

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**CAHABA SAFEGUARD  
ADMINISTRATORS, LLC, CLAIMED  
SOME UNALLOWABLE MEDICARE  
POSTRETIREMENT BENEFIT COSTS  
THROUGH ITS  
INCURRED COST PROPOSALS**

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**November 2020  
A-07-19-00578**

# *Office of Inspector General*

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## Report in Brief

Date: November 2020

Report No. A-07-19-00578

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



### Why OIG Did This Audit

The Centers for Medicare & Medicaid Services (CMS) reimburses contractors for a portion of their postretirement benefit (PRB) costs, which are funded by the contributions that contractors make to their dedicated trust funds.

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

Previous OIG audits found that Medicare contractors have not always complied with Federal requirements when claiming PRB costs for Medicare reimbursement.

Our objective was to determine whether the calendar years (CYs) 2014 through 2016 PRB costs that Cahaba Safeguard Administrators, LLC (Cahaba CSA), claimed for Medicare reimbursement, and reported on its ICPs, were allowable and correctly claimed.

### How OIG Did This Audit

We reviewed \$730,814 of Medicare PRB costs that Cahaba CSA claimed for Medicare reimbursement on its ICPs for CYs 2014 through 2016.

## Cahaba Safeguard Administrators, LLC, Claimed Some Unallowable Medicare Postretirement Benefit Costs Through Its Incurred Cost Proposals

### What OIG Found

Cahaba CSA claimed PRB costs of \$730,814 for Medicare reimbursement, through its ICPs, for CYs 2014 through 2016; however, we determined that the allowable PRB costs during this period were \$55,357. The difference, \$675,457, represented unallowable Medicare PRB costs that Cahaba CSA claimed on its ICPs for CYs 2014 through 2016. Cahaba CSA claimed these unallowable Medicare PRB costs primarily because it used an incorrect methodology when claiming PRB costs for Medicare reimbursement. More specifically, Cahaba CSA incorrectly calculated its allocable PRB costs using the accrual method instead of the pay-as-you-go method.

### What OIG Recommends and Auditee Comments

We recommend that Cahaba CSA work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare PRB costs of \$675,457 for CYs 2014 through 2016.

Cahaba CSA did not concur with our finding, and its comments on our draft report made clear that it did not agree with our recommendation. Cahaba CSA stated that an accrual method of accounting is an appropriate method to calculate allocable PRB costs provided that Federal guidelines are satisfied. Cahaba CSA also said that it believes that we based our finding on our concern over the effectiveness of the restriction on Cahaba CSA's retiree medical account under Federal guidelines. Cahaba CSA explained the steps that it had taken to ensure that it could calculate its PRB costs using the accrual method and provided documentation, to include communications with CMS, to further support its position.

After reviewing Cahaba CSA's comments, we maintain that all of our calculations of the Medicare PRB costs remain valid and that both our finding and recommendation remain valid as well. We have concerns about several provisions of the funding mechanisms that Cahaba CSA has in place and do not believe that those mechanisms satisfy Federal requirements.

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## INTRODUCTION

### WHY WE DID THIS AUDIT

Medicare contractors are eligible to be reimbursed a portion of their postretirement benefit (PRB) costs, which are funded by contributions that these contractors make to their dedicated trust funds. The amount of PRB costs that the Centers for Medicare & Medicaid Services (CMS) reimburses to the contractors is determined by the cost reimbursement principles contained in the Federal Acquisition Regulation (FAR) as required by the Medicare contracts. Previous Office of Inspector General audits found that Medicare contractors have not always complied with Federal requirements when claiming PRB costs for Medicare reimbursement.

At CMS's request, the Office of Inspector General, Office of Audit Services, Region VII pension audit team reviews the cost elements related to qualified defined-benefit, nonqualified defined-benefit, PRB, and any other pension-related cost elements claimed by Medicare administrative contractors (MACs) and Cost Accounting Standards (CAS)- and FAR-covered contracts through Incurred Cost Proposals (ICPs).

For this audit, we focused on one Medicare contractor, Cahaba Safeguard Administrators, LLC (Cahaba CSA). In particular, we examined the Cahaba CSA Medicare segment PRB costs that Cahaba CSA claimed for Medicare reimbursement and reported on its ICPs.

### OBJECTIVE

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

### BACKGROUND

#### **Cahaba Safeguard Administrators, LLC, and Medicare**

During our audit period, Cahaba CSA was a subsidiary of Blue Cross and Blue Shield of Alabama (BCBS Alabama), whose home office is in Birmingham, Alabama. The Cahaba CSA Medicare segment administered program safeguard functions under a contract with CMS. With the implementation of the Health Insurance Portability and Accountability Act of 1996 and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), CMS established the Medicare Integrity Program zones.<sup>1</sup> CMS created seven program integrity zones based on the newly-established MAC jurisdictions. CMS awarded Zone Program Integrity

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<sup>1</sup> The Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191 (Aug. 21, 1996), and the MMA, P.L. No. 108-173 (Dec. 8, 2003). Section 911 of the MMA required CMS to transfer the functions of fiscal intermediaries and carriers to MACs between October 2005 and October 2011.

Contactor (ZPIC)<sup>2</sup> contracts for Zone 3<sup>3</sup> and Zone 6<sup>4</sup> to Cahaba CSA effective April 8, 2011, and September 30, 2011, respectively.

