Medicare

Provider Reimbursement Manual
Part 1- Chapter 7, Value of Services of Nonpaid Workers

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

Transmittal 459 **Date: December 13, 2013**

HEADER SECTION NUMBERS	PAGES TO INSERT	PAGES TO DELETE
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704.2 - 707.2	7-3 - 7-8 (6 pp.)	7-3 - 7-9 (9 pp.)

CLARIFIED/UPDATED MATERIAL--*EFFECTIVE DATE: NOT APPLICABLE*

UPDATED MATERIAL AND/OR PROVISIONS:

This transmittal communicates material added to conform to the current regulations, revises terminology to reflect current usage, revises text to clarify its meaning or to eliminate obsolete policy, and adds an introduction clarifying that the policies in the manual apply to providers in completing the Medicare cost report.

Section 700, Principle, is revised to correct typographical inaccuracies and replace 'institutions' with 'providers.'
Section 704.1, Performance in Positions Customarily Held by Full-Time Employees, on a Regularly Scheduled Basis, is revised to correct grammatical inaccuracies.
Section 704.2, Performance in Positions Necessary for Normal Patient Care and Operation of the Provider, is revised to correct typographical and grammatical inaccuracies, replace 'institutions' with 'providers,' reflect the current name of the American Red Cross and remove redundant language (also appearing in section 700) regarding bona fide payments to an organization of nonpaid workers.
Section 704.3, Value of Services, is revised to correct grammatical inaccuracies and reflect clarifications regarding the non-recognition of excess hours worked by a nonpaid worker and costs incurred for the imputed value of a nonpaid worker.
Section 704.5, Members of Organizations Having Arrangements with Provider, is updated to require necessary documentation in accordance with 42 CFR 413.20.
Section 704.6, Direct Remuneration, is revised to clarify that the policy does not apply to workers that receive any amount of direct remuneration.
Section 704.8, Identification in Provider Records, is updated to require necessary documentation in accordance with 42 CFR 413.20.
Section 706, Computation for Determining Value of Services-Example, is removed because the example contained therein added complexity not encompassed by the preceding sections of the chapter.
Section 707.1, Determining Nonallowable Costs of Nonpaid Worker-General, is revised to reflect clarifications the provider must demonstrate to the contractor to be permitted to use other bases.
Section 707.2, Analysis As a Means of Determining Nonallowable Costs Applicable to Nonpaid Workers' Cost Center, is revised to correct typographical and grammatical inaccuracies.
Section 707.4, Non-Acceptable Alternatives, is revised to replace 'the Social Security Administration' with 'CMS.'
Section 707.5, Nonpaid Workers' Cost Center, is revised to reflect clarifications regarding the costs chargeable to the nonpaid workers' cost center.

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

CHAPTER 7

VALUE OF SERVICES OF NONPAID WORKERS

Section

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INTRODUCTION--Providers must follow the Medicare principles of reasonable cost reimbursement, including the provisions of this chapter and other chapters in this manual, when completing the Medicare cost report. Home offices must also follow these principles when completing a home office cost statement.

700. PRINCIPLE

Under the Medicare program, the value of services performed by nonpaid workers who work more than 20 hours per week in various types of full-time positions that are normally occupied by paid personnel of providers not operated by or related to religious orders is allowable in reimbursable costs as an operating expense. *The* amounts must be identifiable in the records of the *providers* as a legal obligation. The nonpaid workers must be members of organizations under arrangements with the provider for which such services are rendered without direct remuneration (salaries or wages and gifts) to the nonpaid workers by either organization.

Under this principle a provider may claim as an allowable cost the value of services of nonpaid workers beginning with the first day of its first cost reporting period, provided the conditions of this principle and all the criteria *in* §§ 704ff. are met. A paid Director of Volunteers is includable in the allowable costs of a provider but is not considered under the definition of this principle.

This principle is in accord with the practice of some providers in customarily including a value for the services of certain nonpaid workers in calculating reimbursable costs, e.g., the value of services traditionally provided by Sisters and other members of religious orders under arrangements whereby the provider makes bona fide payment to the organization of nonpaid workers has generally been reimbursed by third parties which pay hospitals on a cost basis.

