Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NORIDIAN HEALTHCARE SOLUTIONS, LLC, DID NOT CLAIM ALLOWABLE MEDICARE NONQUALIFIED COSTS THROUGH ITS INCURRED COST PROPOSALS

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A-07-19-00573

Office of Inspector General

https://oig.hhs.gov/

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief
Date: November 2019
Report No. A-07-19-00573

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

Noridian Healthcare Solutions, LLC, Did Not Claim Allowable Medicare Nonqualified Costs Through Its Incurred Cost Proposals

Why OIG Did This Audit

The Centers for Medicare & Medicaid Services (CMS) reimburses a portion of its contractors' nonqualified plan (nonqualified) costs.

At CMS's request, the HHS, OIG, Office of Audit Services, Region VII pension audit team reviews the cost elements related to nonqualified plans and any other pension-related cost elements claimed by Medicare contractors through Incurred Cost Proposals (ICPs).

Previous OIG audits found that Medicare contractors did not always comply with Federal requirements when claiming nonqualified costs for Medicare reimbursement.

Our objective was to determine whether the calendar years (CYs) 2009 through 2013 nonqualified costs that Noridian Healthcare Solutions, LLC (NHS), claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

How OIG Did This Audit

We reviewed $1.7 million of nonqualified costs that NHS claimed for Medicare reimbursement on its ICPs for CYs 2009 through 2013.

What OIG Found

NHS claimed CYs 2009 through 2013 nonqualified costs of $1.7 million for Medicare reimbursement; however, we determined that the allowable nonqualified costs during this period were $3.2 million. The difference, $1.5 million, represented allowable Medicare nonqualified costs that NHS did not claim on its ICPs for CYs 2009 through 2013. NHS did not claim these allowable Medicare nonqualified costs primarily because it did not calculate these costs in accordance with Federal regulations and the Medicare contracts' requirements.

What OIG Recommends and Auditee Comments

We recommend that NHS work with CMS to ensure that its final settlement of contract costs reflects an increase in Medicare nonqualified costs of $1.5 million for CYs 2009 through 2013.

NHS concurred with our recommendation. NHS stated that it would ensure that its final settlement of contract costs reflected an increase in Medicare nonqualified costs of $1.5 million for CYs 2009 through 2013.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Centers for Medicare & Medicaid Services (CMS) reimburses a portion of its contractors' nonqualified plan (nonqualified) costs. In claiming nonqualified costs, contractors must follow cost reimbursement principles contained in the Federal Acquisition Regulation (FAR), the Cost Accounting Standards (CAS), and the Medicare contracts. Previous Office of Inspector General (OIG) audits found that Medicare contractors did not always comply with Federal requirements when claiming nonqualified costs for Medicare reimbursement.

At CMS's request, the OIG, Office of Audit Services, Region VII pension audit team reviews the cost elements related to qualified defined-benefit, nonqualified defined-benefit, postretirement benefit, and any other pension-related cost elements claimed by Medicare fiscal intermediaries and carrier contractors and Medicare administrative contractors (MACs) through Final Administrative Cost Proposals (FACPs), Incurred Cost Proposals (ICPs), or both.

For this audit, we focused on one Medicare contractor, Noridian Healthcare Solutions, LLC (NHS). In particular, we examined the nonqualified costs that NHS claimed for Medicare reimbursement, under the provisions of its MAC contracts and CAS- and FAR-covered contracts, and reported on its ICPs.

OBJECTIVE

Our objective was to determine whether the calendar years (CYs) 2009 through 2013 nonqualified costs that NHS claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

BACKGROUND

Noridian Healthcare Solutions, LLC, and Medicare

NHS is a subsidiary of Blue Cross Blue Shield of North Dakota (BCBS North Dakota) (formerly Noridian Mutual Insurance Company), whose home office is in Fargo, North Dakota. NHS administered Medicare Part A fiscal intermediary, Medicare Part B carrier, and Medicare Durable Medical Equipment (DME) contract operations under cost reimbursement contracts with CMS until its contractual relationships ended on August 10, 2013, February 24, 2012, and March 31, 2011, respectively.

With the implementation of Medicare contracting reform,[1] NHS continued to perform Medicare work after being awarded the MAC contracts for Medicare DME Jurisdiction D[2] and Medicare Parts A and B Jurisdiction 3,[3] effective June 30, 2006, and July 31, 2006, respectively. Currently, NHS is the Medicare Parts A and B MAC contractor for Jurisdictions E[4] and F[5] and the Medicare DME contractor for Jurisdictions A[6] and D.[7] During our audit period, NHS administered both fiscal intermediary and carrier contracts and MAC-related contracts.

