent to providers. Provider appeal rights will remain unchanged. If an overpayment is not paid within 90 days of the initial letter, providers will continue to receive a letter explaining CMS' intention to refer the debt for collection.

MLN Matters® Number: MM7685 **Revised**

Related Change Request (CR) #: 7685

Related CR Release Date: January 24, 2012

Effective Date: January 30, 2012

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Implementation Date: January 30, 2012

Instructions to Teaching Hospitals for Reporting the Internal Revenue Service (IRS) Refund of Medical Resident FICA Taxes

Note: This article was revised on July 31, 2012, to reflect current Web addresses. Previously, it was revised on January 25, 2012, to reflect a revised CR7685, issued on January 24. In this article, the CR release date, transmittal number, and the Web address for accessing CR7685 were revised. All other information is the same.

Provider Types Affected

This article is for teaching hospitals that file cost reports with Medicare contractors (Medicare Administrative Contractors (MACs) or Fiscal Intermediaries (FIs)).

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Provider Action Needed

This article is based on Change Request (CR) 7685 which informs teaching hospitals and Medicare contractors of the proper way of reporting Internal Revenue Service (IRS) Refunds of Medicare FICA taxes on cost reports. **Teaching hospitals must work with their Medicare contractor to make any necessary changes by January 30, 2012, to their Fiscal Year (FY) 2009 cost reports to be used in the FY2013 wage index. See the Background Section for further details regarding this requirement.**

Background

On March 2, 2010, the IRS made an administrative determination that medical residents are exempt from FICA taxes based on the student exception for tax periods ending before April 1, 2005. Recently, the IRS began contacting hospitals, universities, and medical residents who filed FICA (Social Security and Medicare tax) refund claims for these periods. The purpose of these instructions is to instruct the contractors to inform teaching hospitals (defined in section I.B. below) of the proper way to report the FICA refund for medical residents on the Medicare cost report. The FICA refund must be reported in such a way that it does not impact a hospital's wage-related costs used to compute the wage index under the Hospital Inpatient Prospective Payment System (IPPS). However, cost reimbursement principles for cost reporting purposes must be followed on worksheet A.

The FICA Refund has two parts. Under Part I, the IRS will refund FICA and Medicare taxes to the hospitals for the employer's share. Under Part II, the IRS will refund FICA and Medicare taxes to the hospitals for the resident employee's share and the hospitals must return the refund to the residents employed by the hospital between approximately 1994 and 2005. Although both refunds apply for tax periods ending before April 1, 2005, hospitals are receiving these refunds during cost reporting periods that occur during FYs 2009, 2010, or 2011. It is important that a hospital's wage-related costs are properly reported in these fiscal years, so as not to impact the calculation of the IPPS wage index for FYs 2013, 2014, or 2015.

Cost reports ending on or after April 30, 2011 are to be filed on the Form 2552-10. CR7685 instructs your contractor to provide the following cost reporting instructions to the teaching hospitals that they service. For purposes of this instruction, a "teaching hospital" is defined as a hospital that completed worksheet E, Part A for IME and/or worksheet E-3, Part IV for direct GME (or worksheet E-4 if applicable) on its cost report that was most recently submitted as of the time of issuance of this CR.

I. FICA Refund Part I—Hospital Employer's Share

a. Cost Reporting on Worksheet A:

