COSMOS
Navigate the Compliance Universe

42 C.F.R. § 413.99

Qualified and Non-Qualified Deferred Compensation Plans.

(a) *Statutory basis, scope, and definitions*—(1) *Basis.* All payments to providers of services must be based on the reasonable cost of services covered under Title XVIII in accordance with section 1861(v) of the Act and the regulations in this part.

(2) *Scope.* This section and § 413.100(c)(2)(vii) apply to Medicare's treatment of the costs incurred for Qualified and Non-Qualified Deferred Compensation Plans.

(3) *Definitions.* As used in this section the following definitions apply:

Deferred Compensation means remuneration currently earned by an employee that is not received until a subsequent period, usually after retirement.

Employee Retirement Income Security Act of 1974 (ERISA) is a Federal law that sets standards of protection for individuals in most voluntarily established, private-sector retirement plans. The law is set forth in Title 29, Chapter 18 of the U.S. Code.

Funded Plan means a plan in which assets have been irrevocably and unconditionally set aside with a third party for the payment of plan benefits (for example, in a trust or escrow account), and those assets are beyond the reach of the employer or its general creditors.

Non-Qualified Deferred Compensation Plan (NQDC) means an elective or non-elective plan, agreement, method, or arrangement between an employer and an employee to pay the employee compensation in the future. In comparison with qualified plans, nonqualified plans do not provide employers and employees with the tax benefits associated with qualified plans because NQDC plans do not satisfy all the requirements of 26 U.S.C. 401(a).

Non-Qualified Defined Benefit Plan (NQDB) means a type of NQDC that is established and maintained by the employer primarily to provide definitely determinable benefits to its employees usually over a period of years, or for life, after retirement. Such benefits are generally measured by, and based on, such factors as age of employees, years of service, and compensation received by the employees.

Pension Benefit Guaranty Corporation (PBGC) is a Federal agency created by ERISA to protect benefits in private-sector QDBP plans described in section 3(35) of ERISA.

Qualified Defined Benefit Plan (QDBP) means a type of Qualified Deferred Compensation Plan that is established and maintained by the employer primarily to provide definitely determinable benefits to its employees usually over a period of years, or for life, after retirement. Such benefits are generally measured by, and based on, such factors as age of employees, years of service, and compensation received by the employees. A QDBP meets the applicable requirements of ERISA, as amended, and the requirements for a QDBP under 26 U.S.C. 401(a). Under a qualified plan, employers are entitled to deduct expenses in the year the employer makes contributions even though employees will not recognize income until the receipt of distributions.

Qualified Defined Contribution or Individual Account Plan (QDCP) means a type of Deferred Compensation Plan in which the employee, the employer, or both, contribute to an employee's individual account under the plan. The amount in the account at distribution includes the contributions and investment gains or losses, minus any investment and administrative fees. The value of the account changes based on contributions and the value and performance of the investments. A QDCP meets the applicable requirements of ERISA, as amended, and the requirements set forth in 26 U.S.C. 401(a), and, if applicable 26 U.S.C. 401(k).

Unfunded Plan means a plan in which benefits are supported by assets that have not been set aside (that is, a "pay as you go" plan), or by assets that have been set aside, but remain subject to the claims of the employer's general creditors.

(b) *Principle requirements*—(1) *General.* Deferred Compensation contributions or payments must be made by a provider of services, or an employee of the provider of services, to a Qualified or Non-Qualified Deferred Compensation Plan, established and maintained by the provider of services to provide retirement income to employees or to result in the deferral of income by employees for periods extending to the termination of covered employment or beyond. Contributions or payments made by a provider of services for the benefit of its employees to a Qualified or Non-Qualified Deferred Compensation Plan are allowable, when, and to the extent that, such costs are actually incurred by the provider of services and found to be reasonable and necessary under the principles of reasonable cost.

(2) *Deferred Compensation for provider-based physicians services in a hospital or SNF.* Costs incurred by a hospital or SNF to fund a Qualified or Non-Qualified Deferred Compensation Plan for a provider-based physician must meet the following requirements to be allowable under the program: