



DEPARTMENT OF HEALTH & HUMAN SERVICES

**Office Of Inspector General
Office Of Audit Services**

**Region II
Jacob K. Javits Federal Building
26 Federal Plaza
New York, NY 10278**

January 24, 2003

Our Reference: Report Number A-02-02-01005

Ms. Pamela Miller
Vice President, Government Strategic
Planning and Quality Management
Horizon Blue Cross Blue Shield of New Jersey
3 Penn Plaza
Newark, New Jersey 07105-2200

Dear Ms. Miller:

Enclosed are two copies of the U.S. Department of Health and Human Services, Office of Inspector General, Office of Audit Services' report entitled, "REVIEW OF MEDICARE PART A TERMINATION COSTS CLAIMED BY HORIZON BLUE CROSS BLUE SHIELD FOR THE PERIOD AUGUST 2000 THROUGH MAY 2001." A copy of this report will be forwarded to the action official noted below for his review and any action deemed necessary.

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG, OAS reports issued to the Department's grantees and contractors are made available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act which the Department chooses to exercise. (See 45 CFR Part 5.)

Page 2 – Ms. Pamela Miller

To facilitate identification, please refer to Report Number A-02-02-01005 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Timothy J. Horgan", with a long horizontal flourish extending to the right.

Timothy J. Horgan
Regional Inspector General
for Audit Services

Enclosures

Direct Reply to Action Official

Gilbert Kunken, Acting Regional Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
26 Federal Plaza, Room 3809
New York, NY 10278

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICARE PART
TERMINATION COSTS
CLAIMED BY
HORIZON BLUE CROSS BLUE SHIELD
FOR THE PERIOD
AUGUST 2000 THROUGH MAY 2001**



JANET REHNQUIST
Inspector General

JANUARY 2003
A-02-02-01005

Office of Inspector General

<http://oig.hhs.gov/>

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OAS FINDINGS AND OPINIONS

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





DEPARTMENT OF HEALTH & HUMAN SERVICES

Office Of Inspector General
Office Of Audit Services

Region II
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January 24, 2003

Our Reference: Common Identification Number A-02-02-01005

Ms. Pamela Miller
Vice President, Government Strategic
Planning and Quality Management
Blue Cross Blue Shield of New Jersey
3 Penn Plaza, M/S PP 16Y
Newark, New Jersey 07105-2200

Dear Ms. Miller:

This report provides you with the results of our "REVIEW OF MEDICARE PART A TERMINATION COSTS CLAIMED BY HORIZON BLUE CROSS BLUE SHIELD FOR THE PERIOD AUGUST 2000 THROUGH MAY 2001."

The objectives of our review were to determine whether termination costs claimed by Horizon were allowable, allocable and reasonable.

Our audit of Horizon's Medicare Part A termination costs claimed on six termination cost vouchers for the period August 2000 through May 2001, which totaled \$3,736,186, disclosed that the reported costs were overstated by \$1,832,896. Our findings and recommendations are summarized below and are discussed in detail in the Findings and Recommendations section of this report. We found that Horizon's reported termination costs improperly included:

- \$1,804,000 of unfunded post retirement benefits,
- \$15,529 of unallowable legal fees,
- \$11,367 of severance pay related to non-Medicare employee functions and,
- \$2,000 of employee training that did not benefit Medicare.

We are recommending that termination costs claimed by Horizon for the period August 2000 through May 2001 be reduced by \$1,832,896.

Horizon did not dispute that \$1,804,000 of post retirement benefits were not properly funded but stated that they would provide information to the contracting officer to support the allowability of these costs. Horizon disagreed with our recommended disallowance of severance pay, training costs, and some of the legal fees we found to be unallowable. However, in our opinion, Horizon did not provide adequate information or valid arguments to support their non-concurrence with our recommended disallowances. Therefore, our findings and recommendations remain unchanged. Horizon's comments are summarized after each finding and recommendation and are included in their entirety as Appendix A.