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For cost reporting purposes, on worksheet A of both Forms 2552-96 and 2552-10 of the Medicare cost report, the FICA employer's portion of the refund must follow Medicare reimbursement principles in accordance with 42 CFR §413.98. Refunds of the employer portion of FICA costs from previous periods are to be treated as a reduction of the current cost reporting employer portion of FICA costs. If the teaching hospital reported the FICA employer's portion of expense net of the FICA refund on worksheet A, column 2, no adjustment is necessary on worksheet A-8. However, if the teaching hospital did not report the employer's portion of the FICA expense net of the FICA refund on worksheet A, column 2, the teaching hospital shall ensure that the employer's portion of the FICA refund is identified as a revenue offset on worksheet A-8. The FICA employer portion of expenses is classified as an Employee Benefit and shall be reported on worksheet A, in the Employee Benefits cost center. The refund of the FICA employer's portion shall be offset against the expense reported on worksheet A. If the FICA employer's portion of expenses is directly assigned to individual cost centers other than Employee Benefits, the teaching hospital shall offset the refund, not to exceed the total current year FICA expense, against the Employee Benefits cost center, as the residual costs of this cost center will be allocated through step-down accordingly.

b. Wage-Related Cost for the Wage Index:

1. It is possible that teaching hospitals filing on the Form 2552-96 and receiving their employer's share of the FICA refund have subtracted the refund amount from their current year FICA expense on line 17 (FICA-Employer's Portion Only) of the Form 339. For wage index purposes, the FICA refund to a teaching hospital for its employer's share is not to be used to reduce the current year employer's portion of FICA expense on worksheet S-3, Part II and Form 339 of Form 2552-96. Therefore, the employer's portion of the FICA refund must be added back to line 17 of the Form 339 so that line 17 and worksheet S-3, Part II, reflect the full FICA employer's portion of the expense incurred for that year.
2. If a teaching hospital is filing on the Form 2552-10, then for wage index purposes, the employer's portion of the FICA refund must be excluded from line 17 of worksheet S-3, Part IV so that line 17 reflects the FICA employer's portion of the expense incurred for that year.

After ensuring that the FICA employer's portion of the expense incurred for the cost reporting year is properly reflected on line 17 of the Form 339 or worksheet S-3, Part IV as applicable, a teaching hospital shall also ensure that the FICA employer's portion of the expense for the year is properly reflected in its allocation of wage-related costs to lines 13 through 20 of worksheet S-3, Part II of the respective cost report.

II. FICA Refund Part II—Hospital Resident Employee's Share

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- a. If a teaching hospital has already reported the Resident employee's share of the FICA refund as an accrued expense on worksheet A, column 2, then the teaching hospital shall ensure that a revenue offset equal to that accrued expense is submitted on worksheet A-8. A teaching hospital shall identify this offset on worksheet A-8 as the "Resident employee FICA refund." The amount is accrued as an expense on worksheet A and the offset on worksheet A-8 must net to zero.
- b. If a teaching hospital has not reported the "Resident" employee's share of the FICA refund as an accrued expense on worksheet A, or has not filed a cost report in which the employee's portion of the FICA refund is received, then upon receipt of the refund, the proper reporting for such refund is an offset of the actual or accrued employee portion of the FICA refund expense, resulting in a net of zero.

III. Interest Earned on FICA Refunds

The interest income earned on the employee and employer portions of the FICA refund is considered non-capital related and shall be offset against the interest expense that will be incurred in refunding the residents as well as any additional non-capital related interest expense.

IV. Timeline and Instructions for Implementation

Teaching hospitals shall work with their contractors to make any necessary changes by January 30, 2012, to their FY 2009 cost reports (that is, cost reports beginning on or after October 1, 2008) to be used in the FY 2013 wage index, so that the wage index will be calculated correctly for the FY 2013 Inpatient PPS proposed rule. CR7685 makes an exception to the December 5, 2011 deadline specified in CR7450 to allow hospitals to submit revisions to the contractors after December 5, 2011, but **only** for the purpose of CR 7685 to properly report the FICA tax refund. CR 7450 is otherwise unchanged. Under CR 7685, teaching hospitals must submit the revisions to their FY 2009 cost reports to their contractors by January 30, 2012.

Additional Information

CR 7685 may be viewed at <http://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R1017OTN.pdf> on the CMS website. If you have any questions, please contact your FI or MAC at their toll-free number, which may be found at <http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/provider-compliance-interactive-map/index.html> on the CMS website.

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