Nonqualified Plan

BCBS North Dakota sponsors a nonqualified plan called the Supplemental Retirement Program for Certain Employees of Blue Cross Blue Shield of North Dakota. The purpose of this plan is to provide deferred compensation for a select group of management or highly compensated employees within the meaning of the Employee Retirement Income Security Act of 1974. NHS claimed nonqualified costs using pay-as-you-go basis of accounting.

This report addresses the allowable nonqualified costs claimed by NHS under the provisions of its MAC contracts and CAS- and FAR-covered contracts. We are addressing the Supplemental Executive Retirement Plan costs that NHS claimed under the provisions of its fiscal intermediary and carrier contracts in a separate audit (A-07-19-00574; Appendix A).

The disclosure statement that NHS submits to CMS states that NHS uses pooled cost accounting. Medicare contractors use pooled cost accounting to calculate the indirect cost

[1] Section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. No. 108-173, required CMS to transfer the functions of fiscal intermediaries and carriers to MACs between October 2005 and October 2011. Most, but not all, of the MACs are fully operational; for jurisdictions where the MACs are not fully operational, the fiscal intermediaries and carriers continue to process claims. For purposes of this report, the term "Medicare contractor" means the fiscal intermediary, carrier, or MAC, whichever is applicable.

[2] The original Medicare DME Jurisdiction D included the States of Alaska, Arizona, California, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and the U.S. Territories of American Samoa, Guam, and the Northern Mariana Islands.

[3] The original Medicare Parts A and B Jurisdiction 3 included the States of Arizona, Montana, North Dakota, South Dakota, Utah, and Wyoming.

[4] Medicare Parts A and B Jurisdiction E includes the States of California, Hawaii, and Nevada, and the U.S. Territories of American Samoa, Guam, and the Northern Mariana Islands.

[5] Medicare Parts A and B Jurisdiction F includes the States of Alaska, Arizona, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

[6] Medicare DME Jurisdiction A includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia.

[7] Medicare DME Jurisdiction D includes the States of Alaska, Arizona, California, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and the U.S. Territories of American Samoa, Guam, and the Northern Mariana Islands.

rates (whose computations include pension, postretirement benefit, and Supplemental Executive Retirement Plan costs) that they submit on their ICPs. Medicare contractors use the indirect cost rates to calculate the contract costs that they report on their ICPs. In turn, CMS uses these indirect cost rates in determining the final indirect cost rates for each contract.[8]

Accounting Methodologies

The Medicare contracts require NHS to calculate nonqualified costs in accordance with the FAR and CAS 412 and 413. The FAR and the CAS require that the costs for nonqualified plans be measured under either the accrual method or the pay-as-you-go method. Under the accrual method, allowable costs are based on the annual contributions that the employer deposits into its trust fund. For nonqualified plans that are not funded through the use of a funding agency, costs are to be accounted for under the pay-as-you-go method. This method is based on the actual benefits paid to participants, which are comprised of lump-sum payments and annuity payments.

Incurred Cost Proposal Audits

At CMS's request, the Defense Contracting Audit Agency (DCAA) and CliftonLarsonAllen LLP (CLA) performed audits of the ICPs that NHS submitted for CYs 2009 through 2013. The objectives of the DCAA and CLA audits were to determine whether costs were allowable in accordance with the FAR, the U.S. Department of Health and Human Services Acquisition Regulation, and the CAS.

For our current audit, we relied on the DCAA and CLA audit findings and recommendations when computing the allowable nonqualified costs discussed in this report.

We incorporated the results of the DCAA and CLA audits into our computations of the audited indirect cost rates, and ultimately the nonqualified costs claimed, for the contracts subject to the FAR. CMS will use our report on allowable nonqualified costs, as well as the DCAA and CLA audit reports, to determine the final indirect cost rates and the total allowable contract costs for NHS for CYs 2009 through 2013. The cognizant Contracting Officer will perform a final settlement with the contractor to determine the final indirect cost rates. These rates ultimately determine the final costs of each contract.[9]

[8] For each CY, each Medicare contractor submits to CMS an ICP that reports the Medicare direct and indirect costs that the contractor incurred during that year. The ICP and supporting data provide the basis for the CMS Contracting Officer and the Medicare contractor to determine the final billing rates for allowable Medicare costs.

[9] In accordance with FAR 42.705-1(b)(5)(ii) and FAR 42.705-1(b)(5)(iii)(B), the cognizant Contracting Officer shall "[p]repare a written indirect cost rate agreement conforming to the requirements of the contracts" and perform a "[r]econciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement," respectively.

