



January 21, 2010

TO: Charlene Frizzera
Acting Administrator
Centers for Medicare & Medicaid Services

FROM: /Joseph E. Vengrin/
Deputy Inspector General for Audit Services

SUBJECT: Review of OneLegacy's Reported Fiscal Year 2006 Organ Acquisition Overhead Costs and Administrative and General Costs (A-09-08-00033)

Attached is an advance copy of our final report on OneLegacy's reported fiscal year (FY) 2006 organ acquisition overhead costs and administrative and general costs. We will issue this report to OneLegacy within 5 business days.

Organ procurement organizations (OPO) are not-for-profit organizations that are responsible for procuring and preserving transplantable organs and transporting them to transplant centers. The Centers for Medicare & Medicaid Services requires independent OPOs to submit Medicare cost reports annually to determine the amounts payable under Medicare associated with the procurement of kidneys. The cost report includes direct costs, overhead costs, and administrative and general costs associated with organ procurement.

The costs claimed in the cost report must be related to the care of beneficiaries; reasonable, necessary, and proper; and allowable under Medicare regulations (42 CFR § 413.9(a), (b), and (c)(3)). In addition, the OPO's cost information must be accurate and in sufficient detail to support payments made for services provided (42 CFR § 413.24(a) and (c)). The Medicare "Provider Reimbursement Manual" (Manual) states that independent OPOs are reimbursed on the basis of reasonable cost and requires them to use the policies contained in the Manual.

In its FY 2006 Medicare cost report, OneLegacy reported \$15,064,120 of OPO overhead costs and \$9,648,274 of administrative and general costs, from which we judgmentally selected a total of \$3,157,740 to review.

Our objective was to determine whether OneLegacy complied with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report.

OneLegacy did not fully comply with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report. Of the \$3,157,740 of costs we reviewed, \$2,626,280 was allowable. The remaining \$531,460 represents \$290,968 of unallowable costs and \$240,492 of unsupported costs:

- Contrary to Federal regulations, OneLegacy reported \$290,968 of costs that were not related to patient care or did not comply with other Medicare requirements and therefore were not allowable. This amount included costs incurred for the Rose Parade, deferred compensation, donations and gifts, lobbying, meals, and entertainment. We estimated that Medicare's share of the unallowable costs related to kidney procurement was \$162,331.
- Contrary to Federal requirements, OneLegacy reported \$240,492 of costs that were unsupported. For \$26,635 of this amount, no documentation existed to support the reported costs. For the remaining \$213,857, OneLegacy was unable to provide adequate documentation to support the allowability of the reported costs. Based on Federal regulations and the Manual, we considered the unsupported costs to be unallowable for Medicare reimbursement. We estimated that Medicare's share of the unsupported costs related to kidney procurement was \$134,171.

OneLegacy did not have procedures to ensure that all OPO overhead costs and administrative and general costs reported in its Medicare cost report were allowable, supportable, and in compliance with Medicare requirements. As a result, OneLegacy overstated its Medicare reimbursement in the FY 2006 Medicare cost report by an estimated \$296,502.

We recommend that OneLegacy (1) submit a revised FY 2006 Medicare cost report to the fiscal intermediary to correct the estimated Medicare overstatement of \$296,502 and (2) develop and implement procedures to ensure that costs reported in future Medicare cost reports are allowable, supportable, and in compliance with Medicare requirements.

In its comments on our draft report, OneLegacy agreed with the findings related to deferred compensation, lobbying costs, and entertainment costs. However, OneLegacy disagreed with the findings related to Rose Parade costs, donations and gifts, meal costs, and unsupported costs. OneLegacy stated that it was unable to implement the first recommendation because the fiscal intermediary has never allowed OPOs to reopen closed reports. OneLegacy agreed with the second recommendation.

After reviewing OneLegacy's comments and the additional documentation that OneLegacy provided, we revised the report to remove the finding related to unsupported legal fees and modified our first recommendation accordingly. Nothing in OneLegacy's comments and additional documentation caused us to revise our other findings. The fiscal intermediary informed us that it could reopen the cost report at the provider's request.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or through email at George.Reeb@oig.hhs.gov

Page 3 – Charlene Frizzera

or Lori A. Ahlstrand, Regional Inspector General for Audit Services, Region IX, at (415) 437-8360 or through email at Lori.Ahlstrand@oig.hhs.gov. Please refer to report number A-09-08-00033.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services, Region IX
90 – 7th Street, Suite 3-650
San Francisco, CA 94103

January 28, 2010

Report Number: A-09-08-00033

Mr. Thomas Mone
Chief Executive Officer
and Executive Vice President
OneLegacy
221 South Figueroa Street, Suite 500
Los Angeles, California 90012

Dear Mr. Mone:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled “Review of OneLegacy’s Reported Fiscal Year 2006 Organ Acquisition Overhead Costs and Administrative and General Costs.” 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 (415) 437-8360, or contact Jerry McGee, Audit Manager, at (323) 261-7218, extension 603, or through email at Jerry.McGee@oig.hhs.gov. Please refer to report number A-09-08-00033 in all correspondence.

