

CMS Manual System	Department of Health & Human Services (DHHS)
Pub 100-20 One-Time Notification	Centers for Medicare & Medicaid Services (CMS)
Transmittal 1010	Date: December 30, 2011
	Change Request 7685

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

I. SUMMARY OF CHANGES: The purpose of these instructions is to instruct the contractors to inform teaching hospitals of the proper way to report the FICA refund for medical residents on the Medicare cost report.

EFFECTIVE DATE: January 30, 2012

IMPLEMENTATION DATE: January 30, 2012

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

II. CHANGES IN MANUAL INSTRUCTIONS: (N/A if manual is not updated)

R=REVISED, N=NEW, D=DELETED-*Only One Per Row.*

R/N/D	CHAPTER / SECTION / SUBSECTION / TITLE
N/A	

III. FUNDING:

For Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs) and/or Carriers:

No additional funding will be provided by CMS; Contractor activities are to be carried out within their operating budgets.

For Medicare Administrative Contractors (MACs):

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.

IV. ATTACHMENTS:

One-Time Notification

**Unless otherwise specified, the effective date is the date of service.*

Attachment – One-Time Notification

Pub. 100-20	Transmittal: 1010	Date: December 30, 2011	Change Request: 7685
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SUBJECT: Instructions to Teaching Hospitals for Reporting the Internal Revenue Service (IRS) Refund of Medical Resident FICA Taxes

Effective Date: January 30, 2012

Implementation Date: January 30, 2012

I. GENERAL INFORMATION

A. 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.

B. Policy: In accordance with TDL-11452, issued on September 2, 2011, cost reports that end prior to April 30, 2011 would still be filed on the Form 2552-96. Cost reports ending on or after April 30, 2011 are to be filed on the Form 2552-10. Contractors shall 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:*

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

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

Contractors shall inform teaching hospitals that the teaching hospitals shall work with their contractors to make any necessary changes within 30 days after issuance of this CR 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. This CR makes an exception to the December 5, 2011 deadline specified in CR 7450 to allow hospitals to submit revisions to the contractors after December 5, 2011, but *only* for the purpose of this CR 7685 to properly report the FICA tax refund. CR 7450 is otherwise unchanged. Under this CR 7685, teaching hospitals must submit the revisions to their FY 2009 cost reports to their contractors by January 30, 2011. Upon receipt of the revisions to the cost report, contractors are not required to perform a review of the revisions relating to the FICA tax refund. Contractors shall submit

revised HDT files to their CMS wage index analyst reflecting the changes resulting from the FICA refund by February 8, 2012. If contractors had previously submitted an HDT file for a particular teaching hospital, but that HDT file did not reflect the changes resulting from the FICA tax refund, the contractors shall submit the HDT file by February 8, 2012 to their CMS wage index analyst again, to ensure that CMS has received the file with the latest FICA tax refund revisions. However, if more time is needed, CMS will accept revisions to HDT files by no later than April 11, 2012, in accordance with the FY 2013 Wage Index Timetable.

There are 2 possible circumstances under which the contractor shall be required to review the changes the teaching hospital submitted regarding the FICA tax refund. First, as explained in TDL-11482, dated September 29, 2011, CMS conducts its own review of the wage data and flags hospitals that fail certain edits, some of which are the same as the edit thresholds specified in the desk review program. Approximately four times during the FY, FIs and A/B MACs shall receive an e-mail notification from their CMS wage index analyst requesting explanations as to why hospitals failed particular edits. At each time, the FIs and A/B MACs shall review their desk review findings to determine the cause of the edit failure, provide an explanation of the edit failure and/or correct the edit failure, and submit a revised HDT file or occupational mix spreadsheet, as applicable to the CMS wage index analyst. Under this CR 7685, if CMS finds that a hospital fails the edit relating to Wage-related Costs on line 13 of Worksheet S-3, Part II, the contractor shall determine if the hospital is a teaching hospital. If so, the contractor shall perform a second desk review of that teaching hospital’s wage-related costs, focusing on any revisions the provider made related to the FICA tax refund, to determine if the changes relating to the FICA tax refund caused the hospital to fail the wage-related cost edit. As part of the normal editing procedures, the contractor shall take steps to adjust the teaching hospital’s wage-related costs accordingly.

The second circumstance under which the contractor would be required to review the changes relating to the FICA tax refund is for a provider appeal. If under normal appeals procedures, the teaching hospital appeals any adjustment the contractor may have made to the teaching hospital’s wage-related costs, then, as part of reviewing the teaching hospital’s appeal, the contractor shall also perform a second desk review of that teaching hospital’s wage-related costs, focusing on any revisions the provider made related to the FICA tax refund, and make any adjustments as appropriate.