INTRODUCTION

Background

Horizon Blue Cross and Blue Shield (Horizon), a subcontractor of the Blue Cross Blue Shield Association (BCBSA) was the Medicare Part A intermediary in the State of New Jersey during the period October 1, 1997 through July 31, 2000. In January 2000, Horizon invoked Article XXVI of the Medicare contract that permits an intermediary to cancel its contract with six months notice. Specifically, Horizon announced that it would cease performing intermediary duties as of July 31, 2000. As a result of its decision to cancel its contract, for the period August 1, 2000 through May 31, 2001, Horizon submitted six vouchers claiming termination costs totaling \$3,736,186.

Objectives, Scope, and Methodology

Our examination was made in accordance with generally accepted government auditing standards. The objective of our review, which covered the period August 1, 2000 through May 31, 2001, was to determine whether termination costs claimed on six vouchers submitted by Horizon were allowable, allocable, and reasonable in accordance with Appendix B of Horizon's Medicare contract ("Principles of Reimbursement for Administrative Costs") and the Provisions of Part 31 of the Federal Acquisition Regulations (FAR). Pension costs (\$13,918), which were claimed on the termination cost vouchers, will be the subject of a separate audit and therefore have been excluded from the scope of this review.

To accomplish our objective we judgmentally selected invoices, expense vouchers and journal entries for review; examined appropriate supporting documentation; and evaluated the reasonableness and propriety of cost allocations. In instances where the supporting documents were inconclusive or required further explanation, data analyses and inquiries of Horizon officials were conducted. In addition, although a complete assessment of the internal control structure was not made, we performed a limited review of internal controls during which we obtained an understanding of the accounting policies and procedures relevant to the audit objectives. Our fieldwork was performed at Horizon's business office located at 3 Penn Plaza in Newark, New Jersey during the period November 2001 through May 2002.

FINDINGS AND RECOMMENDATIONS

Post Retirement Benefits

On its voucher submitted for the months of April and May 2001, Horizon claimed \$1,804,000 for unallowable post retirement benefit (PRB) costs. The \$1,804,000 represents costs for PRBs (health and life insurance) that Horizon estimates will be incurred on behalf of retirees after termination of its Medicare contract. Although such costs are generally allowable, Horizon failed to fund the claimed PRBs as required by the FAR.

According to FAR 31.205-6(o)(2), PRB costs can be calculated using one of the following:

- Cash (or pay-as-you-go) Basis – recognizes costs as PRBs when they are actually provided.
- Terminal Funding – accrues and pays the entire PRB liability to the insurer or trustee in a lump sum upon the termination of employees to establish and maintain a fund or reserve for the purpose of providing PRBs to retirees. The lump-sum payment is allowable if amortized over a period of 15 years.
- Accrual Basis – measures and assigns costs according to generally accepted accounting principles and pays an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRBs to retirees. The accrual must be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

Prior to termination of its Medicare contract, Horizon claimed PRB costs on a “pay-as-you-go” basis. However, for purposes of claiming future costs to be incurred after termination of its contract, Horizon included on its termination vouchers costs on the accrual basis. The PRB accrual amount of \$1,804,000 was determined for Horizon by the firm of Price Waterhouse Coopers (PWC). In a letter to Horizon dated January 23, 2001, PWC stated, “...the liability calculated was the accumulated postretirement benefit obligation using the methodology described in the Statement of Financial Accounting Standards No.106 with a measurement date of July 31, 2000.”

Based on PWC’s assertion, it appears that the accrued PRB costs were determined in accordance with generally accepted accounting principles. However, the amount claimed is unallowable since Horizon failed to properly establish a fund or reserve to provide PRBs to retirees as required by the FAR. Section 31-205-6(o)(3) of the FAR, states that PRB costs are allowable only if “...funded by the time set for filing the Federal income tax return or any extension thereof.” The FAR also states, “PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.” Therefore, Horizon is improperly claiming reimbursement for unfunded PRB costs.

Recommendation

We are recommending that claimed termination costs be reduced by \$1,804,000 relating to unfunded PRB costs.