Sincerely,

/Lori A. Ahlstrand/
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
Centers 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 ONELEGACY'S
REPORTED FISCAL YEAR 2006
ORGAN ACQUISITION OVERHEAD
COSTS AND ADMINISTRATIVE
AND GENERAL COSTS**



Daniel R. Levinson
Inspector General

January 2010
A-09-08-00033

Office of Inspector General

<http://oig.hhs.gov>

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THIS REPORT IS AVAILABLE TO THE PUBLIC
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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

Pursuant to Title XVIII of the Social Security Act (the Act), the Medicare program provides health insurance for people aged 65 or older, people under the age of 65 with certain disabilities, and people of all ages with end-stage renal disease, which is permanent kidney failure requiring dialysis or a kidney transplant. Section 1881 of the Act authorizes Medicare reimbursement for dialysis, transplantation, and procurement of kidneys. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program.

Organ procurement organizations (OPO) are not-for-profit organizations that are responsible for procuring and preserving transplantable organs and transporting them to transplant centers. Pursuant to section 1138(b)(1) of the Act, for organ procurement costs to be reimbursed under Medicare, an OPO must be a “qualified organ procurement organization” as described in section 371(b) of the Public Health Service Act and meet several other statutory requirements.

An OPO may be independent or hospital-based. Independent OPOs work closely with donor hospitals and transplant centers to facilitate organ donation and transplantation. CMS requires independent OPOs to submit Medicare cost reports annually to determine the amounts payable under Medicare associated with the procurement of kidneys. (Medicare does not reimburse independent OPOs for the costs of procuring organs other than kidneys.) The cost report includes direct costs, overhead costs, and administrative and general costs associated with organ procurement. Overhead costs include costs for procurement coordinators, professional education, public education, and organ placement. Administrative and general costs include such costs as accounting and legal fees; office salaries and supplies; and travel, meetings, and seminars.

The costs claimed in the cost report must be related to the care of beneficiaries; reasonable, necessary, and proper; and allowable under Medicare regulations (42 CFR § 413.9(a), (b), and (c)(3)). In addition, the OPO’s cost information must be accurate and in sufficient detail to support payments made for services provided (42 CFR § 413.24(a) and (c)). The Medicare “Provider Reimbursement Manual” (Manual) states that independent OPOs are reimbursed on the basis of reasonable cost and requires them to use the policies contained in the Manual.

OneLegacy, a federally designated independent OPO serving seven counties in Southern California, submitted to the fiscal intermediary its fiscal year (FY) 2006 Medicare cost report covering the period January 1 through December 31, 2006. OneLegacy reported \$15,064,120 of OPO overhead costs and \$9,648,274 of administrative and general costs, from which we judgmentally selected a total of \$3,157,740 to review.

OBJECTIVE

Our objective was to determine whether OneLegacy complied with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report.

SUMMARY OF FINDINGS

OneLegacy did not fully comply with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report. Of the \$3,157,740 of costs we reviewed, \$2,626,280 was allowable. The remaining \$531,460 represents \$290,968 of unallowable costs and \$240,492 of unsupported costs:

- Contrary to Federal regulations, OneLegacy reported \$290,968 of costs that were not related to patient care or did not comply with other Medicare requirements and therefore were not allowable. This amount included costs incurred for the Rose Parade, deferred compensation, donations and gifts, lobbying, meals, and entertainment. We estimated that Medicare's share of the unallowable costs related to kidney procurement was \$162,331.
- Contrary to Federal requirements, OneLegacy reported \$240,492 of costs that were unsupported. For \$26,635 of this amount, no documentation existed to support the reported costs. For the remaining \$213,857, OneLegacy was unable to provide adequate documentation to support the allowability of the reported costs. Based on Federal regulations and the Manual, we considered the unsupported costs to be unallowable for Medicare reimbursement. We estimated that Medicare's share of the unsupported costs related to kidney procurement was \$134,171.

OneLegacy did not have procedures to ensure that all OPO overhead costs and administrative and general costs reported in its Medicare cost report were allowable, supportable, and in compliance with Medicare requirements. As a result, OneLegacy overstated its Medicare reimbursement in the FY 2006 Medicare cost report by an estimated \$296,502.

RECOMMENDATIONS

We recommend that OneLegacy:

- submit a revised FY 2006 Medicare cost report to the fiscal intermediary to correct the estimated Medicare overstatement of \$296,502 and
- develop and implement procedures to ensure that costs reported in future Medicare cost reports are allowable, supportable, and in compliance with Medicare requirements.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, OneLegacy agreed with the findings related to deferred compensation and lobbying costs and did not object to our findings related to entertainment costs. However, OneLegacy disagreed with the findings related to Rose Parade costs, donations and gifts, meal costs, and unsupported costs. OneLegacy stated that it was unable to implement the first recommendation because the fiscal intermediary has never allowed OPOs to reopen closed reports. OneLegacy agreed with the second recommendation.

OneLegacy's comments are included as the Appendix. We excluded the attachments to the comments because they contained personal and proprietary information.

After reviewing OneLegacy's comments and the additional documentation that OneLegacy provided, we revised the report to remove the finding related to unsupported legal fees and deducted the related amount from our first recommendation. Nothing in OneLegacy's comments and additional documentation caused us to revise our other findings. The fiscal intermediary informed us that it could reopen the cost report at the provider's request.

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
Medicare Program.....	1
Organ Procurement Organizations.....	1
Medicare Reimbursement of Independent Organ Procurement Organizations	1
Medicare Cost Reports.....	2
OneLegacy	2
OBJECTIVE, SCOPE, AND METHODOLOGY	3
Objective	3
Scope	3
Methodology	3
FINDINGS AND RECOMMENDATIONS	4
UNALLOWABLE COSTS	4
Rose Parade.....	5
Deferred Compensation	6
Donations and Gifts	7
Lobbying	7
Meals	7
Entertainment	7
UNSUPPORTED COSTS	8
CAUSE AND EFFECT OF UNALLOWABLE AND UNSUPPORTED COSTS REPORTED	9
RECOMMENDATIONS	9
AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE	9
Unallowable Costs	10
Unsupported Costs.....	11
APPENDIX	
AUDITEE COMMENTS	

INTRODUCTION

BACKGROUND

Medicare Program

Pursuant to Title XVIII of the Social Security Act (the Act), the Medicare program provides health insurance for people aged 65 or older, people under the age of 65 with certain disabilities, and people of all ages with end-stage renal disease (ESRD), which is permanent kidney failure requiring dialysis or a kidney transplant. The ESRD Amendments of 1978, P.L. No. 95-292, added to the Act section 1881, which authorizes Medicare reimbursement for dialysis, transplantation, and procurement of kidneys. The Centers for Medicare & Medicaid Services (CMS) administers the Medicare program.

Organ Procurement Organizations

Organ procurement organizations (OPO) are not-for-profit organizations that are responsible for procuring and preserving transplantable organs and transporting them to transplant centers. CMS certifies OPOs to recover or procure organs in CMS-defined exclusive geographic service areas pursuant to section 371(b)(1)(F) of the Public Health Service Act. Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify its designated OPO of potential organ donors.

Pursuant to section 1138(b)(1) of the Act, for organ procurement costs to be reimbursed under Medicare, an OPO must be a “qualified organ procurement organization” as described in section 371(b) of the Public Health Service Act and meet several other statutory requirements. Qualified OPOs have an agreement with the Secretary of Health and Human Services to be reimbursed under Title XVIII of the Act for the procurement of kidneys.

An OPO may be independent or hospital-based. Independent OPOs work closely with donor hospitals and transplant centers to facilitate organ donation and transplantation. Hospital-based OPOs operate within a hospital’s administrative and financial structure.

Medicare Reimbursement of Independent Organ Procurement Organizations

OPOs do not bill Medicare directly for organ procurement services. For kidneys, the donor hospital providing the organ bills the OPO its customary charge.¹ The OPO provides the kidney to the certified transplant center, which pays the OPO and reports the kidney procurement cost in its Medicare cost report. The OPO submits its own Medicare cost report, in which it reports the cost of procuring the kidney and the payment it received from the certified transplant center. Based on the cost report, Medicare Part A makes a retroactive adjustment directly with the independent OPO to reconcile any overpayment or underpayment resulting from the total payments that the independent OPO received from transplant centers for kidneys furnished for transplantation.

¹Donor hospital charges are not limited to reasonable costs and are not regulated by Medicare.

Medicare Cost Reports

CMS requires independent OPOs to submit Medicare cost reports annually so that it can properly determine the amounts payable under Medicare associated with kidney procurement. The cost report, which is divided into multiple worksheets, summarizes the OPO's financial records and statistical data to determine the amount claimed for Medicare reimbursement. That amount is made up of direct costs, overhead costs, and administrative and general costs associated with organ procurement:

- Direct costs include, for example, costs for operating rooms, anesthesiology, respiratory therapy, intensive care units, and donor tissue typing.
- Overhead costs include, for example, costs for procurement coordinators, professional education, public education, and organ placement.
- Administrative and general costs include, for example, costs for accounting and legal fees; office salaries and supplies; and travel, meetings, and seminars.

Pursuant to the cost finding methodology in the Medicare "Provider Reimbursement Manual" (Manual), part II, section 3311, independent OPOs allocate overhead costs to the specific types of organs based on the total number of organs procured. After overhead costs are allocated to each organ, independent OPOs allocate administrative and general costs to the specific types of organs based on the total accumulated direct and overhead costs.

The cost report must provide a complete accounting of costs incurred by the OPO in providing covered services, the total number of Medicare beneficiaries who received those services, and any other data necessary to enable the fiscal intermediary to determine the reasonable cost of covered services provided to Medicare beneficiaries (42 CFR § 413.200(e)).

The costs claimed in the cost report must be related to the care of beneficiaries; reasonable, necessary, and proper; and allowable under Medicare regulations (42 CFR § 413.9(a), (b), and (c)(3)). In addition, the OPO's cost information must be accurate and in sufficient detail to support payments made for services provided (42 CFR § 413.24(a) and (c)). The Manual, part I, section 2773, states: "[I]ndependent OPOs are reimbursed on the basis of reasonable cost. In determining the reasonable cost of . . . services and cost reporting requirements, the policies contained in the Provider Reimbursement Manual (PRM) are to be used."

