Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

NORIDIAN HEALTHCARE SOLUTIONS, LLC, CLAIMED SOME UNALLOWABLE MEDICARE NONQUALIFIED PLANS COSTS THROUGH ITS INCURRED COST PROPOSALS

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A-07-20-00590

Office of Inspector General

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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.

Report in Brief
Date: September 2020
Report No. A-07-20-00590

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

Noridian Healthcare Solutions, LLC, Claimed Some Unallowable Medicare Nonqualified Plans Costs Through Its Incurred Cost Proposals

Why OIG Did This Audit

The Centers for Medicare & Medicaid Services (CMS) reimburses a portion of its contractors' nonqualified plan costs.

At CMS's request, the HHS, OIG, Office of Audit Services, Region VII pension audit team reviews the cost elements related to nonqualified plans and any other pension-related cost elements claimed by Medicare contractors through Incurred Cost Proposals (ICPs).

Previous OIG audits found that Medicare contractors did not always comply with Federal requirements when claiming nonqualified plan costs for Medicare reimbursement.

Our objective was to determine whether the calendar years (CYs) 2014 through 2016 nonqualified Supplemental Executive Retirement Plan and Select Plan costs (herein referred to as "nonqualified costs") that Noridian Healthcare Solutions, LLC (NHS), claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

How OIG Did This Audit

We reviewed $1.8 million of nonqualified costs that NHS claimed for Medicare reimbursement on its ICPs for CYs 2014 through 2016.

What OIG Found

NHS claimed CYs 2014 through 2016 nonqualified costs of $1.8 million for Medicare reimbursement; however, we determined that the allowable nonqualified costs during this period were $424,341. The difference, $1.3 million, represented unallowable Medicare nonqualified costs that NHS claimed on its ICPs for CYs 2014 through 2016. NHS claimed these unallowable Medicare nonqualified costs primarily because it did not calculate these costs in accordance with Federal regulations and the Medicare contracts' requirements.

What OIG Recommends and Auditee Comments

We recommend that NHS work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1.3 million for CYs 2014 through 2016.

NHS concurred with our recommendation. NHS stated that it would work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1.3 million for CYs 2014 through 2016.

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INTRODUCTION

WHY WE DID THIS AUDIT

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

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

For this audit, we focused on one Medicare contractor, Noridian Healthcare Solutions, LLC (NHS). In particular, we examined the costs that NHS claimed for its two nonqualified plans: the Supplemental Executive Retirement Plan and the Select Plan (herein referred to as nonqualified costs) that NHS claimed for Medicare reimbursement, under the provisions of its MAC contracts and CAS- and FAR-covered contracts, and reported on its ICPs.

OBJECTIVE

Our objective was to determine whether the calendar years (CYs) 2014 through 2016 nonqualified costs that NHS claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

BACKGROUND

Noridian Healthcare Solutions, LLC, and Medicare

NHS is a subsidiary of Blue Cross Blue Shield of North Dakota (BCBS North Dakota) (formerly Noridian Mutual Insurance Company), whose home office is in Fargo, North Dakota. NHS administered Medicare Part A, Medicare Part B, and Medicare Durable Medical Equipment (DME) contract operations under MAC contracts for Medicare Parts A and B Jurisdictions E[1]

[1] Medicare Parts A and B Jurisdiction E includes the States of California, Hawaii, and Nevada, and the U.S. Territories of American Samoa, Guam, and the Northern Mariana Islands.

and F[2] and Medicare DME Jurisdictions A[3] and D.[4] In addition, NHS held the Pricing, Data Analysis and Coding (PDAC) contract.

Nonqualified Plans

BCBS North Dakota sponsors nonqualified plans called the Supplemental Retirement Program for Certain Employees of Blue Cross Blue Shield of North Dakota (SERP plan) and the Noridian Select Retirement Plan for Select Approved Employees of Noridian Mutual Insurance Company (Select plan). The purpose of the SERP plan 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. The purpose of the Select plan is to provide benefits for select executive employees who are unable to participate in certain other programs. Select plan benefits are accrued similarly to benefit accrual under the SERP plan. NHS claimed nonqualified costs (for both plans) using the pay-as-you-go basis of accounting.

This report addresses the allowable nonqualified costs claimed by NHS under the provisions of its MAC contracts and its CAS- and FAR-covered contracts.

The disclosure statement that NHS submits to CMS states that NHS uses pooled cost accounting. Medicare contractors use pooled cost accounting to calculate the indirect cost rates (whose computations include pension, postretirement benefit, nonqualified, and Restoration Plan costs) that they submit on their ICPs. Medicare contractors use the indirect cost rates to calculate the contract costs that they report on their ICPs. In turn, CMS uses these indirect cost rates in determining the final indirect cost rates for each contract.[5]

Accounting Methodologies

The Medicare contracts require NHS to calculate nonqualified costs in accordance with the FAR and CAS 412 and 413. 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,

[2] Medicare Parts A and B Jurisdiction F includes the States of Alaska, Arizona, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

[3] Medicare DME Jurisdiction A includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, and the District of Columbia.