Horizon's Comments

In responding to our draft report, Horizon did not dispute that post retirement benefits, totaling \$1,804,000, were not funded as required by the FAR. However, Horizon contended that post retirement benefits are a “compelling obligation and thus are fully recoverable...” Horizon also indicated that they intend “...to provide the Contracting Officer with further information in support of the allowability of these costs”.

OAS Response

Although Horizon indicated that they intend to provide the Contracting Officer additional information, such information was not provided or explained in their comments. Additionally, Horizon did not provide any explanation or information regarding why they would be exempt from the specific requirement in the FAR that PRBs be funded timely. Accordingly, our finding and recommendation remain unchanged.

Legal Fees

Horizon improperly claimed \$15,529 of legal fees paid to an outside law firm for services related to an appeal of findings contained in a prior OIG Medicare audit report covering fiscal years 1990 through 1994 (CIN A-02-98-01028). According to FAR, Section 31.205-47 (f) (1), “Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government” are unallowable. Therefore, these unallowable legal fees were apparently charged to Medicare in error.

Recommendation

We are recommending that claimed termination costs be reduced by \$15,529 relating to unallowable legal costs.

Horizon's Comments

Horizon conceded that legal fees related to an appeal of prior audit findings are unallowable. However, they contend the unallowable amount is limited to legal fees incurred prior to March 6, 2001, the date of a stay issued by the Armed Services Board of Contract Appeals (ASBCA). Horizon indicated that the purpose of the stay was to include the matters under appeal in a arriving at a “global settlement” between Horizon and CMS.

OAS Response

Contrary to Horizon's stated position, we do not believe that the ASBCA stay or the inclusion of appealed costs in any future global settlement has an impact on the allowability of these legal costs. Since the costs were incurred to appeal prior audit findings, the venue of resolution is of no consequence. Furthermore, our review of the invoices, totaling \$15,529, and supporting documentation, indicated that all legal services were rendered in calendar year 2000, prior to the ASBCA stay date of March 6, 2001. Accordingly, we do not believe that Horizon's position is correct and therefore our finding and recommendation remain unchanged.

Severance Pay

Horizon overcharged Medicare \$11,367 for severance payments to employees terminated as a result of Horizon's decision to cease being a Medicare contractor. The \$11,367 was related to non-Medicare services performed by three employees and therefore was not allocable to Medicare based on CMS allowable cost guidelines. In certain instances of involuntary termination, such as downsizing, etc., Horizon's company-wide severance pay policy provides for the payment of a specified number of weeks of pay based on the employee's length of service and whether the individual is a union or non-union (management) employee. Accordingly, as a result of Horizon's decision to terminate its Medicare contract, Horizon paid \$147,972 of severance pay to 14 employees and Horizon included the entire amount on its termination vouchers.

Our review of the personnel files of the 14 employees that received severance pay disclosed that three of those employees had worked in non-Medicare positions at some point during their careers at Horizon. As such, a portion of the severance paid to those three employees was not allocable to Medicare in accordance with Appendix B, section XV A of Horizon's Medicare contract which identifies as unallowable, "...costs, which relate to the contractor's non-Medicare business and do not contribute to the Medicare agreement/contract." The unallowability of such cost was also specifically explained in a CMS Bureau of Program Operations memorandum dated February 18, 1997, which limits Medicare reimbursement for severance pay "...in proportion to the time each employee worked in the Medicare program." Based on the ratio of Medicare service to total service, we determined that of the \$23,120 of severance and related fringe benefits (employer share of FICA and Medicare taxes) paid for those three employees, only \$11,753 was allocable to Medicare and that the balance of \$11,367 was allocable to non-Medicare lines of business.

Recommendation

We are recommending that claimed termination costs be reduced by \$11,367 relating to non-allocable severance payments.

Horizon's Comments

Horizon did not concur with our recommended adjustment relating to severance pay. Horizon believes that our use of a "proportional" rationale for disallowance of severance paid to Medicare employees who had previously worked in non-Medicare divisions is not equitable since we did not provide a corresponding credit for the proportionate share of severance paid to non-Medicare

employees who had previously performed Medicare functions. Horizon contended that if we had provided for a corresponding proportional credit it would have eliminated all of our recommended disallowance.

