



JUN 17 2009

Office of Audit Services, Region III
Public Ledger Building, Suite 316
150 S. Independence Mall West
Philadelphia, PA 19106-3499

Report Number: A-03-08-00013

Mr. James A. Honchar, SPHR
Deputy Secretary for Human Resources and Management
Governor's Office of Administration
613 North Street
Finance Building, Room 517
Harrisburg, Pennsylvania 17120

Dear Mr. Honchar:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Review of Retiree Drug Subsidy Plan Sponsor Commonwealth of Pennsylvania for Plan Year Ended December 31, 2006." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this 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.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, OIG reports generally are made available to the public to the extent that information in the report is not subject to exemptions in the Act. Accordingly, this report will be posted on the Internet at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, at (215) 861-4470, or contact Nicole Freda, Audit Manager, at (215) 861-4497 or through e-mail at Nicole.Freda@oig.hhs.gov. Please refer to report number A-03-08-00013 in all correspondence.

Sincerely,

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

Stephen Virbitsky
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Ms. Nanette Foster Reilly, Consortium Administrator
Consortium for Financial Management & Fee for Service Operations
Center for Medicare & Medicaid Services
601 East 12th Street, Room 235
Kansas City, Missouri 64106

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF RETIREE
DRUG SUBSIDY PLAN SPONSOR
COMMONWEALTH OF
PENNSYLVANIA FOR PLAN YEAR
ENDED DECEMBER 31, 2006**



Daniel R. Levinson
Inspector General

June 2009
A-03-08-00013

Office of Inspector General

<http://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.

EXECUTIVE SUMMARY

BACKGROUND

Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended Title XVIII of the Social Security Act (the Act) by establishing the Medicare Part D prescription drug program. Under Part D, which began January 1, 2006, individuals entitled to benefits under Part A or enrolled in Part B may obtain drug coverage. In addition, Section 101 of the MMA established the Retiree Drug Subsidy (RDS) program.

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the program. CMS makes subsidy payments to sponsors (employers and unions) of qualified retiree prescription drug plans for qualifying retirees covered under the plans. A qualifying covered retiree is a Medicare Part D eligible individual who is not enrolled in a Part D plan but who is covered by a qualified retiree prescription drug plan. The subsidy payments for each qualifying covered retiree generally equal 28 percent of allowable retiree drug costs.

Medicare requires that the sponsor of a qualified retiree prescription drug plan submit an RDS application to CMS each year. The application must include identifying information for the plan sponsor, an actuarial attestation that the actuarial value of the retiree prescription drug coverage under the plan is at least equal to the actuarial value of the defined standard prescription drug benefit under Medicare Part D, a list of qualifying covered retirees and identifying information, and a sponsor agreement signed by an authorized representative of the plan sponsor.

The Commonwealth of Pennsylvania (Pennsylvania) offers prescription drug coverage to its retired employees through its Retired Employees Health Program (REHP). The REHP is administered by the Pennsylvania Employees Benefit Trust Fund (PEBTF). PEBTF uses an outside vendor to report prescription drug costs to CMS. For plan year 2006, Pennsylvania received \$29,953,907 in subsidy payments based on reported gross retiree drug costs of approximately \$154.9 million and allowable retiree costs of approximately \$107 million.

OBJECTIVES

Our objectives were to determine whether Pennsylvania (1) met the plan sponsor requirements, (2) established controls to ensure that drug costs were correctly reported, and (3) established administrative safeguards over retiree data included in the RDS secure Web site.

SUMMARY OF FINDINGS

Pennsylvania's REHP met the requirements to be considered a qualified retiree prescription drug plan and Pennsylvania established controls to ensure that drug subsidy costs were correctly reported.

However, Pennsylvania did not establish adequate administrative safeguards over retiree data. Specifically, Pennsylvania did not terminate a former employee's access to RDS information. As a result, the confidentiality, integrity, and availability of electronic protected health information could be diminished. Pennsylvania's lack of administrative safeguards was due to a lack of adequate internal controls over protected health information.

RECOMMENDATION

We recommend that Pennsylvania follow the regulations to ensure that only eligible employees have access to the RDS secure Web site.

COMMONWEALTH OF PENNSYLVANIA COMMENTS

In its comments on our draft report, Pennsylvania concurred with our recommendation and outlined the steps it had taken to implement our recommendation. Pennsylvania's comments are included in their entirety as the Appendix.

