NATIONAL GOVERNMENT SERVICES, INC., CLAIMED SOME UNALLOWABLE MEDICARE NONQUALIFIED PLAN COSTS THROUGH ITS INCURRED COST PROPOSALS

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Amy J. Frontz
Deputy Inspector General for Audit Services

December 2022
A-07-22-00628
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:

**Office of Audit Services**

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.

**Office of Evaluation and Inspections**

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

**Office of Investigations**

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

**Office of Counsel to the Inspector General**

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG’s internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.
NOTICES

THIS REPORT IS AVAILABLE TO THE PUBLIC
at https://oig.hhs.gov

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

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.
National Government Services, Inc., Claimed Some Unallowable Medicare Nonqualified Plan Costs Through Its Incurred Cost Proposals

What OIG Found
NGS claimed nonqualified costs of $668,819 for Medicare reimbursement, through its ICPs, for CYs 2015 through 2018; however, we determined that the allowable nonqualified costs during this period were $11,054. The difference, $657,765, represented unallowable nonqualified costs that NGS claimed on its ICPs for CYs 2015 through 2018. NGS claimed these unallowable nonqualified costs primarily because NGS based its claim for Medicare reimbursement on incorrect allocable nonqualified costs included in the indirect cost rates on the ICPs.

What OIG Recommends and Auditee Comments
We recommend that NGS work with CMS to ensure that its final settlement of contract costs reflects a decrease in the Medicare nonqualified costs of $657,765 for CYs 2015 through 2018.

NGS concurred with our recommendation and said that it would work with CMS to reflect the final allocable costs in its ICPs upon final settlement of CYs 2015 through 2018.
# TABLE OF CONTENTS

INTRODUCTION................................................................................................................................................. 1

Why We Did This Audit........................................................................................................................................ 1

Objective .............................................................................................................................................................. 1

Background .......................................................................................................................................................... 1
  National Government Services, Inc., and Medicare ......................................................................................... 1
  Nonqualified Plan ................................................................................................................................................. 2
  Accounting Methodologies ............................................................................................................................ 2
  Incurred Cost Proposal Audits ....................................................................................................................... 3

How We Conducted This Audit.......................................................................................................................... 3

FINDING .............................................................................................................................................................. 3
  Allocable Nonqualified Plan Costs Overstated ................................................................................................. 4
  Unallowable Nonqualified Plan Costs Claimed ............................................................................................... 4

RECOMMENDATION ....................................................................................................................................... 5

AUDITEE COMMENTS ....................................................................................................................................... 5

APPENDICES

A: Audit Scope and Methodology ...................................................................................................................... 6

B: Federal Requirements Related to Nonqualified Plan Costs ......................................................................... 8

C: Auditee Comments ....................................................................................................................................... 10
INTRODUCTION

WHY WE DID THIS AUDIT

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

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

For this audit, we focused on one Medicare contractor, National Government Services, Inc. (NGS). In particular, we examined the allowable nonqualified costs that NGS claimed for Medicare reimbursement and reported on its ICPs.

OBJECTIVE

Our objective was to determine whether the calendar years (CYs) 2015 through 2018 nonqualified costs that NGS claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

BACKGROUND

National Government Services, Inc., and Medicare

NGS is a wholly owned subsidiary of Federal Government Solutions, which is a holding company created and owned by Elevance Health (formerly Anthem, Inc.).¹ NGS administered Durable Medical Equipment (DME) Jurisdiction B² under MAC contracts until the contract concluded on July 31, 2016. NGS continues to administer Medicare Part A and Medicare Part B contract

¹ Effective June 28, 2022, Anthem Inc., changed its name to Elevance Health.

² DME Jurisdiction B consists of the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin.
operations under MAC contracts for Jurisdictions 6 and K, effective September 27, 2012, and February 22, 2013, respectively.\(^3,4\)

The disclosure statement that NGS submits to CMS states that NGS uses pooled cost accounting. Medicare contractors use pooled cost accounting to calculate the indirect cost rates (whose computations include pension, PRB, Supplemental Executive Retirement Plan, and nonqualified costs) that they submit on their ICPs. The indirect cost rates are used to calculate contract costs reported on the ICPs. CMS uses these indirect cost rates in determining the final indirect cost rates for each contract.\(^5\)

**Nonqualified Plan**

Anthem sponsors the Anthem, Inc., Comprehensive Non-Qualified Deferred Compensation Plan (Anthem Plan). The plan’s primary purpose 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.

This report addresses the nonqualified costs that NGS claimed under the provisions of its MAC contracts and CAS- and FAR-covered contracts.

**Accounting Methodologies**

The Medicare contracts require NGS to calculate nonqualified costs in accordance with the FAR and the CAS. 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.\(^6\)


\(^4\)Medicare Parts A and B Jurisdiction K consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. NGS’s jurisdiction for home health and hospice services consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

\(^5\)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.