II. BUSINESS REQUIREMENTS TABLE

Use “Shall” to denote a mandatory requirement

Number	Requirement	Responsibility (place an “X” in each applicable column)									
		A / B M A C	D M E M A C	F I I E R	C A R R I E R	R H H R I	Shared-System Maintainers				OTHER
					F I S S	M C S	V M S	C W F			
7685.1	Using the policy in this CR, contractors shall inform teaching hospitals of the proper way to report the FICA refund for medical residents on the Medicare cost report.	X		X							
7685.2	Within 1 week of release of this CR, contractors shall inform teaching hospitals that the teaching hospitals shall	X		X							

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B M A C	D M E M A C	F I I E R	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
					F I S S	M C S	V M S	C W F			
	work with their contractors to make any necessary changes within 30 days after issuance of this CR to their FY 2009 cost reports to be used in the FY 2013 wage index.										
7685.3	Contractors shall submit revised HDT files to their CMS wage index analyst reflecting the changes due to the FICA refund by February 8, 2012.	X		X							
7685.4	If contractors had previously submitted an HDT file for a particular teaching hospital, but that HDT file did not reflect the changes resulting from the FICA tax refund, the contractors shall submit the HDT file by February 8, 2012 to their CMS wage index analyst again, to ensure that CMS has received the file with the latest FICA tax refund revisions. However, if more time is needed, CMS will accept revisions to HDT files by no later than April 11, 2012, in accordance with the FY 2013 Wage Index Timetable.	X		X							
7685.5	If CMS finds that a hospital fails the edit relating to Wage-related Costs on line 13 of Worksheet S-3, Part II, the contractor shall determine if the hospital is a teaching hospital. If so, the contractor shall perform a second desk review of that teaching hospital's wage-related costs, focusing on any revisions the provider made related to the FICA tax refund, to determine if the changes relating to the FICA tax refund caused the hospital to fail the wage-related cost edit. As part of the normal editing procedures, the contractor shall take steps to adjust the teaching hospital's wage-related costs accordingly.	X		X							
7685.6	If under normal appeals procedures, the teaching hospital appeals any adjustment the contractor may have made to the teaching hospital's wage-related costs, then, as part of reviewing the teaching hospital's appeal, the contractor shall also perform a second desk review of that teaching hospital's wage-related costs, focusing on any revisions the provider made related to the FICA tax refund, and make any adjustments as appropriate.	X		X							

III. PROVIDER EDUCATION TABLE

Number	Requirement	Responsibility (place an "X" in each applicable column)									
		A / B	D M E	F I	C A R R I E R	R H H I	Shared-System Maintainers				OTHER
							F I S S	M C S	V M S	C W F	
7685.7	<p>A provider education article related to this instruction will be available at http://www.cms.hhs.gov/MLNMattersArticles/ shortly after the CR is released. You will receive notification of the article release via the established "MLN Matters" listserv.</p> <p>Contractors shall post this article, or a direct link to this article, on their Web site and include information about it in a listserv message within one week of the availability of the provider education article. In addition, the provider education article shall be included in your next regularly scheduled bulletin. Contractors are free to supplement MLN Matters articles with localized information that would benefit their provider community in billing and administering the Medicare program correctly.</p>	X		X							

IV. SUPPORTING INFORMATION

Section A: For any recommendations and supporting information associated with listed requirements, use the box below:

Use "Should" to denote a recommendation.

X-Ref Requirement Number	Recommendations or other supporting information:

Section B: For all other recommendations and supporting information, use this space: N/A

V. CONTACTS

Pre-Implementation Contact(s): Miechal Lefkowitz (410) 786-5316, Michael Treitel (410) 786-4552

Post-Implementation Contact(s): Contact your Contracting Officer's Technical Representative (COTR) or Contractor Manager, as applicable.

VI. FUNDING

Section A: For Fiscal Intermediaries (FIs), Regional Home Health Intermediaries (RHHIs), and/or Carriers:

No additional funding will be provided by CMS; contractor activities are to be carried out within their operating budgets.

Section B: *For Medicare Administrative Contractors (MACs)*, include the following statement:

The Medicare Administrative Contractor is hereby advised that this constitutes technical direction as defined in your contract. CMS does not construe this as a change to the MAC Statement of Work. The contractor is not obligated to incur costs in excess of the amounts allotted in your contract unless and until specifically authorized by the Contracting Officer. If the contractor considers anything provided, as described above, to be outside the current scope of work, the contractor shall withhold performance on the part(s) in question and immediately notify the Contracting Officer, in writing or by e-mail, and request formal directions regarding continued performance requirements.