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INTRODUCTION

BACKGROUND

Retiree Drug Subsidy

Title I of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended Title XVIII of the Social Security Act (the Act) by establishing the Medicare Part D prescription drug program. Under Part D, which began January 1, 2006, individuals entitled to benefits under Part A or enrolled in Part B may obtain drug coverage. In addition, Section 101 of the MMA established the Retiree Drug Subsidy (RDS) program.

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the program. Under the program, CMS makes subsidy payments to sponsors (employers and unions) of qualified retiree prescription drug plans for each qualifying retiree covered under the plan. A qualifying covered retiree is a Medicare Part D eligible individual who is not enrolled in a Part D plan but who is covered by a qualified retiree prescription drug plan.

The subsidy payments for each qualifying covered retiree generally equal 28 percent of allowable retiree drug costs. Allowable retiree drug costs are based on gross retiree costs between a cost threshold and a cost limit,¹ minus any price concessions such as discounts or rebates.

Plan Sponsor Requirements

Medicare requires that the sponsor of a qualified retiree prescription drug plan submit an RDS application to CMS each year. Pursuant to 42 CFR § 423.884(c), the application must include identifying information for the plan sponsor, an actuarial attestation that the actuarial value of the retiree prescription drug coverage under the plan is at least equal to the actuarial value of the defined standard prescription drug benefit under Medicare Part D, a list of qualifying covered retirees and identifying information, and a sponsor agreement signed by an authorized representative of the plan sponsor.

Qualifying Covered Retirees

As part of the application process, 42 CFR § 423.884(c) requires that plan sponsors must submit a list of qualifying covered retirees. The submitted list must include retiree identification information, as well as the plan sponsor's coverage effective and termination dates.² To process

¹The cost threshold and cost limit are determined by CMS. For plan year 2006 the individual qualifying retiree cost threshold was \$250 and the cost limit was \$5,000.

²The plan sponsor's coverage effective and termination dates represent the dates that the plan sponsor provided the retiree with coverage under the qualified retiree prescription drug plan.

a retiree file, CMS queries the Medicare Beneficiary Database and determines whether each individual is a qualifying covered retiree eligible for the subsidy based on Medicare entitlement. CMS then determines the periods of time during the plan year when the retiree is eligible for the subsidy. CMS includes the subsidy effective and termination dates in the retiree response file that it returns to the plan sponsor.

CMS recommends that plan sponsors submit updated retiree files periodically to reflect (1) new retirees not previously reported, (2) updates to previously accepted retiree records, (3) deletions for previously accepted retiree records, and (4) resubmissions. Each time a plan sponsor submits an updated retiree file, CMS prepares a response file. CMS also sends plan sponsors a notification file when an event occurs—such as a retiree’s death or enrollment in Medicare Part D—that may affect a plan sponsor’s ability to receive the subsidy for a retiree.

Retiree Drug Costs

Plan sponsors, or their vendors, must accumulate retiree drug costs and prepare and submit cost reports to CMS before requesting subsidy payments. Plan sponsors can elect to receive interim subsidy payments based on costs reported to date. A plan sponsor receiving interim payments is required to reconcile interim subsidy payments within 15 months after the end of its plan year. CMS will make any necessary adjustments to interim payments for the plan year when the reconciliation is completed.

Because plan sponsors submit retiree costs to CMS on an aggregate (rather than an individual retiree) basis, plan sponsors must carefully manage retiree response and notification files to ensure that costs are accumulated only for qualifying covered retirees during valid subsidy periods.

Retiree Drug Subsidy Secure Web Site

CMS, through its contractor ViPS, Inc., created the RDS secure Web site as a secure portal for plan sponsors participating in the subsidy program to submit RDS applications and requests for payment. Plan sponsor personnel requiring access to the secure Web site are assigned roles, including authorized representative, account manager, actuary, and designee. The authorized representative or account manager can assign designees various duties including completing portions of the RDS application, submitting retiree data, and requesting subsidy payments.

Commonwealth of Pennsylvania

The Commonwealth of Pennsylvania (Pennsylvania) offers prescription drug coverage to its retired employees through its Retired Employees Health Program (REHP). The REHP is administered by the Pennsylvania Employees Benefit Trust Fund (PEBTF). PEBTF administers

health care benefits, including prescription drug benefits, to eligible Commonwealth employees, retirees, and their dependents. PEBTF uses an outside vendor to report prescription drug costs to CMS.