704. GUIDELINES

704.1 Performance in Positions Customarily Held by Full-Time Employees on a Regular*ly,* Scheduled Basis.--Nonpaid workers must work more than 20 hours per week in various types of full-time positions that are normally occupied by paid personnel of providers not operated by or related to religious orders.

704.2 Performance in Positions Necessary for Normal Patient Care and Operation of the *Provider*.--Services must be related directly to patient care and operation of the provider. Operations may include administrative positions essential to the provision of patient care such as nursing, *human resources, payroll, accounting,* admitting, *and* switchboard operations. Where the provider would not generally employ individuals to perform the services of the nonpaid workers, the value of the nonpaid work is not an element of cost. For example, services of nonpaid workers in distributing books and magazines to patients, or in serving in a provider canteen, cafeteria or gift shop, are not reimbursable. Services rendered gratis by volunteers such as those affiliated with the American Red Cross, hospital guilds, auxiliaries, and similar organizations are not reimbursable. Such services have traditionally been rendered on a volunteer basis without expectation of any form of reimbursement by the organization through which the service is rendered, or by the person rendering the service. In addition, such services are of the type for which payment has not been made by third parties that reimburse providers on the basis of costs.

Whether or not the nonpaid workers are members of a religious order, the arrangements existing between the organization of nonpaid workers and the provider *is* considered in deciding whether the services rendered by the nonpaid workers are of a kind that have traditionally been furnished to providers on a volunteer basis and traditionally been reimbursed by other third parties. The intent of the program is to follow the usual and customary methods of third parties in compensating for such volunteer services.

704.3 Value of Services.--The amount per individual recognized in reimbursable costs for the imputed value of services of nonpaid workers cannot, in any situation, exceed the amount per individual allowed for paid employees (based on regular working hours - excluding overtime) who perform similar services. Hours worked by the nonpaid worker in excess of the regular working hours of the comparable paid employee cannot be recognized in reimbursable costs even when the paid employee works overtime. Where the services of a nonpaid worker are performed in a position unlike any other full-time position in the provider's organization, the amount allowed in reimbursable costs cannot exceed the amount paid for such services by other providers in the area of similar size, scope of services, and utilization. The value of similar services includes actual salaries paid based on regular hours (excluding overtime hours)~~,~~ and regular rates of pay~~,~~ plus the costs of maintenance, perquisites, and fringe benefits for paid employees. (Examples: maintenance--room and board; perquisites--free uniforms and laundry; fringe benefits--vacations, holidays, sick leave, and discounts below cost on hospital bills and drugs.)

The reasonable costs actually incurred by a provider in furnishing fringe benefits, perquisites, and maintenance to a nonpaid worker (regardless of whether or not any of the same fringe benefits, perquisites, and maintenance are furnished to a paid employee in a similar position) *are includable* as allowable costs in the appropriate cost centers not to exceed the total allowable costs (including salary) for similar services rendered by the paid employee. The total of these costs incurred on behalf of the nonpaid worker is then subtracted from the total allowable costs for similar services rendered by the paid employee (including salary), with any positive difference *(i.e., the additional amount incurred for the paid employee)* being the net imputed value for the nonpaid worker. This net imputed value is allowable to the extent that the provider is under contractual obligation to pay the organization of nonpaid workers *(i.e., is allowable only to the extent the provider actually incurs a cost for the imputed value)*. Any payments made by the organization of nonpaid workers to the provider for the nonpaid workers' maintenance, perquisites, or fringe benefits *are* used as an offset to the total of such costs actually incurred by the provider *(and serve to increase the imputed value for the nonpaid worker)*.

The value of fringe benefits *are* based on those fringe benefits furnished to a paid employee whose hours of work are comparable to those of a nonpaid worker. Where a nonpaid worker's hours are comparable to those of a part-time employee, the value of fringe benefits allowed in establishing the value of the services of the nonpaid worker must be based on the value of fringe benefits to the part-time employee.

Certain costs incurred in the interest of paid employee *are* not normally included in determining the value of the nonpaid workers' services. These costs include social security taxes, *workers'* compensation, *s*tate unemployment insurance, and any other costs stemming from legislative requirements. However, these costs may be included as allowable costs in computing the value of the nonpaid workers' services when the provider actually makes payment to the regulatory agency in the interest of the nonpaid worker.