\(^6\)The pay-as-you-go method is a method of recognizing costs only when benefits are paid to retired employees or their beneficiaries.
Incurred Cost Proposal Audits

At CMS’s request, Kearney & Company, P.C. (Kearney), CohnReznick, LLC (CohnReznick), and CliftonLarsonAllen LLP (CLA) performed audits of the ICPs that NGS submitted for the periods of 2015 through 2018. The objectives of the Kearney, CohnReznick, and CLA ICP 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 Kearney, CohnReznick, and CLA ICP audit findings and recommendations when computing the allowable nonqualified costs discussed in this report.

We incorporated the results of the Kearney, CohnReznick, and CLA ICP 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 Kearney, CohnReznick, and CLA ICP audit reports, to determine the final indirect cost rates and the total allowable contract costs for NGS for CYs 2015 through 2018. The cognizant Contracting Officer will perform a final settlement with NGS to determine the final indirect cost rates. These rates ultimately determine the final costs of each contract.7

HOW WE CONDUCTED THIS AUDIT

We reviewed $668,819 of nonqualified costs that NGS claimed for Medicare reimbursement on its ICPs for CYs 2015 through 2018.

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.

Appendix A contains details of our audit scope and methodology.

FINDING

NGS claimed nonqualified costs of $668,819 for Medicare reimbursement, through its ICPs, for CYs 2015 through 2018; however, we determined that the allowable nonqualified costs during this period were $11,054. The difference, $657,765, represented unallowable nonqualified costs that NGS claimed on its ICPs for CYs 2015 through 2018. NGS claimed these unallowable

---

7 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.
nonqualified costs primarily because NGS based its claim for Medicare reimbursement on incorrect allocable nonqualified costs included in the indirect cost rates on the ICPs.

**ALLOCABLE NONQUALIFIED PLAN COSTS OVERSTATED**

During this audit, we calculated the allocable nonqualified costs for CYs 2015 through 2018 in accordance with Federal requirements. We determined that the allocable nonqualified costs for CYs 2015 through 2018 totaled $10,771. NGS identified its allocable nonqualified costs of $653,043 for this period. Therefore, NGS overstated the allocable nonqualified costs by $642,272. This overstatement occurred because NGS did not claim the correct allocable nonqualified costs on its ICPs.

We used these allocable nonqualified costs to determine the allowable nonqualified costs for Medicare reimbursement. Table 1 compares the allocable nonqualified costs that we determined for CYs 2015 through 2018 with the costs that NGS reported for the same time period.

<table>
<thead>
<tr>
<th>CY</th>
<th>Allocable Per Audit</th>
<th>Per NGS</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$3,440</td>
<td>$215,560</td>
<td>($212,120)</td>
</tr>
<tr>
<td>2016</td>
<td>2,896</td>
<td>217,497</td>
<td>(214,601)</td>
</tr>
<tr>
<td>2017</td>
<td>2,422</td>
<td>216,064</td>
<td>(213,642)</td>
</tr>
<tr>
<td>2018</td>
<td>2,013</td>
<td>3,922</td>
<td>(1,909)</td>
</tr>
<tr>
<td>Total</td>
<td>$10,771</td>
<td>$653,043</td>
<td>($642,272)</td>
</tr>
</tbody>
</table>

After performing the calculations discussed above, we then used the allocable cost information to adjust the indirect cost rates (i.e., the fringe benefit and general and administrative rates) and, in turn, to calculate the information presented in Table 2 later in the report. (Our calculations do not appear in this report because those rate computations that NGS used in its ICPs, and to which we referred as part of our audit, are proprietary information.)

**UNALLOWABLE NONQUALIFIED PLAN COSTS CLAIMED**

NGS claimed nonqualified costs of $668,819 for Medicare reimbursement, through its ICPs, for CYs 2015 through 2018. After incorporating the results of the Kearney, CohnReznick, and CLA ICP audits, we determined that the allowable nonqualified costs for CYs 2015 through 2018 were $11,054. Thus, NGS claimed $657,765 of unallowable nonqualified costs on its ICPs for CYs 2015 through 2018. This overclaim occurred because NGS based its claim for Medicare reimbursement on incorrect allocable nonqualified costs included in the indirect cost rates on the ICPs.
In accordance with the FAR and the CAS, we calculated the allowable nonqualified costs based on actual payments to nonqualified participants in accordance with CAS 415.40(a). Accordingly, we determined that the allowable nonqualified costs for CYs 2015 through 2018, calculated under the pay-as-you-go method, totaled $11,054.

Table 2 compares the nonqualified costs that we calculated (using our adjusted indirect cost rates) with the nonqualified costs that NGS claimed for Medicare reimbursement for CYs 2015 through 2018.