[4] Medicare DME Jurisdiction D includes the States of Alaska, Arizona, California, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming, and the U.S. Territories of American Samoa, Guam, and the Northern Mariana Islands.

[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.

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.

Incurred Cost Proposal Audits

At CMS's request, Kearney and Company (Kearney) and Davis Farr, LLP (Farr), performed audits of the ICPs that NHS submitted for CYs 2014 through 2016. The objectives of the Kearney and Farr 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 and Farr ICP audit findings and recommendations when computing the allowable nonqualified costs discussed in this report.

We incorporated the results of the Kearney and Farr 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 and Farr ICP audit reports, to determine the final indirect cost rates and the total allowable contract costs for NHS for CYs 2014 through 2016. The cognizant Contracting Officer will perform a final settlement with the contractor to determine the final indirect cost rates. These rates ultimately determine the final costs of each contract.[6]

HOW WE CONDUCTED THIS AUDIT

We reviewed $1,773,301 of nonqualified costs claimed by NHS for Medicare reimbursement on its ICPs for CYs 2014 through 2016.

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 finding and conclusions based on our audit objectives.

Appendix A contains details of our audit scope and methodology.

FINDING

The CYs 2014 through 2016 nonqualified costs that NHS claimed for Medicare reimbursement, and reported on its ICPs, were not always allowable and correctly claimed. Specifically, NHS

[6] 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.

claimed nonqualified costs of $1,773,301 for Medicare reimbursement, through its ICPs, for CYs 2014 through 2016. However, we determined that the allowable nonqualified costs during this period were $424,341. The difference, $1,348,960, represented unallowable Medicare nonqualified costs that NHS claimed on its ICPs for CYs 2014 through 2016. NHS claimed these unallowable Medicare nonqualified costs primarily because it did not calculate these costs in accordance with Federal regulations and the Medicare contracts' requirements.

ALLOCABLE MEDICARE NONQUALIFIED PLANS COSTS OVERSTATED

During this audit (and before we incorporated the results of the Kearney and Farr ICP audits), we calculated the allocable Medicare segment nonqualified costs for CYs 2014 through 2016 in accordance with Federal requirements.[7] We determined that the allocable Medicare nonqualified costs for CYs 2014 through 2016 totaled $538,995. NHS reported that its allocable nonqualified costs totaled $1,950,193. Therefore, NHS overstated the allocable Medicare nonqualified costs by $1,411,198. This overstatement occurred because of differences in the accounting methodology used to calculate the nonqualified costs for Medicare reimbursement.

The Medicare contracts require that nonqualified costs be calculated in accordance with the FAR and the CAS. NHS calculated its nonqualified costs in accordance with CAS 412. However, the nonqualified plans did not offer a benefit that is payable for life; therefore, the plans did not qualify as "pension plans" as defined in FAR 31.001. Thus, NHS did not claim costs in accordance with Federal regulations. NHS should have identified the nonqualified costs in accordance with the regulations for a deferred compensation plan and should therefore have calculated those costs in accordance with the FAR and CAS 415.

Because NHS's plans did not qualify as pension plans, we calculated its plan costs in accordance with FAR 31.205-6(k) and CAS 415, which govern deferred compensation plans. Specifically, we calculated the allowable nonqualified costs based on actual payments to nonqualified participants in accordance with CAS 415.40(a). Accordingly, we determined the allowable nonqualified costs for CYs 2014 through 2016. (Our calculation does not appear in this report because the indirect cost rate computations that NHS used in its ICPs, and to which we referred as part of our audit, are proprietary information.) For details on the Federal requirements, see Appendix B.

Table 1 on the following page shows the differences between the allocable Medicare nonqualified costs that we determined for CYs 2014 through 2016 and the nonqualified costs that NHS calculated for the same time period.

[7] We identified the allocable nonqualified costs for CYs 2014 and 2015 in our previous audit (A-07-19-00573, Nov. 21, 2019). NHS's CY 2015 allocable nonqualified costs identified in Table 1 of that report included NHS's allocable Medicare segment restoration costs. We are separately reporting on those costs (A-07-20-00591). In addition, we have incorporated the Select plan costs for CY 2014 and have therefore revised the CY 2014 audited allocable costs. We have identified only NHS's allocable nonqualified costs in Table 1 of this report. For the current audit, we incorporated these allocable nonqualified costs into the indirect cost rates to determine the allowable nonqualified costs.