Payments for nonpaid workers made under a recognized pension plan to either a provider's pension fund or to the organization of nonpaid workers where the payments match the provider's pension costs for a paid employee *are* recognized as an allowable cost. No payments *are* includable in allowable costs for nonpaid workers after the age specified for retirement in the pension plan has been reached.

704.4 Control by Provider.--Nonpaid workers must observe all rules, regulations, and codes of conduct required of regular paid workers of the provider.

704.5 Members of Organizations Having Arrangements with Provider.--Nonpaid workers must be members of an organization of nonpaid workers that has arrangements with the provider for the performance of services by nonpaid workers. Membership in the organization must be substantiated by adequate documentation in the files of the organization of nonpaid workers. A legally enforceable agreement must exist between the provider and the organization of nonpaid workers establishing the obligation to remunerate the organization for services rendered. However, a legally enforceable agreement does not exist where the provider's legal obligation to pay the organization of nonpaid workers is nullified by an offsetting legal obligation by the organization of nonpaid workers to pay or make a contribution to the provider of all or part of the salary liability. The part of the provider's obligation required to be paid by the organization of nonpaid workers *is not allowable*.

A legally enforceable agreement must include the following: the amount applicable to the value of services rendered by nonpaid workers, types of services, the title of each full-time position, number of hours, rates of pay (including salary, fringe benefits, perquisites, and maintenance); the period of time during which services are rendered, the time period in which payment for the services *is to* be made (*in order for the cost of the imputed value of services to be allowable,* payment may not be made later than the end of the provider's cost reporting period following the reporting period during which the services are rendered); and the requirement that a provider must maintain proper records *as set forth* in § 704.8.

The program deems a bona fide payment of the provider's obligation to discharge its liability under the legally enforceable agreement *as* made to the organization of nonpaid workers when the provider makes payment equal to the net imputed value (see § 704.3) in one of the following ways:

A. Makes payment by check or cash to the organization of nonpaid workers.

B. Issues a negotiable instrument (note) to the organization.

C. Legally transfers assets, such as stocks, bonds, real property, etc., to the organization. The amount of payment *is* based on the fair market value of the assets transferred. Such value shall be determined at the time of transfer.

D. Accepts a written statement from the organization of nonpaid workers disclosing that the organization is voluntarily donating to the provider a part or all of the salary liability, makes the proper book entries, and retains in its files documentation to substantiate the donation and its nature.

The organization of nonpaid workers must obtain a tax exempt status from the U.S. Internal Revenue Service*, and the provider must retain documentation to substantiate the same.*

704.6 Direct Remuneration.--Reimbursable costs cannot include any imputed value (i.e., any expenses not actually incurred) for the services of a worker who has received any direct remuneration (salaries, wages, or gifts) from the provider or from the organization of nonpaid workers. *A worker who receives direct remuneration from either organization cannot be considered a nonpaid worker under this principle. However,* reimbursable costs may include an imputed value for the services of a nonpaid worker who has received from the provider remuneration *only* in the form of perquisites and maintenance. The cost of such forms of remuneration which may be included in allowable costs must be used to reduce the imputed value of the services of nonpaid workers.

704.7 Qualifications of Nonpaid Workers.--The qualifications of nonpaid workers must be comparable to the qualifications of paid employees performing identical services. Where services of a nonpaid worker are performed in a position unlike any other full-time position established by the provider, the qualifications must be equivalent to the qualifications for similar services of other providers in the area of similar size, scope of service, and utilization.

704.8 Identification in Provider Records.--A provider must maintain proper records for the reimbursable services performed by nonpaid workers, identifying established full-time positions and rates of pay in a manner equivalent to the identification in the payroll record for a paid employee of the provider. Also, the provider's files must contain a copy of the agreement between the organization of nonpaid workers and the provider, *and documentation of the Federal tax-exempt status of the organization of nonpaid workers*.

The full amount developed, under the terms of the agreement between the organization of nonpaid workers and the provider, for services rendered to the provider by the nonpaid workers must be entered in the provider's accounts even though only a portion may apply to the program.

