Medicare

Provider Reimbursement Manual Part 1, Chapter 9, Compensation of Owners

Department of Health & Human Services (DHHS)

Centers for Medicare & Medicaid Services (CMS)

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HEADER SECTION NUMBERS	PAGES TO INSERT	PAGES TO DELETE
906.3 – 906.4	9-7 - 9-8 (2 pp.)	9-7 - 9-8 (2 pp.)

CLARIFIED/UPDATED MATERIAL--*EFFECTIVE DATE:* The inflation factors are applied on a calendar year basis.

Section 905.6, Inflation Factor, provides for calendar year (CY) inflation factors to update previous years' reasonable compensation ranges. The factor is from the cost category Professional Fees: Labor Related in the CMS Prospective Payment System Hospital Input Price Index. The data in the Input Price Index is taken from actual data for the most recent year from the Employment Cost Index (ECI) for Professional and Related Services published by the Bureau of Labor Statistics. The data for years prior to 2006 was from the ECI for Professional and Technical Workers. In this transmittal, the factor for CY 2012 has been added and the factor for CY 2002 has been deleted. The factors are applied on a calendar year basis

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

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905.6 Inflation Factor.

Contractors apply an inflation factor to update ranges of reasonable compensation determined for previous years. The CMS furnishes an annual calendar year (CY) inflation factor for this purpose. Following are the CY factors for recent years:

2003 - 3.4%; 2004 - 4.3%**;** 2005 - 3.7%; 2006 - 3.4%; 2007 - 3.7%; 2008 - 3.0%; 2009 - 1.7%; 2010 - 1.5%; 2011 - 2.0%*; 2012 - 2.0%*

906. TYPES OF COMPENSATION - CORPORATIONS

As indicated in §902.2, compensation for the necessary services of a stockholder-employee or an individual described in §901 (other than sole proprietors and partners) includes:

- Salary amounts paid for managerial, administrative, professional, and other services;
- Amounts paid by the institution for the personal benefit of the owner (see §906.1);
- The costs of assets and services which the owner receives from the institution (see §906.1); and
- Deferred compensation. (See §2140.)

Any payments to an owner in excess of a reasonable level do not constitute compensation or any other allowable cost.

906.1 Other Types of Compensation.--There may be instances in which an owner is receiving compensation in a form that, without close scrutiny, might not be recognized as compensation (e.g., fringe benefits). Compensation to an owner may include (1) supplies and services for the personal use of the owner, (2) special merchandise ordered from wholesalers for the owner's personal use, (3) wages of a domestic or other employee who works in the home of the owner, (4) personal use of a car owned by the business, (5) personal insurance premiums paid for the owner, and (6) other fringe benefits as described in §2144.

Any of the above payments must be included in the owner's total compensation to determine its reasonableness when such payments meet the requirements for being categorized as fringe benefits under the definition given in §2144.1. If the requirements of that section are not met, these types of payments cannot be considered compensation.

906.2 Subchapter S Corporation.--Under Federal income tax law, certain corporations can elect to be treated for tax purposes as a partnership. This election, however, has no effect on reimbursement under the Medicare program, and an owner of a Subchapter S corporation is not considered a partner for purposes of this principle.

906.3 Director Fees and Consultant Fees.--All payments by a provider to an owner which are claimed as an allowable cost are included in the owner's total compensation for purposes of determining the reasonableness of the cost claimed. This includes fees received by an owner, regardless of the label placed on them, such as consultant or director fees. The determination as to the reasonableness of such compensation is made by comparing it with amounts paid by comparable institutions for comparable services performed by their employees, rather than by considering the amounts that outside consultants receive.

906.4 Unpaid Compensation.--See §2146.2B.

General.--The compensation of stockholder-employees and individuals described in §901 (other than sole proprietors and partners) is included for a cost reporting period if earned within the period, even if not paid until after the close of the period. However, payment must be made (whether by check or other negotiable instrument, cash or legal transfer of assets such as stocks, bonds, real property, etc.) within 75 days after the close of the period. Where payment is made by check or other negotiable instrument (e.g., a promissory note), these forms of payment must be liquidated through an actual transfer of the provider's assets within 75 days after the close of the period in order to meet the requirements of this section. If payment, including the liquidation of negotiable instruments, is not made within the cost reporting period, or within 75 days thereafter, the unpaid compensation is not includable in allowable costs either in the period when earned or in the period when actually paid.

907. COMPENSATION-SOLE PROPRIETORSHIPS AND PARTNERSHIPS

A. General.--The allowance of compensation for sole proprietors and partners is the value of the services rendered by the owner. Such an amount may or may not be represented as actual payments made to the owner. There is no direct relationship between the compensation allowance of the owner and the amount of operating profit (or loss) of the facility.

In determining the allowance, the contractor is responding to a claim for the value of the services of the owner. That is, the institution will include in its statement of reimbursable cost an allowance for the value of the owner's services and the contractor evaluates the reasonableness of this claim by applying the criteria in this chapter.

B. Actual Payments Made.--Where a provider has claimed as some other cost (for example, see § 906.1) an amount paid to a sole proprietor or partner, such amount is combined with the allowance claimed by the provider for the owner's services. This total is then used for determining the reasonableness of the compensation allowance claimed.

C. Other Considerations.--Since the compensation allowance for sole proprietors and partners is dependent upon the value of the necessary services rendered, no allowance is granted where such services are not actually rendered. This is true even if an owner is receiving payments from the provider. Therefore, although a partnership agreement might provide for retired partners to continue to receive a share of the partnership profits even though they are not rendering any services, such payments are not considered allowable costs under the program.

D. Corporation is Partner.--Where a corporation is a partner in a participating provider, the allowance of compensation for the services of stockholder employees of the corporation is limited to the actual remuneration paid. In contrast to sole proprietors and partners, these individuals do receive actual compensation for their services, separate and apart from any distribution of profits made to them by virtue of their ownership interest in the corporation. The compensation paid by the corporation is subject to the test of reasonableness in evaluating the partnership's claimed allowance. Further, since the corporation is considered related to the provider within the meaning of Chapter 10, Cost to Related Organizations, the provider also cannot claim amounts for services performed by other employees of the corporation which are in excess of the actual remuneration paid.