



DEPARTMENT OF HEALTH AND HUMAN SERVICES

## OFFICE OF INSPECTOR GENERAL



OFFICE OF AUDIT SERVICES, REGION VII  
601 EAST 12<sup>TH</sup> STREET, ROOM 0429  
KANSAS CITY, MO 64106

April 16, 2012

Report Number: A-07-11-03166

Mr. Pat Shiverdecker  
Senior Vice President, Corporate Strategy  
Mutual of Omaha Insurance Company  
Mutual of Omaha Plaza  
Omaha, NE 68175

Dear Mr. Shiverdecker:

Enclosed is the U.S. Department of Health and Human Services, Office of Inspector General (OIG), final report entitled *Most of Mutual of Omaha's Medicare Administrative Costs Reported for Fiscal Years 2007 and 2008 Were Allowable*. 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.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at (816) 426-3591, or contact Greg Tambke, Audit Manager, at (573) 893-8338, extension 30, or through email at [Greg.Tambke@oig.hhs.gov](mailto:Greg.Tambke@oig.hhs.gov). Please refer to report number A-07-11-03166 in all correspondence.

Sincerely,

/Patrick J. Cogley/  
Regional Inspector General  
for Audit Services

Enclosure

**Direct Reply to HHS Action Official:**

Ms. Deborah Taylor  
Director & Chief Financial Officer  
Office of Financial Management  
Centers for Medicare & Medicaid Services  
Mail Stop C3-01-24  
7500 Security Boulevard  
Baltimore, MD 21244-1850

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**MOST OF MUTUAL OF OMAHA'S  
MEDICARE ADMINISTRATIVE COSTS  
REPORTED FOR FISCAL YEARS 2007  
AND 2008 WERE ALLOWABLE**



Daniel R. Levinson  
Inspector General

April 2012  
A-07-11-03166

# *Office of Inspector General*

<http://oig.hhs.gov>

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The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

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The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

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# *Notices*

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

## **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 XVIII of the Social Security Act established the Medicare program. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program through Medicare administrative contractors (Medicare contractors), including Part A fiscal intermediaries that process and pay Medicare claims submitted by health care providers. Contracts between CMS and the Medicare contractors define the functions to be performed and provide for the reimbursement of allowable administrative costs incurred in the processing of Medicare claims.

Following the close of each fiscal year (FY), each Medicare contractor submits to CMS a Final Administrative Cost Proposal (FACP) reporting Medicare administrative costs incurred during the year. The FACP and supporting data provide the basis for the CMS contracting officer and the Medicare contractor to negotiate a final settlement of allowable Medicare administrative costs. When claiming costs, Medicare contractors must follow cost reimbursement principles contained in Part 31 of the Federal Acquisition Regulation (codified in Title 48 Code of Federal Regulations), the Medicare contract, and other applicable criteria.

Until November 5, 2007, Mutual of Omaha Insurance Company (Mutual) was the Medicare contractor that processed Medicare Part A claims for providers in all States except New York. On November 5, 2007, Wisconsin Physicians Service Insurance Corporation assumed operations of Mutual's Medicare Part A contract. Mutual reported Medicare administrative costs totaling \$64,320,567 on the FACPs for FY 2007 and for that portion of FY 2008 up until the termination of the contract. We reviewed these administrative costs and, at CMS's and Mutual's request, we also reviewed Mutual's 401(k) pension plan gains, due to unvested forfeitures, for FYs 1989 through the termination of the contract on November 5, 2007.

### **OBJECTIVES**

Our objectives were to determine whether:

- the Medicare administrative costs that Mutual reported on the FACPs for FY 2007 and part of FY 2008 were reasonable, allowable, and allocable in accordance with Federal regulations and the Medicare contract, and
- Mutual credited to the Federal Government the equitable share of gains from the 401(k) pension plan in accordance with Federal regulations.

### **SUMMARY OF FINDINGS**

Mutual reported Medicare administrative costs that substantially complied with Federal regulations and the Medicare contract. However, Mutual reported, on the FACPs, \$67,243 that was not allowable.

In addition, the Federal Government did not receive a refund or credit for its equitable share of gains from Mutual's 401(k) pension plan, due to unvested forfeitures, for FYs 1989 through the termination of the contract on November 5, 2007. Mutual did not have a process to identify which employees were unvested in order to calculate and refund or credit the Federal Government. As a result, Mutual did not refund, or credit to the Federal Government, 401(k) pension plan gains, due to unvested forfeitures, totaling \$555,995.