OAS Response

CMS's severance pay policy specifically limits the allowability of severance cost to payments made to "...employees of cost centers whose function directly services the Medicare contract at the time of non-renewal or termination notice ...". Accordingly, there is no provision for application of the potential credits proposed by Horizon. Therefore, our finding and recommendation remains unchanged.

Employee Training

Horizon improperly claimed \$2,000 of unallowable employee training on its termination voucher. The purpose of the training was to provide an employee who eventually lost his job as a result of Horizon's decision to cease being a Medicare contractor, instruction on resume preparation and career assistance. Section XV.A of Appendix B of the Medicare contract, specifically identifies as unallowable, "costs, which do not contribute to the Medicare agreement, contract." Since the training was prompted by Horizon's decision to opt-out of its Medicare contract and provided no benefit to Medicare, all related costs are unallowable and should be borne by Horizon.

Recommendation

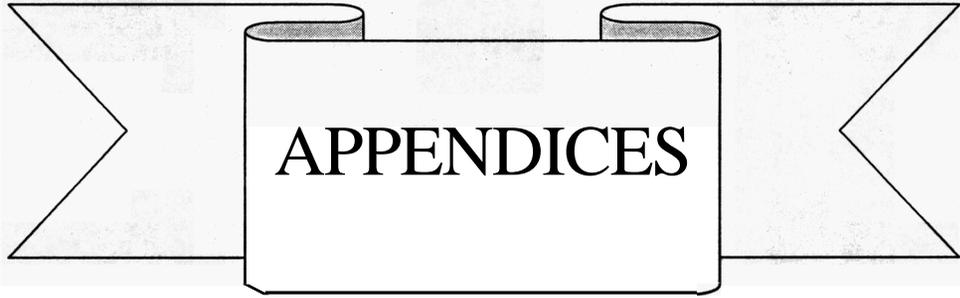
We recommend a downward adjustment of \$2,000 for unallowable employee training included on the termination vouchers.

Horizon's Comments

Horizon did not concur with our recommended adjustment relating to employee training courses. They indicated the training involved resume preparation and related career assistance for employees transitioning out of the Medicare program. This training was offered to the Medicare employees in an effort to keep morale and confidence high during the transition period. Horizon also stated we made an erroneous argument in our draft report regarding Horizon's decision to "opt out" of the Medicare contract, and that we misunderstood they're obligations to CMS. Horizon further stated they had no obligation to continue in the Medicare program and its decision to terminate or "opt out" was fully in accordance with the terms of the contract.

OAS Response

We maintain our opinion that these training costs provided no benefit to Medicare. We made no statement in our draft report that Horizon was obligated to continue in the Medicare program, or that their decision to terminate or opt out of the program was not in accordance with the contract. However, while it was Horizon's right to terminate its Medicare contract, we do not believe it is reasonable to expect Medicare to fund unnecessary costs resulting from Horizon's decision.



APPENDICES

APPENDIX A

**HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY
Termination Costs Claimed
August 2000 through May 2001**

<u>Elements of Expense</u>	<u>Costs Claimed</u>	<u>Recommended Financial Adjustments (2)</u>	<u>Balance</u>
Direct Labor	\$ 382,602		\$ 382,602
Severance Pay	147,972	\$ 11,367	136,605
Benefits and Taxes	81,827		81,827
Other Post Retirement Benefits	1,804,000	1,804,000	0
Legal Fees	38,908	15,529	23,379
Other Direct Costs	<u>1,129,922</u>	<u>2,000</u>	<u>1,127,922</u>
Total Direct Costs	\$3,585,231	\$1,832,896	\$1,752,335
 Indirect Costs	 150,955		 150,955
 Total Costs Claimed	 <u>\$3,736,186</u>	 <u>\$1,832,896</u>	 <u>\$1,903,290</u>
 Less: Pension Costs Not Reviewed (1)	 13,918		 13,918
 Balance After Audit Adjustment	 <u>\$3,722,268</u>	 <u>\$1,832,896</u>	 <u>\$1,889,372</u>

- (1) The scope of our review did not include claimed pension benefits, which will be the subject of a subsequent review and report.
- (2) The costs recommended for adjustment were claimed on the April to May, 2001 voucher.