OneLegacy

OneLegacy, incorporated in 1977 as a nonprofit corporation, is a federally designated independent OPO serving people in Los Angeles, Kern, Orange, Riverside, San Bernardino, Santa Barbara, and Ventura Counties. Its corporate office is located in Los Angeles, California. OneLegacy submitted its fiscal year (FY) 2006 (January 1 through December 31, 2006) Medicare cost report to the fiscal intermediary, Riverbend Government Benefits Administrator,

which was responsible for reviewing the annual Medicare cost reports submitted by the 50 independent OPOs nationwide.²

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether OneLegacy complied with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report.

Scope

OneLegacy reported \$15,064,120 of OPO overhead costs and \$9,648,274 of administrative and general costs in its FY 2006 Medicare cost report. For our review, we judgmentally selected \$3,157,740 of these costs. We limited our review of OneLegacy's internal controls to the procedures that OneLegacy used to accumulate and report OPO overhead costs and administrative and general costs in its cost report.

We conducted our audit from April 2008 to February 2009 and performed fieldwork at OneLegacy's corporate office in Los Angeles, California.

Methodology

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- obtained OneLegacy's FY 2006 Medicare cost report from Riverbend Government Benefits Administrator and reviewed working papers from prior fiscal intermediary audits;
- obtained an understanding of OneLegacy's procedures for reporting OPO overhead costs and administrative and general costs in its Medicare cost reports;
- verified that the total costs reported in OneLegacy's FY 2006 Medicare cost report reconciled to its audited financial statements;
- reconciled the OPO overhead costs and administrative and general costs reported in OneLegacy's FY 2006 Medicare cost report to its detailed general ledger;

²Effective August 3, 2009, Cahaba Government Benefit Administrators, LLC, is the Medicare administrative contractor for independent OPOs.

- reconciled the organ statistics reported in the FY 2006 Medicare cost report to OneLegacy's organ donor log, which included the number of organs procured for each type of organ and the transplant hospital receiving the organ(s);
- judgmentally selected for testing \$3,157,740 of OPO overhead costs and administrative and general costs reported in OneLegacy's FY 2006 detailed general ledger, based on whether the costs were material in amount or considered to be high risk;
- reviewed supporting documentation for the judgmentally selected costs and determined the allowability of those costs;
- interviewed OneLegacy officials and personnel;
- estimated that the percentage of OPO overhead costs and administrative and general costs allocated to kidneys in OneLegacy's FY 2006 Medicare cost report was 55.79 percent;³ and
- estimated the Medicare overpayment related to kidney procurement by applying the estimated percentage of 55.79 to the unallowable and unsupported OPO overhead and administrative and general costs.

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 objective.

FINDINGS AND RECOMMENDATIONS

OneLegacy did not fully comply with Medicare requirements for reporting selected OPO overhead costs and administrative and general costs in its FY 2006 Medicare cost report. Of the \$3,157,740 of costs we reviewed, \$2,626,280 was allowable. The remaining \$531,460 represents \$290,968 of unallowable costs and \$240,492 of unsupported costs. OneLegacy did not have procedures to ensure that all OPO overhead costs and administrative and general costs reported in its Medicare cost report were allowable, supportable, and in compliance with Medicare requirements. As a result, OneLegacy overstated its Medicare reimbursement in the FY 2006 Medicare cost report by an estimated \$296,502.

UNALLOWABLE COSTS

OneLegacy reported \$290,968 of OPO overhead costs and administrative and general costs that were not related to patient care or did not comply with other Medicare requirements and

³We calculated this percentage by averaging the 58.19 percent of overhead costs and 53.39 percent of administrative and general costs allocated to kidneys in the cost report.

therefore were not allowable. The estimated Medicare overpayment for the unallowable costs related to kidney procurement was \$162,331. The table shows details of the unallowable costs.

Unallowable Costs

Cost Category	Unallowable Costs	Estimated Medicare Overpayment
Rose Parade	\$153,513	\$85,645
Deferred Compensation	64,558	36,017
Donations and Gifts	44,003	24,549
Lobbying	15,000	8,368
Meals	9,157	5,109
Entertainment	4,737	2,643
Total	\$290,968	\$162,331

Rose Parade

The Manual, part I, section 2102.3, defines costs not related to patient care. It includes, as an example, “[c]ost of entertainment, including tickets to sporting and other entertainment events” Moreover, the Manual, part I, section 2105.8, states: “Costs incurred by providers for entertainment, including tickets to sporting or other events, alcoholic beverages, golf outings, ski trips, cruises, professional musicians or other entertainers, are not allowable.”

Contrary to the Manual, OneLegacy reported as public education costs \$153,513 of OPO overhead costs associated with the 2006 Rose Parade and Rose Bowl that were entertainment and sporting events. OneLegacy incurred a total of \$327,278 of costs related to the 2006 Rose Parade and Rose Bowl:

- \$75,000 for a float framework and design;
- \$72,021 for lodging, which included \$34,026 for a block of rooms at a hotel in Pasadena, California;
- \$38,980 for receptions and banquets, which included \$7,768 for use of a hotel ballroom for a New Year’s Eve celebration;
- \$30,057 for media and communications expenses, such as audiovisual equipment, photography, and television coverage;
- \$26,469 for miscellaneous supplies;
- \$16,990 for Rose Parade seats and Rose Bowl game tickets;

- \$15,238 for chartered buses, shuttles, and limousines for float judging day and parade day;
- \$8,600 for musical entertainment, which included \$8,000 for a musical performance during a New Year's Eve celebration; and
- \$43,923 for other costs, such as food and beverages, public storage, and flowers.