## **RECOMMENDATIONS**

We recommend that Mutual:

- refund \$67,243 to the Federal Government for unallowable Medicare administrative costs and
- refund or credit \$555,995 to the Federal Government for 401(k) pension gains due to unvested forfeitures.

## **AUDITEE COMMENTS**

In written comments on our draft report, Mutual agreed with our findings. Mutual also requested that CMS credit the \$67,243 in unallowable administrative costs and \$555,995 for 401(k) pension gains due to unvested forfeitures against any amount owed to Mutual when the final contract termination and plan costs are determined.

Mutual's comments are included in their entirety as the Appendix.

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# INTRODUCTION

## BACKGROUND

### Medicare Program

Title XVIII of the Social Security Act established the Medicare program. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program through Medicare administrative contractors (Medicare contractors), including Part A fiscal intermediaries that process and pay Medicare claims submitted by health care providers.<sup>1</sup> Contracts between CMS and the Medicare contractors define the functions to be performed and provide for the reimbursement of allowable administrative costs incurred in the processing of Medicare claims.

Following the close of each fiscal year (FY), each Medicare contractor submits to CMS a Final Administrative Cost Proposal (FACP) reporting Medicare administrative costs incurred during the year. The FACP and supporting data provide the basis for the CMS contracting officer and the Medicare contractor to negotiate a final settlement of allowable Medicare administrative costs. When claiming costs, Medicare contractors must follow cost reimbursement principles contained in Part 31 of the Federal Acquisition Regulation (FAR) (codified in Title 48 Code of Federal Regulations (CFR)), the Medicare contract, and other applicable criteria.

### Mutual of Omaha Medicare Contract

Until November 5, 2007, Mutual of Omaha Insurance Company (Mutual) was the Medicare contractor that processed Medicare Part A claims for providers in all States except New York. On November 5, 2007, Wisconsin Physicians Service Insurance Corporation (WPS) assumed operations of Mutual's Medicare Part A contract. Mutual reported Medicare administrative costs totaling \$64,320,567 on the FACPs for FY 2007 and for that portion of FY 2008 up until the termination of the contract.<sup>2</sup>

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<sup>1</sup> 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 Medicare administrative contractors (MAC) 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.

<sup>2</sup> Mutual reported Medicare administrative costs totaling \$56,150,449 on its FACP for FY 2007 (October 1, 2006, through September 30, 2007) and \$8,170,118 on WPS's FACP for part of FY 2008 (October 1, 2007, through the termination of the contract on November 5, 2007).

## **OBJECTIVES, SCOPE, AND METHODOLOGY**

### **Objectives**

Our objectives were to determine whether:

- the Medicare administrative costs that Mutual reported on the FACPs for FY 2007 and part of FY 2008 were reasonable, allowable, and allocable in accordance with Federal regulations and the Medicare contract, and
- Mutual credited to the Federal Government the equitable share of gains from the 401(k) pension plan in accordance with Federal regulations.

### **Scope**

We reviewed the \$64,320,567 in Medicare administrative costs that Mutual reported on the FACPs for FY 2007 and for that portion of FY 2008 up until the termination of the contract. In addition, at CMS's and Mutual's request, we reviewed Mutual's 401(k) pension plan gains, due to unvested forfeitures, for FYs 1989 through the termination of the contract on November 5, 2007.

Our objective did not require us to review Mutual's overall internal control structure. Therefore, we limited our internal control review to Mutual's procedures for reporting costs on the FACPs.

We conducted fieldwork at Mutual's home office in Omaha, Nebraska, from June to September 2011.

### **Methodology**

To accomplish the objective, we:

- reviewed applicable Medicare laws, regulations, and guidelines, the applicable sections of Federal regulations (the FAR), and Mutual's contract with CMS;
- reviewed Mutual's prior independent auditor's reports and a prior Office of Inspector General audit report (A-07-07-01041, issued November 1, 2007);
- reconciled the FACPs to Mutual's accounting records and to the independently audited financial statements for FY 2007 and for that portion of FY 2008 up until the termination of the contract (November 5, 2007);
- judgmentally selected and reviewed invoices, expense vouchers and reports, and journal entries;
- interviewed Mutual officials about their cost accumulation processes for FACPs and gained an understanding of their cost allocation systems;

- reviewed payroll journals, corporate bonus plans, and personnel records;
- reviewed Mutual's 401(k) pension plan gains due to unvested forfeitures;
- tested costs for reasonableness, allowability, and allocability; and
- discussed our results with Mutual officials on December 15, 2011.