**POWELL
GOLDSTEIN
FRAZER &
MURPHY LLP**
ATTORNEYS AT LAW

direct dial 202-624-7227
bshirk@pgfm.com

December 23, 2002

Via Facsimile and Federal Express
(212-264-6307)

Timothy J. Horgan
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services
Region II
Jacob K. Javits Federal Building
26 Federal Plaza New York, NY 10278

HHS/OIG
OFFICE OF AUDIT
NEW YORK REGIONAL OFFICE

DEC 24 2002

RECEIVED

Re: Review of Medicare Part A Termination Costs Claimed By Horizon Blue Cross
Blue Shield For The Period August 2000 Through May 2001

Dear Mr. Horgan:

This letter responds to the HHS Office of Inspector General's draft report entitled "Review of Medicare Part A Termination Costs Claimed by Horizon Blue Cross Blue Shield For The Period August 2000 Through May 2001" (hereinafter "Draft Report" or "Report"). The Draft Report recommends the disallowance of \$1,832,896 of the \$3,736,186 in termination costs claimed by Horizon for the period from August 2000 through May 2001. Specifically, the Report recommends the disallowance of four categories of costs: (1) \$1,832,396 relating to allegedly unfunded Post Retirement Benefits ("PRB") costs; (2) \$15,529 in claimed legal fees; (3) \$11,367 in claimed severance pay purportedly related to non-Medicare employee functions; and (4) \$2000 in claimed employee training costs.

Horizon disagrees with the recommended disallowances in three of the categories: (1) PRBs; (2) severance pay; and (3) training costs. Horizon concedes the finding relating to legal fees but only to the extent those fees related to services performed prior to March 6, 2001.

In addition, Horizon generally asserts that it has incurred allowable costs for professional fees significantly in excess of the disallowed amount since May 2001, which costs are fully allocable to Medicare. These positions are discussed in more detail below.

I. Recommended Disallowance of \$1,804,000 in Post Retirement Benefit Costs

The auditors recommend the disallowance of the entire \$1,804,000 claimed by Horizon for its future PRB obligations. The basis of this recommendation is that Horizon's claim was contrary to FAR 31.205-6(o)(3), in that "Horizon is improperly claiming reimbursement for unfunded PRB costs."

As the auditors point out, PRB costs "are generally allowable." Audit Report at 2. Horizon submits that its PRB costs are not only allowable but must be reimbursed on the basis that its Medicare Intermediary Contract was a pure cost reimbursable, no fee type contract. Specifically, Horizon's Intermediary Contract expressly provided that, subject to certain conditions:

the Intermediary, in performing its functions under this agreement, shall be paid its costs of administration under the principle of neither profit nor loss to the Intermediary...

Intermediary Contract at (Art. XIII(A))

Horizon submits that the PRB costs claimed are the subject of a compellable obligation and thus are fully recoverable under Art. XIII(A) of its Medicare Contract. Horizon intends, in the near future, to provide the Contracting Officer with further information in support of the allowability of these costs.

II. Recommended Disallowance of \$15,529 in Termination Related Legal Fees

The auditors also recommend the disallowance of \$15,529 of legal fees claimed by Horizon, pursuant to the restriction of FAR § 31.205-47(f)(1), on the basis that the fees related to an “appeal” of a previous OIG Medicare audit report covering fiscal years 1990 to 1994. Horizon concedes that, to the extent such fees were incurred prior to March 6, 2001, they are unallowable under the FAR § 31.205-47(f)(1) because such costs related to the prosecution of a claim by Horizon at the Armed Services Board of Contract Appeals (“ASBCA”). On March 6, 2001, however, the ASBCA stayed the proceedings at the Board to allow the parties to consider the issues raised by the 1990-1994 audit report as part of a global settlement between CMS and Horizon. The Board’s Order is attached as Exhibit A, hereto. The “global settlement” discussions that are continuing with CMS stem directly from the termination of Horizon’s contract. Thus, legal fees relating to the subject audit report incurred after March 6, 2001 are not in the furtherance of the ASBCA appeal and are not unallowable under FAR § 31.205-47(f)(1). The auditors should adjust their recommended disallowance to reflect this distinction to the extent applicable.