OneLegacy received donations totaling \$173,765 for the 2006 Rose Parade and Rose Bowl. OneLegacy used the donations to offset the total expenditures of \$327,278 and reported a net amount of \$153,513 as public education costs in its FY 2006 Medicare cost report. However, OneLegacy was unable to identify which expenses incurred for the 2006 Rose Parade and Rose Bowl were offset by the donations received because OneLegacy did not categorize donations according to the type of covered expense or set aside donations for specific purposes. The estimated Medicare share of the unallowable costs related to kidney procurement was \$85,645.

Deferred Compensation

Federal regulations (42 CFR § 413.100(c)(2)(vii)(B)) provide that liabilities related to deferred compensation plans “must be liquidated within 1 year after the end of the cost reporting period in which the liability is incurred. An extension, not to exceed 3 years beyond the end of the cost reporting year in which the liability was incurred, may be granted by the intermediary for good cause if the provider, within the 1-year time limit, furnishes to the intermediary sufficient written justification for non-payment of the liability.”

The Manual, part I, section 2140.4, states: “A provider must make payment of its liability to the fund established for the deferred compensation plan in accordance with the provisions covering liquidation of liabilities established in §2305. This section requires full liquidation of the liability within 1 year after the end of the cost reporting period in which the liability is incurred.”

OneLegacy reported \$64,558 of unallowable OPO overhead costs and administrative and general costs related to its deferred-compensation pension plan. OneLegacy incurred deferred compensation costs of \$1,253,097, which represented employer contributions for the pension plan for the year ending December 31, 2006. However, contrary to Federal regulations and the Manual, OneLegacy did not liquidate the entire amount within 1 year of the end of the FY 2006 cost reporting period. OneLegacy transferred only \$1,177,925 to its third-party pension administrator. The remaining \$75,172 was not liquidated as required by Medicare regulations, of which \$64,558 related to overhead costs and administrative and general costs. As of February 2009, OneLegacy had not liquidated the balance, nor had it requested a good-cause extension from the intermediary. The estimated Medicare share of the unallowable costs related to kidney procurement was \$36,017.

Donations and Gifts

The Manual, part I, section 2102.3, states that the costs of gifts or donations are not related to patient care and therefore not allowable in computing reimbursable costs. Section 2105.7 states: “Costs incurred by providers for gifts or donations to charitable, civic, educational, medical or political entities are not allowable.”

Contrary to the Manual, OneLegacy reported \$44,003 of OPO overhead costs and administration and general costs related to donations and gifts. This amount consisted of \$41,250 incurred for donations made to charitable and medical entities and \$2,753 incurred for gifts to non-employees. For example, OneLegacy reported \$6,000 for sponsorship of a golf tournament that benefited a health foundation. OneLegacy also reported \$7,000 for its sponsorship of a liver foundation’s recognition dinner honoring OneLegacy’s chief executive officer. The estimated Medicare share of the unallowable costs related to kidney procurement was \$24,549.

Lobbying

The Manual, part I, section 2139, states: “Provider political and lobbying activities are not related to the care of patients. Therefore, costs incurred for such activities are unallowable.” Further, section 2139.2, paragraph A, defines lobbying as “any activity whereby a directed effort is made to influence legislation.” The Manual further states: “The policy applies whether the lobbying involves Medicare activities or activities unrelated to Medicare and whether the provider lobbies with its own employees or engages others, directly or indirectly, to lobby on its behalf.”

Contrary to the Manual, OneLegacy reported \$15,000 of administrative and general costs related to lobbying. OneLegacy removed \$60,000 of the \$75,000 incurred for lobbying related to legal services provided by a law firm; however, it failed to remove the remaining \$15,000. The estimated Medicare share of the unallowable costs related to kidney procurement was \$8,368.

Meals

The Manual, part I, section 2105.2, states: “The cost of meals for other than provider personnel, whether served in a cafeteria, coffee shop, canteen, etc., is unallowable under the program because it is not related to patient care. (See §2102.3) Providers must maintain adequate cost data in order to determine the cost of these meals.”

Contrary to the Manual, OneLegacy reported \$9,157 of OPO overhead costs and administration and general costs for meals provided to donor hospitals’ staff and others who were not OneLegacy employees without documenting valid business purposes for the expenditures. The estimated Medicare share of the unallowable costs related to kidney procurement was \$5,109.