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 RECOMMENDATIONS**

Mutual reported Medicare administrative costs that substantially complied with Federal regulations and the Medicare contract. However, Mutual reported, on the FACPs, \$67,243 that was not allowable.

In addition, the Federal Government did not receive a refund or credit for its equitable share of gains from Mutual's 401(k) pension plan, due to unvested forfeitures, for FYs 1989 through the termination of the contract on November 5, 2007. Mutual did not have a process to identify which employees were unvested in order to calculate and refund or credit the Federal Government. As a result, Mutual did not refund, or credit to the Federal Government, 401(k) pension plan gains, due to unvested forfeitures, totaling \$555,995.

## **UNALLOWABLE COSTS**

### **Direct Rent Costs**

Federal regulations (48 CFR § 31.201-2(d)) state:

A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles.... The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

Mutual reported unallowable direct rent costs of \$33,827. Mutual reported to Medicare forecasted direct rent costs of \$1,738,261 instead of the actual year-end direct rent costs of \$1,704,434.

## **Indirect Costs**

Mutual reported unallowable indirect costs totaling \$30,072. These indirect costs were for legal (\$28,188), travel (\$1,318), entertainment (\$356), interest (\$142), miscellaneous (\$41), and post-termination-date purchases (\$27), and were not allowable for Federal reimbursement.

### *Indirect Costs for Legal Fees*

Federal regulations (48 CFR § 31.205-33(f)) state: “Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished...”

Mutual reported unallowable legal costs of \$28,188. Specifically, Mutual reported to Medicare fees for settlement costs and for a contract status update which were not supported with evidence of the nature and scope of the services furnished.

### *Indirect Costs for Travel*

Pursuant to Appendix B, section XV, of the Medicare Part A contract: “The following items are unallowable: A. All direct and indirect costs which relate to the contractor’s non-Medicare business and do not contribute to the Medicare agreement/contract...”

Mutual reported unallowable travel costs of \$1,318. Specifically, Mutual reported to Medicare travel costs that involved government contract bidding which related to Mutual’s non-Medicare business.

### *Indirect Costs for Entertainment*

Federal regulations (48 CFR § 31.205-14) state: “Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable.”

Mutual reported unallowable entertainment costs (tickets to shows, sports events, and social activities) of \$356.

### *Indirect Costs for Interest*

Federal regulations (48 CFR § 31.205-20) state: “Interest on borrowings (however represented) ... are unallowable.”

Mutual reported unallowable interest costs (a finance charge related to a software and services payment) of \$142.

### *Indirect Miscellaneous Costs*

Pursuant to Appendix B, section XV, of the Medicare Part A contract: “The following items are unallowable: A. All direct and indirect costs which relate to the contractor’s non-Medicare business and do not contribute to the Medicare agreement/contract....”

Mutual reported unallowable miscellaneous costs of \$41. Specifically, Mutual reported to Medicare costs for items in its Wild Kingdom program and for flowers which related to Mutual’s non-Medicare business.

### *Post-Termination-Date Purchases*

Pursuant to Appendix B, section XV, of the Medicare Part A contract: “The following items are unallowable: A. All direct and indirect costs which relate to the contractor’s non-Medicare business and do not contribute to the Medicare agreement/contract....”

Mutual reported unallowable post-termination-date purchase costs of \$27. Specifically, Mutual reported to Medicare the costs for a flag and books that were purchased after WPS had assumed Mutual’s operations. Because Mutual made these purchases after the termination of the Medicare contract, the costs did not contribute to Medicare.

### **Online Claim Access Costs**

Federal regulations (48 CFR § 31.201-2(d)) state:

A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles.... The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

Mutual reported online claim access costs of \$2,824 that were not allowable because they lacked supporting documentation. Online claim access is a service that Mutual offers to providers that enables them to access Medicare claim information. Mutual reported to Medicare online claim access costs of \$15,361 but had supporting documentation for only \$12,537 of these costs.

### **Travel Costs**

Mutual reported unallowable travel costs of \$520. These costs were for airline tickets (\$385) and hotel/lodging (\$135), and were not allowable for Federal reimbursement.