706. *Reserved*

707. DETERMINING NONALLOWABLE COSTS OF NONPAID WORKERS

707.l General.--The program's cost finding requirements may not, in all cases, result in the appropriate allocation of overhead costs to the nonpaid workers' cost center. Other bases (not utilizing cost finding--see § 707.2) which result in a more accurate allocation may be used for the purpose of determining the costs of nonpaid workers only. *if the provider can furnish adequate auditable documentation that is satisfactory to the contractor.*

707.2 Analysis as a Means of Determining Nonallowable Costs Applicable to Nonpaid Workers' Cost Center.--The intent of cost finding is to approximate as nearly as possible the results that would have been obtained had the provider assigned each specific incident of cost to the cost center(s) in which it was incurred. Cost finding also seeks to avoid the administrative complications and expense of the system through which this could be accomplished. However, if a provider desires to analyze its costs to determine those amounts which apply to nonpaid workers, this is acceptable as a more precise measurement, provided adequate auditable documentation is available to support the results. Arbitrary estimates of such costs in lieu of analysis *are* not acceptable.

Where the provider uses analysis as a means of assigning a cost center's cost to other cost centers or their sub-cost centers, then the analysis should extend to all elements or sub-cost centers of the cost center being analyzed. The cost of certain elements or of certain sub-cost centers may not be directly applicable to the nonpaid workers' cost center but may be applicable to other sub-cost centers within the same cost center and to other cost centers including those that render services to nonpaid workers. Therefore, any allocations of these *other* cost centers or sub-cost centers to the nonpaid workers' cost center must include an appropriate share of any costs already allocated to the cost center being allocated. For example, where a provider uses the "analysis" method for the allocation of the "administrati*ve* and general" cost center, there may be no portion of its sub-cost center, "executive offices," directly applicable to nonpaid workers, but some portion of it may be applicable to one or more of its other sub-cost centers, e.g., "purchasing," as well as the other *cost* centers. Therefore, if "purchasing" is allocated to the nonpaid workers' cost center for services rendered to nonpaid workers, the allocation must include an appropriate share of the cost of the "executive offices" applicable to "purchasing."

If the provider cannot demonstrate that the "analysis" method properly identifies the cost of the *nonpaid workers'* cost center, it must utilize normal cost finding procedures, subject to the usual bases of allocating costs.

707.3 Residual Costs of Cost Centers Which Are Allocated on the Basis of Job Order Costs or Some Other Costing Basis.--Frequently, the cost of a cost center such as "maintenance and repairs" may be allocated to other cost centers to which it renders services on the basis of a "Job Order Cost" system or some other "costing" basis. The attempt may be to allocate directly to other cost centers as accurately as possible all the cost of the cost center. For example, time may be charged at a standard rate which will include the overhead and minor supplies incurred by the "maintenance and repairs" cost center as well as any costs contemplated to be allocated from other cost centers. Materials and supplies ordered especially for a job would be charged separately. Any residual costs not allocated directly to other cost centers would be allocated on the basis of cost allocated directly as just described.

Should a provider not use a "Job Order Cost" system or some other "costing" system, then the minimum requirement would be to allocate to the nonpaid workers' cost center the direct costs of jobs performed only for nonpaid workers (labor and material - similar to or the same as the "Job Order Cost" system) plus an appropriate share of the residual. In all cases, an appropriate share of the residual would include all standby costs plus any other elements of costs not included in the determination of the direct cost of jobs performed only for nonpaid workers.

707.4 Non-Acceptable Alternatives.--Alternative methods for determining the costs of nonpaid workers have been suggested which are not acceptable to *CMS*. The concept of "incremental costs" by which only the additional costs resulting from the extension of services to accommodate nonpaid workers would be considered applicable to the nonpaid workers' cost center cannot be used for Medicare purposes. Nor will the program recognize a substitute for the actual depreciation base of the facilities occupied.

707.5 Nonpaid Workers' Cost Center.--A cost center *is required* for the nonallowable costs of nonpaid workers. *If a provider incurs actual costs for nonpaid workers for fringe benefits, perquisites, maintenance or any other expense in excess of the total allowable costs incurred on behalf of comparable paid employees in similar positions, i.e., salary plus fringe benefits, perquisites, maintenance, the excess costs are chargeable to the nonpaid workers' cost center as nonallowable costs. If a provider incurs actual costs for similar or equal fringe benefits, perquisites, and maintenance for both nonpaid workers and comparable paid workers, such costs are allowable costs and none of these costs are chargeable to the nonpaid workers' cost center.*