Entertainment

The Manual, part I, section 2102.3, states that the costs of entertainment and alcoholic beverages are costs not related to patient care and therefore are not allowable in computing reimbursable

costs. Further, section 2102.3 defines unallowable costs as “[c]ost of alcoholic beverages furnished to employees or to others regardless of how or where furnished, such as cost of alcoholic beverages furnished at a provider picnic or furnished as a fringe benefit”

The Manual, part I, section 2105.8, states: “Costs incurred by providers for entertainment, including tickets to sporting or other events, alcoholic beverages, golf outings, ski trips, cruises, professional musicians or other entertainers, are not allowable.”

Contrary to the Manual, OneLegacy reported \$4,737 of OPO overhead costs and administration and general costs related to entertainment and alcohol. This amount consisted of \$4,347 incurred for parties held for individuals who were not OneLegacy employees and \$390 incurred for alcoholic beverages by OneLegacy personnel. The estimated Medicare share of the unallowable costs related to kidney procurement was \$2,643.

UNSUPPORTED COSTS

The Manual, part I, section 2300, states: “Providers receiving payment on the basis of reimbursable cost must provide adequate cost data based on financial and statistical records which can be verified by qualified auditors.” Further, section 2304 of the Manual states:

Cost information as developed by the provider must be current, accurate, and in sufficient detail to support payments made for services rendered to beneficiaries. This includes all ledgers, books, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.), which pertain to the determination of reasonable cost, capable of being audited.

Contrary to Federal regulations (42 CFR § 413.24) and the Manual, OneLegacy reported \$240,492 of OPO overhead costs and administration and general costs that were unsupported. For \$26,635 of this amount, no documentation existed to support the reported costs. For the remaining \$213,857, OneLegacy was unable to provide adequate documentation to support the allowability of the reported costs.

Of the \$213,857 of inadequately supported costs, OneLegacy provided only credit card statements for \$149,249 and did not provide adequate supporting documentation for \$64,608 incurred for miscellaneous expenditures:

- OneLegacy provided only credit card statements for \$149,249. OneLegacy maintains corporate credit cards for its executives. Some of those credit cards’ charges were processed for payment without supporting documentation that provided justification for the costs or identification of business purposes. These charges included airfares, hotels, meals at restaurants, and miscellaneous charges. For example, OneLegacy was unable to provide an invoice or itemized receipts to support \$8,446 listed on its September 2006 credit card statement for costs incurred at a hotel in New Orleans, Louisiana.
- For the remaining \$64,608, OneLegacy did not provide adequate supporting documentation, such as itemized bills indicating the types of expenditures incurred or the purpose of the expenditures. For example, OneLegacy was unable to adequately support

\$32,102 of costs reported for a 3-day board of directors' retreat held at a resort and spa in Laguna Beach, California. OneLegacy did not provide sufficient documentation of the purpose of the retreat, the need for overnight lodging, or the need for holding the meeting at a separate facility, or demonstrate that the costs were reasonable, necessary, and proper. The only documentation provided that validated a business purpose was the minutes for the board of directors meeting on the third day of the retreat.

Based on Federal regulations and the Manual, we considered the unsupported costs to be unallowable for Medicare reimbursement. The estimated Medicare share of the unsupported costs related to kidney procurement was \$134,171.

CAUSE AND EFFECT OF UNALLOWABLE AND UNSUPPORTED COSTS REPORTED

OneLegacy reported unallowable and unsupported costs because it did not have procedures to ensure that all OPO overhead costs and administrative and general costs were allowable, supportable, and in compliance with Medicare requirements. As a result, OneLegacy overstated its Medicare reimbursement in the FY 2006 Medicare cost report by an estimated \$296,502.

RECOMMENDATIONS

We recommend that OneLegacy:

- submit a revised FY 2006 Medicare cost report to the fiscal intermediary to correct the estimated Medicare overstatement of \$296,502 and
- develop and implement procedures to ensure that costs reported in future Medicare cost reports are allowable, supportable, and in compliance with Medicare requirements.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In its comments on our draft report, OneLegacy agreed with the findings related to deferred compensation and lobbying costs and did not object to our findings related to entertainment costs. However, OneLegacy disagreed with the findings related to Rose Parade costs, donations and gifts, meal costs, and unsupported costs. OneLegacy stated that it was unable to implement the first recommendation because the fiscal intermediary has never allowed OPOs to reopen closed reports. OneLegacy agreed with the second recommendation.

OneLegacy's comments are included as the Appendix. We excluded the attachments to the comments because they contained personal and proprietary information.

After reviewing OneLegacy's comments and the additional documentation that OneLegacy provided, we revised the report to remove the finding related to unsupported legal fees and deducted the related amount from our first recommendation. Nothing in OneLegacy's comments and additional documentation caused us to revise our other findings. The fiscal intermediary informed us that it could reopen the cost report at the provider's request.

Unallowable Costs

Auditee Comments

OneLegacy disagreed that costs related to the Rose Parade, donations and gifts, and meals were unallowable:

- OneLegacy stated that the Rose Parade is a partnered investment in public education to increase organ donations and that Medicare has long considered targeted “patient education” designed to improve access to care and clinical outcomes to be reimbursable. OneLegacy also stated that because OPOs do not treat patients, some latitude has always been applied to OPO cost reports. With its comments, OneLegacy provided the 2007 budget expenses paid in FY 2006 for the January 1, 2007, Rose Parade float.
- OneLegacy stated that it made donations to purchase opportunities to make presentations at health care events on the value of organ donations, with the intention of increasing public and patient support for organ donation.
- OneLegacy stated that because meals were provided to improve patient and donor care by hospital staff and were essential to ensuring organ donations, these costs should be allowable.