Using information from the REHP's eligibility files, PEBTF manages Pennsylvania's list of the RDS-eligible retirees. PEBTF's outside vendor is responsible for accumulating retiree drug costs and for preparing and submitting the cost reports to CMS on Pennsylvania's behalf. For plan year 2006, Pennsylvania received \$29,953,907 in subsidy payments based on 53,104 eligible retirees with reported gross retiree drug costs of approximately \$154.9 million and allowable retiree costs of approximately \$107 million. Pennsylvania reconciled its plan year 2006 subsidy payments on June 24, 2008.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine whether Pennsylvania (1) met the plan sponsor requirements, (2) established controls to ensure that drug costs were correctly reported, and (3) established administrative safeguards over retiree data included in the RDS secure Web site.

Scope

We reviewed Pennsylvania's plan year 2006 RDS application, retiree files, and final cost report. Our review was limited to determining whether Pennsylvania correctly reported drug costs for qualifying covered retirees and for applicable periods of RDS eligibility. We also reviewed the RDS secure Web site users associated with Pennsylvania's application for plan year 2006. We did not determine the allowability of the drug costs reported.

Our objectives did not require an understanding or assessment of Pennsylvania's complete internal control system. We limited our review of internal controls to obtaining an understanding of Pennsylvania's process for monitoring and updating its retiree files and coordinating with its outside vendor to ensure that costs claimed for subsidy payments represent costs for qualifying covered retirees.

We performed our field work at Pennsylvania's administrative offices in Harrisburg, Pennsylvania and at their vendor's offices in Franklin Lakes, New Jersey from June 2008 through January 2009.

Methodology

To accomplish our objectives, we:

- reviewed applicable Federal laws and regulations, Medicare program guidance, and the American Academy of Actuaries' guidance;
- met with Pennsylvania's actuary and reviewed his working papers to verify that the actuary had completed and submitted the attestation in accordance with CMS and American Academy of Actuaries' guidance;
- reviewed Pennsylvania's notice of creditable coverage sent to Medicare Part D eligible retirees for the period beginning January 1, 2006;
- reviewed Pennsylvania's 2006 plan year RDS application to determine whether the information provided was complete, accurate, and submitted to CMS by the October 31, 2005, deadline and to verify that CMS had approved the application;
- selected a judgmental sample of 50 plan year 2006 retirees for whom Pennsylvania reported costs and received subsidy payments;
- reviewed information from the Medicare Beneficiary Database to determine whether the sampled retirees were eligible for Medicare Part D and not enrolled in a Part D prescription drug plan;
- reviewed documentation provided by Pennsylvania to determine whether the sampled retirees met Pennsylvania's criteria for retiree health coverage and were enrolled in a retiree health plan approved for the RDS;
- met with Pennsylvania and vendor personnel responsible for the RDS process to obtain an understanding of the application process and their procedures for submitting retiree files to CMS and processing retiree response and notification files received from CMS;
- reviewed the reconciled cost report for plan year 2006 submitted by Pennsylvania's vendor to determine the total gross drug costs submitted and the total subsidy payments received by Pennsylvania;
- reviewed the contract between PEBTF and its outside vendor;
- reviewed detailed drug costs supporting the plan year 2006 final cost report to determine whether Pennsylvania correctly reported gross retiree costs within each qualifying covered retirees valid subsidy period; and

- identified Pennsylvania's secure Web site users for the plan year 2006 application and determined whether the users were assigned and registered in accordance with program policies.

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 findings and conclusions based on our audit objectives.

FINDINGS AND RECOMMENDATION

Pennsylvania's REHP met the requirements to be considered a qualified retiree prescription drug plan and Pennsylvania established controls to ensure that drug costs were correctly reported.

However, Pennsylvania did not establish adequate administrative safeguards over retiree data. Specifically, Pennsylvania did not terminate a former employee's access to RDS information. As a result, the confidentiality, integrity, and availability of electronic protected health information could be diminished. Pennsylvania's lack of administrative safeguards was due to a lack of adequate internal controls over protected health information.

PLAN SPONSOR REQUIREMENTS

Federal Requirements

Pursuant to 42 CFR § 423.884, employment-based retiree health coverage is considered to be a qualified retiree prescription drug plan if:

- the plan provides CMS with an attestation that the actuarial value of the retiree prescription drug coverage under the plan is at least equal to the actuarial value of the defined standard prescription drug benefit under Part D and
- Part D eligible individuals covered under the plan are provided with appropriate notification regarding creditable drug coverage.

