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CMS Contractors Disallow Pension Costs in FFY 2012 Wage Index, Finding Pension Plans Overfunded in 2008

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An important deadline is looming in the federal fiscal year (FFY) 2012 wage index review process, and providers with pension plans should take particular note of changes to their allowable pension costs. Some providers were undoubtedly surprised to discover that their intermediaries or Medicare Administrative Contractors (MACs) considered their pension plans to be overfunded at the close of 2008, the worst year for stock market performance since the Great Depression. This is the curious outcome of a change that CMS implemented in March of 2008 with Transmittal 436PR1 [PDF].

Transmittal 436PR1 was ostensibly a clarification that replaced "GAAP terms" with "ERISA terms" in order to prevent confusion. However, the transmittal has a much more significant effect than its preamble language suggests. The key change implemented by the transmittal is the addition of the term "surplus assets" to section 2142.5A of the Provider Reimbursement Manual. The term "surplus assets" is defined as the amount by which the actuarial value of a plan's assets exceeds the actuarial value of its liabilities. If a plan is deemed by CMS to have surplus assets, then many FIs/MACs will disallow pension costs – even costs that were timely funded by the provider – for purposes of calculating the wage index.

Even before the transmittal, there were legitimate objections to the application of the manual provisions in question to the wage index calculation. Many of these objections have been raised in appeals currently pending before the Provider Reimbursement Review Board.

The FFY 2012 wage index calculations demonstrate that Transmittal 436PR1 has rendered the manual useless even for the limited purpose of reasonable cost reimbursement. FIs/MACs have used suspect numbers in order to determine that providers have a deemed surplus, and they have ignored providers' ERISA obligations to fund their pension plans (obligations that have been significantly tightened under the Pension Protection Act of 2006 [PDF]). As a result, providers are now being squeezed between ERISA-mandated contributions on one hand, and CMS's determination that pension plans are overfunded on the other. Thus, many providers that comply with ERISA mandates are not seeing their undeniable pension costs reflected in the wage index.

Ober|Kaler's Comments

Providers that are questioning their FFY 2012 wage index calculation should take an extra look at the FI/MAC treatment of pension costs. If legitimate pension costs were disallowed, it is important to register an appeal to CMS. Under the FFY 2012 wage index development timetable [PDF], providers must send an appeal from the FI/MAC calculation of their wage index to CMS by April 20. This is the most recent in a series of deadlines that providers must meet in order to preserve an appeal of the FFY 2012 wage index, so affected providers that have not already requested relief from the FI/MAC may not be able to preserve the issue at this point.