Office of Inspector General Response

Nothing in OneLegacy’s comments and additional information caused us to revise our findings.

- Costs incurred in connection with the Rose Parade and Rose Bowl are entertainment costs that are not allowable under the specific cost reimbursement principles in the Manual, part I, section 2105.8. We understand that OneLegacy considers the Rose Parade float to be an investment in public education; however, the Manual, part I, section 2136.1, provides that advertising costs, including costs associated with public relations, are allowable only if they are directly or indirectly related to patient care and are reasonable. The Manual, part I, section 2102.1, states: “Implicit in the intention that actual costs be paid to the extent they are reasonable is the expectation that the provider seeks to minimize its costs and that its actual costs do not exceed what a prudent and cost conscious buyer pays for a given item or service.” Costs associated with the Rose Parade float and related activities are not allowable public education costs because they are not directly or indirectly related to patient care and exceed what a cost-conscious buyer would pay for public education. Moreover, the documentation that OneLegacy provided to support expenses that were offset by donations was for the 2007, not the 2006, Rose Parade.
- Because donations and gifts are not related to patient care, they are not allowable under sections 2102.3 and 2105.7 of the Manual. In addition, during our audit, a OneLegacy official informed us that donations were not mandatory for OneLegacy staff to attend and speak at various venues.

- Meals provided to individuals who were not OneLegacy employees are not allowable under sections 2102.3 and 2105.2 of the Manual. In addition, the fiscal intermediary’s instructions to OPOs emphasized that “the costs of meals for anyone other than provider personnel are not allowable.”

Unsupported Costs

Auditee Comments

OneLegacy disagreed that the following costs were inadequately supported:

- For \$149,249 of costs supported only by credit card statements, OneLegacy commented that the statements included information equivalent to the details provided on receipts and had the information necessary to determine allowable expenses. OneLegacy attached to its comments a one-page example of a recent credit card statement.
- For \$64,608 of inadequately supported costs, OneLegacy provided itemized receipts for \$32,102 related to the board of director’s retreat. OneLegacy acknowledged that \$1,119 was for unallowable alcoholic drinks. OneLegacy stated that it was unable to address the remaining \$32,506⁴ because the draft report did not include a description of the disallowed costs.

OneLegacy did not comment on the \$26,635 for which no documentation existed to support the reported costs.

Office of Inspector General Response

The credit card statement example provided by OneLegacy was for expenses incurred in May and June 2009. The scope of our audit related to expenses incurred during FY 2006. The majority of credit card statements provided during our review did not include any handwritten attestations of the work-related purpose of the expenses. In addition, the handwritten attestations did not provide an itemization of the expenses that would be required to determine the allowability of the costs incurred pursuant to Federal regulations and the Manual.

OneLegacy’s itemized receipts for the board of directors’ retreat did not describe the purpose of the retreat and did not demonstrate that these costs were reasonable, necessary, and proper and related to patient care as required by Federal regulations and the Manual. Although the remaining \$32,506 of inadequately supported costs was not described in the draft report, all of these costs were identified in a detailed list provided to OneLegacy during our audit.

⁴OneLegacy incorrectly cited \$32,306 in its comments instead of \$32,506.

APPENDIX

APPENDIX: AUDITEE COMMENTS



July 7, 2009

Re: Report Number: A-090-08-00033

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Dear Ms. Ahlstrand:

Thank you for providing a draft report of your audit of OneLegacy for Medicare Cost Report year 2006. We have reviewed the report and would like to respond to each of the items identified.

The report identifies \$290,968 in Unallowable Costs and \$315,076 of Unsupported Costs and an Estimated Medicare Overpayment of \$352,972. Seven individual categories of expense are identified as making up these amounts and we will respond to each of these below.

Unallowable Costs

Rose Parade: \$153,513 Unallowable and \$85,645 Overpayment

Dispute *OIG Determination*

First, the Donate Life Rose Parade float is a partnered investment in public education to increase donation with 60 partner OPOs, transplant centers, and corporations. All contributions are pooled to cover the entire cost of development, construction, coordination, and operation of the float and ancillary media to deliver the message. All riders and their supporters' travel and lodging costs are paid for by their sponsors or themselves and are not subsidized by OneLegacy. Partner contribution details and expense details are available for your review at any time, and attached is an itemized summary of the revenues and expenses of the Parade float.

Second, everything about the float and its support activities is done to generate media stories designed to educate the public and increase organ donation consent rates; which is evidenced by the 300+ media stories on local and national TV, radio and newspapers which is also documented and available for your review (see attached chart illustrating media stories generated and spreadsheet of revenues and expenses, Attachment 1). At an estimated value of \$1,000 for print media advertising and \$2,000 for radio and \$10,000 for television, the economic value of these media placements for the 2006 fiscal year was \$511,000.



Third, the effectiveness of the parade float as a vehicle to make the public more comfortable with donation and inspire them to donate is found in the increase in donation rates and donor registration rates in communities that have been active participants in the float in the months of January – March each year.