Pursuant to 42 CFR § 423.884(c), the sponsor of a qualified retiree prescription drug plan must submit an application for the retiree drug subsidy to CMS each year. The application must include identifying information for the plan sponsor, an actuarial attestation, a list of qualifying covered retirees and identifying information, and a sponsor agreement signed by an authorized representative of the plan sponsor. For plan years ending in 2006, the application deadline was October 31, 2005.

Results of Review of Plan Sponsor Requirements

Pennsylvania's REHP met the requirements to be considered a qualified retiree prescription drug plan under the RDS program. Our review of Pennsylvania's application shows that all requirements were met on a timely basis and Pennsylvania was accepted by CMS as a sponsor of a qualified retiree prescription drug plan eligible for subsidy payments.

SAFEGUARDING RETIREE DATA

Data Security Requirements

The plan sponsor agreement included with the RDS application requires sponsors to establish and implement proper safeguards against unauthorized use and disclosure of the data exchanged under the application. By signing the application, the plan sponsor certifies that its retiree group health plans have established and implemented appropriate safeguards in compliance with the Health Insurance Portability and Accountability Act (HIPAA) administrative simplification, privacy, and security rule (45 CFR parts 160, 162, and 164) in order to prevent unauthorized disclosure of such information or data. The sponsor also agrees that if it participates in the administration of the plans, then it has also established and implemented the same safeguards in compliance with the above HIPAA citations.

45 CFR § 164.308(a)(3)(ii)(C) requires that covered entities implement procedures terminating access to electronic protected health information when the employment of a workforce member ends.

Results of Review of Administrative Safeguards over Retiree Data

Pennsylvania had not established adequate administrative safeguards over the electronic protected health information on the RDS secure Web site. Our review of secure Web site users associated with Pennsylvania's application found that the Authorized Representative for the 2006 and 2007 plan years had terminated employment but Pennsylvania had not revoked access to the secure Web site when that individual left. For the 2-month period after leaving employment with Pennsylvania, this individual still had access to the RDS secure web site, which contains confidential retiree information. This lack of administrative safeguards was due to a lack of adequate internal controls over protected health information.

Effect on Electronic Protected Health Information

Individuals who have access to sensitive retiree information and are no longer employed by Pennsylvania diminish the confidentiality, integrity, and availability of electronic protected health information. Accordingly, during the period of our fieldwork, Pennsylvania drafted a succession plan to ensure that terminated employees would no longer have access to the RDS secure Web site.

RECOMMENDATION

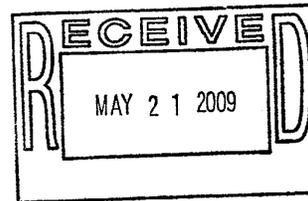
We recommend that Pennsylvania follow the regulations to ensure that only eligible employees have access to the RDS secure Web site.

COMMONWEALTH OF PENNSYLVANIA COMMENTS

In its comments on our draft report, Pennsylvania concurred with our recommendation and outlined the steps it had taken to implement our recommendation. Pennsylvania's comments are included in their entirety as the Appendix.

APPENDIX

APPENDIX



May 18, 2009

Stephen Virbitsky
Regional Inspector General
For Audit Services
Office of Inspector General
Office of Audit Services – Region III
Public Ledger Building, Suite 316
150 S. Independent Mall West
Philadelphia, Pennsylvania 19106-3499

Dear Mr. Virbitsky:

The commonwealth has received and reviewed the Office of Inspector General's draft report A-03-08-00013 entitled "Review of Retiree Drug Subsidy Plan Sponsor Commonwealth of Pennsylvania for Plan Year Ended December 31, 2006." The commonwealth appreciates the opportunity to provide comments on the draft report before the final report is issued.

We concur with the Office of Inspector General's (OIG) recommendation that Pennsylvania follow the regulations to ensure that only eligible employees have access to the RDS Secure Website. As noted by OIG in the report, as soon as the OIG identified this error, the commonwealth developed and implemented proper internal controls, as well as a succession strategy to ensure that only eligible employees have access to the RDS Secure Website.

The commonwealth also would like to acknowledge that throughout the audit process, the auditors were professional, courteous, and patient in learning the intricacies of our program and our relationships with various parties. It was a pleasure working with your staff.

If you need any additional information or assistance, please contact Mrs. Tara K. Long at (717) 787-9872.

Sincerely,

A handwritten signature in black ink, appearing to read 'James A. Honchar'.

James A. Honchar, SPHR
Deputy Secretary

cc: Secretary Naomi Wyatt