III. Recommended Disallowance of \$11,367 Relating to Severance Pay

The auditors recommend the disallowance of \$11,367 for severance payments purportedly related to the “non-Medicare services” of three employees who, at times in their respective Horizon careers, had worked in non-Medicare related areas of the Company. Although this “proportional” disallowance policy might seem fair on its face, it is blatantly unfair as it fails to give Horizon any corresponding credit for “Medicare time-served” in

situations where severance has been paid or is to be paid solely by Horizon. Notably, Horizon presented the auditors with evidence of at least one severance situation where Medicare's proportion of severance paid by Horizon would have exceeded the entire \$11,367 recommended for disallowance in the Draft Report. Why this evidence was not considered in the auditors' recommendation is a mystery to Horizon.

Horizon has never been paid for the Medicare proportion of severance payments made to employees working in non-Medicare areas, who had, at one time, worked for Medicare. Moreover, as the auditors are fully aware, 17 former Medicare employees were transitioned to Horizon's commercial side after the termination of Horizon's Medicare contract. This transfer not only saved Medicare the immediate severance obligation for these 17 employees but effectively shifted the full future severance obligation for these employees from Medicare to Horizon (assuming, of course, that Horizon does not decide to submit a claim for these costs based on CMS's "proportional" severance pay policy). Horizon asserts that if the proportional amount of this future obligation were quantified and claimed, Medicare's proportion would far exceed the \$11,367 disallowed by the auditors in this case. At a minimum, Medicare's proportional share of this future severance pay should be recognized and treated as an offset to the recommended disallowance in this case. The failure to do so would be blatantly inconsistent with the "proportional" rationale upon which the disallowance is based.

Finally, the CMS policy that bases severance pay on the proportionality of each employee's work history *vis a vis* his or her Medicare work history may be flawed in the first place. If the need for severance pay is determined causally, Medicare alone would be

responsible for the severance obligations in this case because the termination of the Medicare contract was the sole cause of the payments made.

IV. Recommended Disallowance of \$2,000 Relating to Employee Training Costs

The auditors also recommended disallowance of \$2,000 in employee training costs. The costs at issue were incurred to train an employee transitioning out of the Medicare program in resume preparation and related career assistance. Horizon contracted for the training on behalf of its employees in an effort to keep morale and confidence high at a time when all of Horizon's Medicare employees would have to find new jobs. The rationale relied on by the auditors in recommending the disallowance of this cost is short sighted and, when viewed in the totality of the circumstances surrounding the termination, flatly wrong.

The seamless transition and continuity of the Horizon's Medicare functions through the entire transition period was of utmost importance to the Medicare program. The continued performance, morale and support of the Horizon employees working on the transition effort was of utmost importance in this regard. CMS specifically recognized this fact by approving stay bonus awards to Horizon's transition employees. Without the continuing dedication of Horizon's employees, Medicare's performance in the transition period would have suffered.

In the context of the transition and the reality that all of the Medicare employees had to look for new jobs, Horizon made a reasonable decision to offer career transition training to its Medicare employees in an effort to keep confidence levels and morale high. Such considerations clearly provide a basis for incurrence of allowable costs. See e.g., FAR 31.205-13 ("costs incurred on activities designed to improve . . . employer-employee relations, employee morale,

and employee performance . . . are allowable); FAR 31.205-21 (labor relations costs allowable including costs incurred “in maintaining satisfactory relations between the contractor and its employees”). Moreover, the costs incurred were relatively *de minimus*, *i.e.*, only \$2,000, in the context of the importance of properly transitioning the Medicare contract without any decrease in performance.