Fourth and finally, Medicare has long considered targeted “patient education” designed to improve access to care and clinical outcomes to be reimbursable. Since OPOs do not ever treat patients, it is clear that some latitude has always been applied to OPO cost reports and that has been the recognition that we serve donors instead of patients. The Rose Parade float has been demonstrated to be the most effective means of informing families and individuals of the benefits of donation and increasing donation and registration rates. As such, these costs are consistent with allowable “patient education” expenses made by OPOs, such as brochures, videos, and public presentations that are routinely allowed by the fiscal intermediary and they should be deemed to be allowable in this audit.

Deferred Compensation: \$64,558 Unallowable and \$36,017 Overpayment

Agree with OIG Determination

This finding is correct and resulted from a redetermination of the number of eligible employees that was not adjudicated prior to cost report closure.

Donations and Gifts: \$44,033 Unallowable and \$24,549 Overpayment

Dispute OIG Determination

Each of these “donations” was made to purchase the opportunity to speak and present written and video materials at events that brought together healthcare leaders in our community in order to stimulate their understanding of the need for and value of donation and transplant. They are classified on our books as “donations and gifts” because that is the nature of the fundraising of these organizations and those donors that are for-profit, taxpaying organizations rely on this classification in order to deduct these expenses as charitable donations. As a not-for-profit, we do not need to nor do we intend our donations to be a tax deduction. Our contribution is given with the clear intention of purchasing a venue for sharing our message and increasing public and “patient” support for donation and as such should be an allowable cost.

Lobbying: \$15,000 Unallowable and \$8,368 Overpayment

Agree with OIG Determination

These funds were inadvertently reported as allowable, and should have been reported as non-allowable as the majority of the lobbying expenses were handled.

Meals: \$9,157 Unallowable and \$5,109 Overpayment

Dispute OIG Determination

These meal expenses were made to facilitate the attendance of hospital staff during meal periods at meetings designed to educate on policy and practice changes in donor

identification, management, and organ recovery and hospital policy development to facilitate organ donation. As such, this was solely provided to improve "patient/donor care" by hospital staff and essential to ensuring donation and transplant, and thereby should be deemed to be an allowable expense.

Entertainment: \$4,737 Unallowable and \$2,643 Overpayment

Agree with OIG Determination

Given the de minimus amount of these expenses and the fact that alcohol was identified as making up a portion of the expense (\$390) we will not object to this finding.

Unsupported Costs: \$315,076 Unsupported and \$190,641 Overpayment

Credit Card Statements: \$149,249 Unsupported

Dispute OIG Determination

Credit Card Statements include Date, Payee, Amount, and a hand written attestation as to the work-related purpose of the expense (sample in Attachment 2). This is equivalent to the detail provided on receipts, most of which were printed on thermal paper and do not remain legible within months of the expense. Thus, the documentation of expenses is substantive, and meets the necessary information needs to determine allowable expenses.

Legal Fees: \$101,219

Dispute OIG Determination

These fees were for defense against and settlement of a former employee claim of wrongful termination. OneLegacy was not found responsible and settlement expense was made in order to minimize continued legal expense of a trial. Such fees are entirely within the normal legal expenses related to employment, and in this case the expenses were to defend against an unproven allegation in which OneLegacy agreed to a mediated settlement without admission of any wrong-doing in order to minimize defense costs. This is clarified in the attached documentation (Attachment 3) and these expenses should be deemed to be allowable.

Other Expenses: \$64,408

Dispute OIG Determination

The only item identified in the OIG report is \$32,102 of expenses for the Board of Directors Annual Retreat and Meeting. The report claims that an itemization does not exist, but in fact one was available for all expenses associated with the accommodations and dining and is attached herein. Additional expenses for travel for our international speaker were provided to the auditors. As illustrated in the attached materials (Attachment 4), the individuals in attendance, food and lodging costs, meeting room expenses, and audio-visual expenses are clearly itemized. As such, these costs should not be deemed non-allowable for lack of itemization as is noted in the OIG report. It would be reasonable for the OIG to note that the expense itemization lists \$1,118.78 for alcoholic drinks and this amount should not be deemed allowable. As for the remaining \$32,306 identified in the report; no description of the

nature of this disallowance is included in the report so we have no ability to address this claim and must assume these costs to be allowable.

Finally, the report recommends that OneLegacy submit a revised cost report to the intermediary to correct any overpayments by the Medicare program. Unfortunately, the fiscal intermediary has never allowed OPOs to re-open closed cost reports, so we are unable to follow this recommendation at this time. We would appreciate your guidance in this regard. Additionally, the report recommends that we implement procedures to ensure costs are allowable, supportable, and in compliance with Medicare requirements and we have substantially increased record-keeping requirements to remove any possible ambiguity as to Medicare Allowable status of expenses. We will refine these requirements once the items in dispute are resolved to the satisfaction of our OneLegacy, the OIG, and our fiscal intermediary.

Thank you very much for this opportunity to comment on your findings.

Sincerely

A handwritten signature in cursive script, appearing to read "Thomas Mone".

Thomas Mone, CEO
OneLegacy