HOW WE CONDUCTED THIS AUDIT

We reviewed $1,664,133 of nonqualified costs claimed by NHS for Medicare reimbursement on its ICPs for CYs 2009 through 2013.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

Appendix A contains details of our audit scope and methodology.

FINDING

NHS claimed CYs 2009 through 2013 nonqualified costs of $1,664,133 for Medicare reimbursement; however, we determined that the allowable nonqualified costs during this period were $3,180,191. The difference, $1,516,058, represented allowable Medicare nonqualified costs that NHS did not claim on its ICPs for CYs 2009 through 2013. NHS did not claim these allowable Medicare nonqualified costs primarily because it did not calculate these costs in accordance with Federal regulations and the Medicare contracts' requirements.

ALLOCABLE MEDICARE NONQUALIFIED COSTS UNDERSTATED

During this audit, we calculated the allocable nonqualified costs for CYs 2009 through 2015 in accordance with Federal requirements.[10] We determined that the allocable nonqualified costs for CYs 2009 through 2015 totaled $4,671,812.[11] NHS reported that its allocable nonqualified costs, as identified in its actuarial computations, totaled $3,558,359. Therefore, NHS understated the allocable nonqualified costs by $1,113,453. This understatement occurred because NHS incorrectly calculated assignable nonqualified costs. More specifically, this underclaim occurred primarily because of differences in the accounting methodology used to calculate the nonqualified costs for Medicare reimbursement.

Table 1 on the following page shows the differences between the allocable nonqualified costs that we determined for CYs 2009 through 2015 and the nonqualified costs that NHS calculated for the same time period.

[10] For the current audit, we incorporated these allocable nonqualified costs into the indirect cost rates to determine the allowable nonqualified costs.

[11] We incorporated the results of the ICP audits into our computation of the allowable nonqualified costs. Because the ICP audits for CYs 2014 and 2015 have not been issued, our report opines only on the claimed nonqualified costs for CYs 2009 through 2013.

Table 1: Allocable Nonqualified Costs

CY	Allocable Per Audit	Per NHS	Difference
2009	$617,899	$132,402	$485,497
2010	2,723,762	381,374	2,342,388
2011	55,565	509,212	(453,648)
2012	1,075,285	555,876	519,409
2013	135,309	607,108	(471,799)
2014	6,512	628,486	(621,975)
2015	57,483	743,901	(686,419)
Total	**$4,671,812**	**$3,558,359**	**$1,113,453**

CALCULATION OF ALLOWABLE NONQUALIFIED COSTS

We used the allocable nonqualified costs to adjust the indirect cost rates (i.e., the fringe benefit and general and administrative rates) to determine the allowable nonqualified costs for Medicare reimbursement for CYs 2009 through 2013.

NHS claimed Medicare nonqualified costs of $1,664,133 on its ICPs for CYs 2009 through 2013. After incorporating the results of the ICP audits and our adjustments to the indirect cost rates, we determined that the allowable nonqualified costs for CYs 2009 through 2013 were $3,180,191. Thus, NHS did not claim $1,516,058 of allowable Medicare nonqualified costs on its ICPs for CYs 2009 through 2013. This underclaim occurred primarily because NHS based its claim for Medicare reimbursement on an incorrect cost accounting method when calculating its nonqualified costs for Medicare reimbursement.

The Medicare contracts require that nonqualified costs be calculated in accordance with the FAR and the CAS. NHS calculated its nonqualified costs in accordance with CAS 412. However, the nonqualified plan did not offer a benefit that is payable for life; therefore, the plan did not qualify as a "pension plan" as defined in FAR 31.001. Thus, NHS did not claim costs in accordance with Federal regulations. NHS should have identified the nonqualified costs in accordance with the regulations for a deferred compensation plan and should have calculated those costs in accordance with the FAR and CAS 415.

Because NHS's plan did not qualify as a pension plan, we calculated its plan costs in accordance with FAR 31.205-6(k) and CAS 415, which govern deferred compensation plans. Specifically, we calculated the allowable nonqualified costs based on actual payments to nonqualified plan participants in accordance with CAS 415.40(a). Accordingly, we determined the allowable nonqualified costs for CYs 2009 through 2013. (Our calculation does not appear in this report because the indirect cost rate computations that NHS used in its ICPs, and to which we referred as part of our audit, are proprietary information.) For details on the Federal requirements, see Appendix B.

Table 2 below compares the Medicare nonqualified costs that we calculated (using our adjusted indirect cost rates) to the nonqualified costs that NHS claimed for Medicare reimbursement for CYs 2009 through 2013.