#### *Travel Costs for an Airline Ticket*

Pursuant to Appendix B, section XV, of the Medicare Part A contract: “The following items are unallowable: A. All direct and indirect costs which relate to the contractor’s non-Medicare business and do not contribute to the Medicare agreement/contract....”

Mutual reported an unallowable airline ticket cost of \$385 associated with travel that did not contribute to Medicare.

#### *Travel Costs for Hotel/Lodging*

Federal regulations (48 CFR § 31.201-2(d)) state:

A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles.... The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

Mutual reported an unallowable hotel/lodging cost of \$135. Specifically, Mutual reported to Medicare a hotel/lodging cost not supported with documentation.

#### **PENSION PLAN GAINS DUE TO UNVESTED FORFEITURES**

Federal regulations (48 CFR § 31.201-5) state: “The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the [Medicare] contractor shall be credited to the Government either as a cost reduction or by cash refund.”

Federal regulations (48 CFR § 31.205-6(j)(3)(ii)) state:

For all other situations where assets revert to the [Medicare] contractor, or such assets are constructively received by it for any reason, the [Medicare] contractor shall, at the Government’s option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government’s equitable share shall reflect the Government’s participation in pension costs through those contracts for which cost or pricing data were submitted....

Mutual did not refund or credit the Federal Government for 401(k) pension plan gains, due to unvested forfeitures, for FYs 1989 through the termination of the contract on November 5, 2007. Mutual did not have a process to identify which employees were unvested in order to calculate the Federal Government’s equitable share of pension plan gains. As a result, Mutual did not refund, or credit to the Federal Government, 401(k) pension plan gains, due to unvested forfeitures, totaling \$555,995.

#### **RECOMMENDATIONS**

We recommend that Mutual:

- refund \$67,243 to the Federal Government for unallowable Medicare administrative costs and

- refund or credit \$555,995 to the Federal Government for 401(k) pension gains due to unvested forfeitures.

### **AUDITEE COMMENTS**

In written comments on our draft report, Mutual agreed with our findings. Mutual also requested that CMS credit the \$67,243 in unallowable administrative costs and \$555,995 for 401(k) pension gains due to unvested forfeitures against any amount owed to Mutual when the final contract termination and plan costs are determined.

Mutual's comments are included in their entirety as the Appendix.

# **APPENDIX**

## APPENDIX: AUDITEE COMMENTS

MUTUAL of OMAHA INSURANCE COMPANY  
Mutual of Omaha Plaza  
Omaha, NE 68175  
402 342 7600  
mutualofomaha.com



March 5, 2012

Mr. Patrick J. Cogley  
Regional Inspector General  
for Audit Services  
Office of Inspector General  
Region VII  
601 East 12<sup>th</sup> Street, Room 0429  
Kansas City, MO 64106

Dear Mr. Cogley:

This letter is in response to the draft audit report dated February 15, 2012 relating to the review of Mutual of Omaha Insurance Company's ("Mutual of Omaha") Final Administrative Cost Proposals (FACPs) for the period October 1, 2006 through November 5, 2007 and Mutual of Omaha's 401(k) pension plan gains, due to unvested forfeitures, for FYs 1989 through November 5, 2007.

The report proposes to eliminate \$67,243 for unallowable administrative costs. The report further proposes that Mutual of Omaha refund or credit \$555,995 for 401(k) pension gains due to unvested forfeitures. Mutual of Omaha agrees with the findings contained within the draft audit report.

Mutual of Omaha and CMS have not finalized the final costs associated with the novation of Mutual of Omaha's Medicare Part A contract which occurred on November 5, 2007 or Audit Report A-07-11-00347 relating to the Mutual of Omaha Retirement Income Plan (Plan). Mutual of Omaha estimates these final costs to be in excess of the amounts owed to CMS under this draft audit report. Therefore, Mutual of Omaha respectfully requests that the total amount of the unallowable costs and pension gains related to the 401(k) unvested forfeitures set forth in the draft audit report be credited against any amount owed to it by CMS when the final contract termination and Plan costs are determined.

Thank you for the opportunity to respond to the draft report. Please contact me at 402-351-2257 if you have any questions regarding Mutual of Omaha's response.

Sincerely,

Pat Shiverdecker  
SVP Corporate Strategy  
Mutual of Omaha Insurance Company

cc: Kathy Markman