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

<table>
<thead>
<tr>
<th>CY</th>
<th>Allowable Per Audit</th>
<th>Per NGS</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>$4,100</td>
<td>$257,509</td>
<td>($253,409)</td>
</tr>
<tr>
<td>2016</td>
<td>2,710</td>
<td>203,851</td>
<td>(201,141)</td>
</tr>
<tr>
<td>2017</td>
<td>2,288</td>
<td>203,662</td>
<td>(201,374)</td>
</tr>
<tr>
<td>2018</td>
<td>1,956</td>
<td>3,797</td>
<td>(1,841)</td>
</tr>
<tr>
<td>Total</td>
<td>$11,054</td>
<td>$668,819</td>
<td>($657,765)</td>
</tr>
</tbody>
</table>

Because NGS did not calculate its nonqualified costs in accordance with Federal regulations and the Medicare contracts’ requirements, it claimed $657,765 of unallowable nonqualified costs.

RECOMMENDATION

We recommend that National Government Services, Inc., work with CMS to ensure that its final settlement of contract costs reflects a decrease in the Medicare nonqualified costs of $657,765 for CYs 2015 through 2018.

AUDITEE COMMENTS

In written comments on our draft report, NGS concurred with our recommendation and said that it would work with CMS to reflect the final allocable costs in its ICPs upon final settlement of CYs 2015 through 2018.

NGS’s comments appear in their entirety as Appendix C.

---

8 Our calculations of allowable costs do not appear in this report because those indirect cost rate computations that NGS used in its ICPs, and to which we referred as part of our audit, are proprietary information.
APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed $668,819 of nonqualified costs that NGS claimed for Medicare reimbursement on its ICPs for CYs 2015 through 2018.

Achieving our objective did not require that we review NGS’s overall internal control structure. We reviewed the internal controls related to the pension costs that were included in NGS’s ICPs and ultimately used as the basis for Medicare reimbursement, to ensure that these costs were allocable in accordance with the CAS and allowable in accordance with the FAR.

We performed our audit work at our office in Jefferson City, Missouri.

METHODOLOGY

To accomplish our objective, we:

• reviewed the portions of the FAR, CAS, and Medicare contracts applicable to this audit;
• reviewed the Anthem Plan’s plan documents;
• reviewed accounting records and information provided by NGS to identify the amount of nonqualified costs claimed for Medicare reimbursement for CYs 2015 through 2018;
• calculated the allowable nonqualified costs in accordance with applicable provisions for the FAR and the CAS;
• reviewed the results of the Kearney, CohnReznick, and CLA ICP audits and incorporated those results into our calculations of allowable nonqualified costs; and
• provided the results of our audit to NGS officials on August 29, 2022.

We performed this audit in conjunction with the following audits and used the information obtained during these audits:

• National Government Services, Inc., Claimed Some Unallowable Medicare Pension Costs Through Its Incurred Cost Proposals (A-07-22-00623); and
• National Government Services, Inc., Claimed Some Unallowable Medicare Postretirement Benefit Plan Costs Through Its Incurred Cost Proposals (A-07-22-00624); and

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.
APPENDIX B: FEDERAL REQUIREMENTS RELATED TO
NONQUALIFIED PLAN COSTS

FEDERAL REGULATIONS

FAR 31.001 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.

Federal regulations (CAS 415.50(a)) state that the contractor shall be deemed to have incurred
an obligation for the cost of deferred compensation when all of the following conditions have
been met. However, for awards that require that the employee perform future service in order
to receive the benefits, the obligation is deemed to have been incurred as the future service is
performed for that part of the award attributable to such future service:

(1) There is a requirement to make the future payment(s) which the contractor cannot
unilaterally avoid.

(2) The deferred compensation award is to be satisfied by a future payment of money,
other assets, or shares of stock of the contractor.

(3) The amount of the future payment can be measured with reasonable accuracy.

(4) The recipient of the award is known.
(5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.

(6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

Federal regulations (CAS 415.50(b)) state: “If any of the conditions in [CAS 415.50(a)] is not met, the cost of deferred compensation shall be assignable only to the cost accounting period or periods in which the compensation is paid to the employee.”

MEDICARE CONTRACTS

The Medicare contracts require NGS 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.)
December 5, 2022

Mr. James I. Korn  
Regional Inspector General for Audit Services  
Office of Audit Services, Region VII  
601 East 12th Street, Room 0429  
Kansas City, MO 64106

Re: Report Number A-07-22-00628

We are in receipt of the above referenced draft audit report.

NGS concurs with the recommendation made in the report and will work with CMS to reflect the final allocable costs in its Incurred Cost Proposals upon final settlement of years 2015 thru 2018.

In addition to these costs, NGS will work with CMS to incorporate the pre-2007 Empire Plan benefit payments that were excluded from this audit. These costs have previously been recognized as allowable by CMS. These costs totaled approximately $204,000 between 2015 and 2018.

If you have any further questions, I can be reached at 414-207-2517 or via email at todd.reiger@elevancehealth.com.

Sincerely,

/Todd W. Reiger/

Todd W. Reiger, CPA  
Medicare Chief Financial Officer

Copy: Jane Hite-Syed  
Rachel Fleischer  
Gail Howard  
Renee Sherrill  
Jeff Wilson (OIG)