

II. Summary of Proposed Rule

On October 9, 1991, we published a proposed rule (56 FR 50834) to revise § 413.24 by adding a new paragraph to describe the conditions under which certain accrued costs would be recognized for purposes of Medicare payment. Our intention in specifying these conditions was not to change policy. Rather, it was to incorporate into the regulations our longstanding policy on the timely liquidation of liabilities, as contained in sections 704.3, 704.5, 906.4, 2140, 2144.8, 2144.9, 2146, 2162.9, and 2305 of the Provider Reimbursement Manual. Under this longstanding policy, accrued costs are included in Medicare allowable costs in the year of accrual, provided the related liabilities are liquidated timely, in accordance with the liquidation requirements for the particular type of accrued cost. If the liabilities are not liquidated timely, an adjustment is required to disallow the costs. Generally, the adjustment is made in the year of accrual except for vacation and all-inclusive paid days off, in which case the adjustment generally is made in the year in which the payment for the accrued vacation or all-inclusive paid days off should have been made. (The Provider Reimbursement Manual provides additional instructions, not incorporated in the regulations, regarding later recognition, if any, with respect to costs associated with liabilities not liquidated in accordance with the liquidation of liabilities requirements.)

As we indicated in the proposed rule, we believe this clarification will significantly contribute to the uniform application of our policies concerning recognizing accrued costs for Medicare payment and will preclude misinterpretation of the policies in the future. A change to the regulations is necessary to ensure that providers are paid for their actual costs as intended under section 1861(v)(1)(A) of the Act, and 42 CFR 413.9(c)(3), which state that the reasonable cost basis of payment contemplates that providers of services are to be paid the actual costs of providing quality care.

Accordingly, in order for accrued costs to be recognized for Medicare payment, we proposed that the following requirements be met with respect to the liquidation of liabilities:

- In a new § 413.24(c)(3)(i), we proposed that a short-term liability generally must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred, with an exception in cases in which the intermediary is furnished, within the 1-

year time limit, sufficient written justification, based upon documented evidence, for nonpayment. An extension not to exceed 3 years beyond the end of the cost reporting year in which the liability was incurred could be granted for good cause.

- In a new § 413.24(c)(3)(ii), we proposed that if the provider's vacation policy is consistent for all employees, we would require that payment be made within the period provided for by that policy. If the provider's vacation policy is not consistent for all employees, we would require that payment be made within 2 years after the close of the cost reporting period in which the liability is accrued. Under this paragraph, we also proposed that the policy applicable to vacation pay also would apply to all-inclusive paid days off (for example, total time off in a given period for unspecified occasions, including illness, vacations, and family bereavement).

- In a new § 413.24(c)(3)(iii), we proposed that if sick pay is vested and funded in a deferred compensation plan, liabilities related to the contributions to the fund would be liquidated in accordance with the policy stated above for a short-term liability. However, if the sick leave plan grants employees the right to demand cash payment for unused sick leave at the end of each year, we proposed that the sick pay be includable in allowable costs, without funding, in the cost reporting period when it is earned.

- In a new § 413.24(c)(3)(iv), with regard to compensation of owners other than sole proprietors and partners (that is, employees, officers and directors owning stock in closely-held corporations or with a substantial ownership or equity in publicly-traded corporations, and certain employees of trusts), we proposed that any related accrued liability be liquidated within 75 days after the close of the cost reporting period in which the liability occurs.

- In a new § 413.24(c)(3)(v), we proposed that obligations incurred under a legally-enforceable agreement to remunerate an organization of nonpaid workers be discharged no later than the end of the provider's cost reporting period following the period in which the services were furnished.

- In a new § 413.24(c)(3)(vi), we proposed that the employer's share of FICA and other payroll taxes that the provider becomes obligated to remit to governmental agencies may be included in allowable costs only during the cost reporting period in which payment, upon which the tax is based, is actually made to the employee. For example, no legal obligation exists for the provider-employer to pay FICA taxes until such

time as the employee is paid and the specific amount of payroll liability is known.

- In a new § 413.24(c)(3)(vii), we proposed that accrued liabilities related to contributions to a funded deferred compensation plan must be liquidated in accordance with the policy stated above in § 413.24(c)(3)(i) for a short-term liability. However, if the plan is not funded, reasonable provider payments made to employees under deferred compensation plans would be considered an allowable cost only during the cost reporting period in which actual payment is made to the participating employee.

- In a new § 413.24(c)(3)(viii), we proposed that accrued liability related to contributions under a self-insurance program that are systematically made to a funding agency, and that cover malpractice and comprehensive general liability, unemployment compensation, workers' compensation insurance losses, or employee health benefits, must be liquidated within 75 days after the close of the cost reporting period.

III. Discussion of Public Comments

In response to the October 9, 1991 proposed rule, we received 17 timely items of correspondence. The comments were submitted by eight providers or provider associations, two trade associations, five consultants or accounting firms, one State, and one law firm. Our responses are presented below:

A. General

Comment: Several commenters raised questions regarding the relationship between Medicare payment policy and generally accepted accounting principles (GAAP). Some commenters believe that the proposed rule conflicts with GAAP and that HCFA is bound to use GAAP.

Response: The regulations at § 413.24(a) establish the general principle that cost data be based on the accrual basis of accounting, a concept also integral to GAAP. However, regarding application of the accrual basis of accounting, Medicare payment policy does not always follow GAAP exactly because Medicare payment policy and GAAP have different objectives. Medicare's objective for cost payment purposes is to pay providers appropriately for the reasonable and proper cost of furnishing services to Medicare beneficiaries in a specific fiscal period. On the other hand, the primary goal of GAAP is the full and proper presentation of accounting data through statements and reports.