Table 1: Allocable Medicare Nonqualified Costs

CY	Allocable Per Audit	Per NHS	Difference
2014	$481,512	$628,486	($146,974)
2015	57,483	660,644	(603,161)
2016	0	661,063	(661,063)
Total	**$538,995**	**$1,950,193**	**($1,411,198)**

We used the allocable nonqualified costs 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 this report. (Our calculation does not appear in this report because those rate computations that NHS used in its ICPs, and to which we referred as part of our audit, are proprietary information.)

NONQUALIFIED PLANS COSTS CLAIMED

NHS claimed Medicare nonqualified costs of $1,773,301 on its ICPs for CYs 2014 through 2016. We calculated the allowable Medicare nonqualified costs in accordance with the FAR and the CAS. For details on the Federal requirements, see Appendix B.

UNALLOWABLE NONQUALIFIED PLANS COSTS CLAIMED

After incorporating the results of the ICP audits and our adjustments to the indirect cost rates, we determined that the allowable nonqualified costs for CYs 2014 through 2016 were $424,341. Thus, NHS claimed $1,348,960 of unallowable Medicare nonqualified costs on its ICPs for CYs 2014 through 2016. This overclaim occurred primarily because NHS based its claim for Medicare reimbursement on an incorrect cost accounting method when calculating its nonqualified costs for Medicare reimbursement.

Table 2 below compares the Medicare nonqualified costs that we calculated (using our adjusted indirect cost rates) to the nonqualified costs that NHS claimed for Medicare reimbursement for CYs 2014 through 2016.

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

CY	Allowable Per Audit	Per NHS	Difference
2014	$367,993	$482,490	($114,497)
2015	56,348	645,768	(589,420)
2016	0	645,043	(645,043)
Total	**$424,341**	**$1,773,301**	**($1,348,960)**

RECOMMENDATION

We recommend that Noridian Healthcare Solutions, LLC, work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1,348,960 for CYs 2014 through 2016.

AUDITEE COMMENTS

In written comments on our draft report, NHS concurred with our recommendation. NHS stated that it would work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1.3 million for CYs 2014 through 2016.

NHS's comments are included in their entirety as Appendix C.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed $1,773,301 of nonqualified costs that NHS claimed for Medicare reimbursement on its ICPs for CYs 2014 through 2016.

Achieving our objective did not require that we review NHS's overall internal control structure. We reviewed the internal controls related to the nonqualified costs claimed for Medicare reimbursement to ensure that those costs were allocable in accordance with the CAS and allowable in accordance with the FAR.

We performed fieldwork 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 SERP plan and Select plan documents;
- reviewed accounting records and ICP information provided by NHS to identify the amount of nonqualified costs claimed for Medicare reimbursement for CYs 2014 through 2016;
- reviewed the results of the Kearney and Farr ICP audits and incorporated those results into our calculations of allowable nonqualified costs;
- calculated allowable nonqualified costs in accordance with applicable provisions of the FAR and CAS; and
- provided the results of our audit to NHS officials on June 18, 2020.

We performed this audit in conjunction with the following audit and used the information obtained during it: *Noridian Healthcare Solutions, LLC, Claimed Some Unallowable Medicare Nonqualified Restoration Plan Costs Through Its Incurred Cost Proposals* (A-07-20-00591).

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 finding and conclusions based on our audit objectives.

APPENDIX B: FEDERAL REQUIREMENTS RELATED TO REIMBURSEMENT OF NONQUALIFIED PLANS COSTS

FEDERAL REGULATIONS

FAR 31.001 defines a "pension plan" as follows:

> 'Pension plan' means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

FAR 31.001 also 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. In the event no obligation is incurred prior to payment, the cost shall be assigned to the cost accounting period in which the payment is made.

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:

(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 the options ultimately will occur.

Federal regulations (CAS 415.50(b)) states that 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 NHS 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.)

APPENDIX C: AUDITEE COMMENTS

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Report Number: A-07-20-00590

Report Title: Noridian Healthcare Solutions, LLC, Claimed Some Unallowable Medicare Nonqualified Plans Costs Through Its Incurred Cost Proposal

Recommendation – From Report

We recommend that NHS work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1.3 million for CYs 2014 through 2016.

Statement of concurrence or non-concurrence:

Noridian Healthcare Solutions, LLC concurs with the above recommendation.

- For a concurrence, please include a statement describing the nature of the corrective action taken or planned.
- For a nonconcurrence, please include specific reasons for the nonconcurrence and a statement of any alternative corrective action taken or planned.

Noridian will work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of $1.3 million for CYs 2014 through 2016.

Signed /David Breuer/ Date: 8/21/2020
David Breuer, Executive Vice President and Chief Financial Officer
Blue Cross Blue Shield of North Dakota