In addition, improving employee skills in career transition at this time when all Medicare employees faced such a transition may have made this employee more efficient in performing her Medicare functions. The analysis of whether such costs are “reasonable” under the Medicare contract should include “. . . a variety of considerations and circumstances, including . . . [t]he contractor’s responsibilities to the Government, other customers, the owners of the business, employees, and the public at large.” FAR 31.201-3(b)(3) (emphasis added).

Finally, the auditors proffer the totally erroneous argument that but for “Horizon’s decision to opt-out of its Medicare contract” these costs would not have been incurred and therefore “provided no benefit to Medicare.” This argument is based on a fundamental misunderstanding of Horizon’s obligations to CMS. Contrary to the presumption made by the auditors, Horizon had no obligation whatsoever to continue in the Medicare program and its decision to terminate or “opt out” was fully in accordance with the terms of the Medicare contract. Such costs when related to a termination are subject to a lesser, rather than a greater, level of scrutiny. See *e.g.*, *Appeal of Freedom Elevator Corp.*, GSBICA 7259, 85-2 BCA 17964 (1985) (the purpose of a termination settlement is to fairly compensate the contractor and make it whole for the costs it incurred in performing the terminated work); *Appeal of Tagarelli*

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Timothy J. Horgan
December 23, 2002
Page 7

Brothers Construction Co., ASBCA 34793, 88-1 BCA 20363 (1987), *aff'd on reconsideration*, 88-2 BCA 20546 (1988) (“Federal regulators contemplate settlement of termination for convenience purposes by agreement, with business judgment, as distinguished from strict accounting purposes, as the heart of the settlement.”).

Sincerely,



W. Bruce Shirk

WBS:bct
Enclosure

cc: Mr. Thomas Grippe (w/encl.) (via facsimile and Federal Express)
Jeffrey Robbins, Esq. (w/encl.) (via facsimile and Federal Express)
Pamela Miller, Esq. (w/enc.) (via facsimile and Federal Express)

:ODMA\PCDOCS\WSH284188\1

EXHIBIT



ARMED SERVICES BOARD OF CONTRACT APPEALS

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6 March 2001

✓
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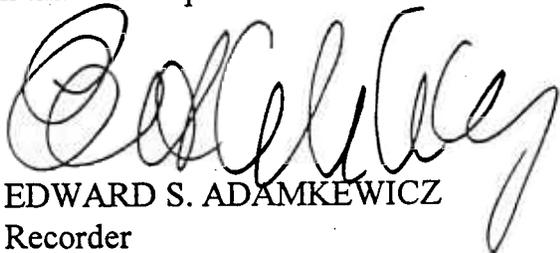
Re: ASBCA No. 52803
Appeal of Horizon Blue Cross Blue Shield of New Jersey
Under Contract No. HCFA 87-001-133

ORDER

The Board has considered the parties' request that the Board stay proceedings in the above-referenced appeal. The Board encourages such settlement efforts by the parties. Accordingly, the proceedings in the above-referenced appeal are stayed until 14 May 2001.

Should the parties settle, the parties shall notify the Board as soon as possible. Should the settlement efforts prove unsuccessful, however, the Board expects the parties to agree upon and provide the Board with a firm schedule for proceeding with the resolution of this appeal. Such a schedule is due at the Board no later than 24 May 2001.

Should the parties fail to settle or provide the Board with a firm schedule for proceeding, the Board may, without further contact with the parties, dismiss the appeal without prejudice under Board Rule 30 until such time as the parties are able to meaningfully proceed.


EDWARD S. ADAMKEWICZ
Recorder

ACKNOWLEDGMENTS

This report was prepared under the direction of Timothy J. Horgan, Regional Inspector General for Audit services. Other principal Office of Audit Services staff who contributed include:

Thomas Grippe, *Audit Manager*
Jeffrey I. Jacobs, *Senior Auditor*
Ernest T. Knight, *Senior Auditor*
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