Table 2: Comparison of Allowable Nonqualified Costs and Claimed Nonqualified Costs

CY	Allowable Per Audit	Per NHS	Difference
2009	$445,779	$86,601	$359,178
2010	1,667,136	228,707	1,438,429
2011	32,983	303,689	(270,706)
2012	913,593	479,859	433,734
2013	120,700	565,277	(444,577)
Total	**$3,180,191**	**$1,664,133**	**$1,516,058**

RECOMMENDATION

We recommend that Noridian Healthcare Solutions, LLC, work with CMS to ensure that its final settlement of contract costs reflects an increase in Medicare nonqualified costs of $1,516,058 for CYs 2009 through 2013.

AUDITEE COMMENTS

In written comments on our draft report, NHS concurred with our recommendation. NHS stated that it would ensure that its final settlement of contract costs reflected an increase in Medicare nonqualified costs of $1,516,058 for CYs 2009 through 2013.

NHS's comments appear in their entirety as Appendix C.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed $1,664,133 of nonqualified costs that NHS claimed for Medicare reimbursement on its ICPs for CYs 2009 through 2013.

Achieving our objective did not require that we review NHS's overall internal control structure. We reviewed the internal controls related to the nonqualified costs claimed for Medicare reimbursement to ensure that those costs were allocable in accordance with the CAS and allowable in accordance with the FAR.

We performed fieldwork at NHS located in Fargo, North Dakota.

METHODOLOGY

To accomplish our objective, we:

- reviewed the portions of the FAR, CAS, and Medicare contracts applicable to this audit;
- reviewed the Supplemental Retirement Program for Certain Employees of BCBS North Dakota plan documents;
- reviewed accounting records and ICP information provided by NHS to identify the amount of nonqualified costs claimed for Medicare reimbursement for CYs 2009 through 2013;
- calculated allowable nonqualified costs in accordance with applicable provisions of the FAR and CAS; and
- provided the results of our audit to NHS officials on August 8, 2019.

We performed this audit in conjunction with the following audit and used the information obtained during this audit: *Noridian Healthcare Solutions, LLC, Did Not Claim Some Allowable Medicare Nonqualified Costs* (A-07-19-00574).

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objectives.

APPENDIX B: FEDERAL REQUIREMENTS RELATED TO REIMBURSEMENT OF NONQUALIFIED PLAN COSTS

FEDERAL REGULATIONS

FAR 31.001 defines a "pension plan" as follows:

> 'Pension plan' means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

FAR 31.001 also defines "deferred compensation" as follows:

> 'Deferred compensation' means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

The allowability of costs for deferred compensation plans is governed by FAR 31.205-6. FAR 31.205-6(k) states that costs shall be measured, assigned, and allocated in accordance with CAS 415.

Federal regulations (FAR 52.216-7(a)(1)) address the invoicing requirements and the allowability of payments as determined by the Contracting Officer in accordance with FAR subpart 31.2.

Federal regulations (CAS 415.40(a)) state that the cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost shall be assigned to the cost accounting period in which the payment is made.

MEDICARE CONTRACTS

The Medicare contracts require NHS to submit invoices in accordance with FAR 52.216-7, "Allowable Cost & Payment." (See our citation to FAR 52.216-7(a)(1) in "Federal Regulations" above.)

APPENDIX C: AUDITEE COMMENTS

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Mr. David Breuer
Executive Vice President and Chief Financial Officer
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4510 13th Avenue South
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Report Number: A-07-19-00573

Report Title: Noridian Healthcare Solutions, LLC, Did Not Claim Allowable Medicare Nonqualified Costs Through Its Incurred Cost Proposals

Recommendation – From Report

We recommend that Noridian Healthcare Solutions, LLC, work with CMS to ensure that its final settlement of contract costs reflects an increase in Medicare nonqualified costs of $1,516,058 for CYs 2009 through 2013.

Statement of concurrence or non-concurrence:

Noridian Healthcare Solutions, LLC concurs with the above recommendation.

- For a concurrence, please include a statement describing the nature of the corrective action taken or planned.
- For a nonconcurrence, please include specific reasons for the nonconcurrence and a statement of any alternative corrective action taken or planned.

Noridian will ensure its final settlement of contract costs reflects an increase in Medicare nonqualified costs of $1,516,058 for CYs 2009 through 2013.

Signed: _____/David Breuer/_____ Date: ____10/15/2019_____
David Breuer, Executive Vice President and Chief Financial Officer
Blue Cross Blue Shield of North Dakota