BCBS Alabama has two Medicare segments that participate in its PRB: (1) Cahaba Government Benefits Administrators (Cahaba GBA) and (2) Cahaba CSA. On January 1, 2013, BCBS Alabama created the Healthcare Business Solutions, LLC (HBS), intermediate home office segment (HBS segment) by transferring assets into it from the Cahaba GBA and Cahaba CSA segments.<sup>5</sup> This report addresses the allowable Medicare PRB costs<sup>6</sup> claimed by Cahaba CSA under the provisions of its MAC contracts. We are addressing Cahaba GBA's compliance with the MAC contracts in a separate audit. Cahaba CSA claimed PRB costs using the segmented accrual basis of accounting.

The disclosure statement that Cahaba CSA submits to CMS states that Cahaba CSA uses pooled cost accounting. Medicare contractors use pooled cost accounting to calculate the indirect cost rates (whose computations include pension and PRB 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.<sup>7</sup>

### **Medicare Reimbursement of Postretirement Benefit Costs**

CMS reimburses a portion of the Medicare contractors' annual PRB costs, which are funded by contributions that contractors make to their PRB plans. The PRB costs are included in the computation of the indirect cost rates reported on the ICPs. In turn, CMS uses indirect cost rates in reimbursing costs under cost-reimbursement contracts.

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<sup>2</sup> CMS created ZPICs to perform, in each designated zone, program integrity functions for Medicare Part A; Part B; Durable Medical Equipment Prosthetics, Orthotics, and Supplies; Home Health and Hospice; and Medicare-Medicaid data matching.

<sup>3</sup> ZPIC Zone 3 includes the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin.

<sup>4</sup> ZPIC Zone 6 includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, as well as the District of Columbia.

<sup>5</sup> Although BCBS Alabama created the HBS segment, we determined that this segment was not a Medicare segment. Because HBS is not a Medicare segment, we do not opine on the variances noted in the HBS segment pension assets.

<sup>6</sup> The allowable Medicare PRB costs include both the Medicare segment direct PRB costs and the indirect home office allowable Medicare PRB costs.

<sup>7</sup> 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.

Federal regulations (FAR 31.205-6(o)) require that to be allowable for Medicare reimbursement, PRB costs must be (1) measured, assigned, and allocated in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 715-60 (formerly Statement of Financial Accounting Standards (SFAS) 106) and (2) funded as specified by part 31 of the FAR. In claiming costs, contractors must follow cost reimbursement principles contained in the FAR and the Medicare contracts.

### **Incurred Cost Proposal Audits**

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

We incorporated the results of the Farr ICP audits into our computations of the audited indirect cost rates, and ultimately the pension costs claimed, for the contracts subject to the FAR. CMS will use our report on allowable pension costs, as well as the Farr ICP audit reports, to determine the final indirect cost rates and the total allowable contract costs for Cahaba CSA 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.<sup>8</sup>

### **HOW WE CONDUCTED THIS AUDIT**

We reviewed \$730,814 of Medicare PRB costs that Cahaba CSA claimed 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.

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<sup>8</sup> 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.

## FINDING

Cahaba CSA claimed PRB costs of \$730,814 for Medicare reimbursement, through its ICPs, for CYs 2014 through 2016; however, we determined that the allowable PRB costs during this period were \$55,357. The difference, \$675,457, represented unallowable Medicare PRB costs that Cahaba CSA claimed on its ICPs for CYs 2014 through 2016. Cahaba CSA claimed these unallowable Medicare PRB costs primarily because it used an incorrect methodology when claiming PRB costs for Medicare reimbursement. More specifically, Cahaba CSA incorrectly calculated its allocable PRB costs using the accrual method instead of the pay-as-you-go method.

### ALLOCABLE POSTRETIREMENT BENEFIT PLAN COSTS OVERSTATED

During this audit, we calculated the Medicare segment allocable PRB costs for CYs 2014 through 2016 in accordance with Federal requirements. We determined that the Cahaba CSA Medicare segment allocable PRB costs for CYs 2014 through 2016 totaled \$58,279. Cahaba CSA reported that its allocable PRB costs, as identified in its actuarial computations, totaled \$863,774. Therefore, Cahaba CSA overstated its Medicare segment allocable PRB costs by \$805,495. This overstatement occurred because Cahaba CSA incorrectly calculated assignable PRB costs. More specifically, Cahaba CSA incorrectly calculated its allocable PRB costs using the accrual method instead of the pay-as-you-go method.

Table 1 below shows the differences between the allocable Medicare segment PRB costs that we determined for CYs 2014 through 2016 and the Medicare segment PRB costs that Cahaba CSA calculated for the same time period.

**Table 1: Medicare Segment Allocable PRB Costs**

<b>CY</b>	<b>Allocable Per Audit</b>	<b>Per Cahaba CSA</b>	<b>Difference</b>
2014	\$1,041	\$316,392	(\$315,351)
2015	18,077	385,748	(367,671)
2016	39,161	161,634	(122,473)
<b>Total</b>	<b>\$58,279</b>	<b>\$863,774</b>	<b>(\$805,495)</b>

### POSTRETIREMENT BENEFIT PLAN COSTS CLAIMED

Cahaba CSA claimed PRB costs of \$730,814 for Medicare reimbursement, through its ICPs, for CYs 2014 through 2016. We calculated the allowable Medicare PRB costs in accordance with Federal requirements. For details on the Federal requirements, see Appendix B.

## UNALLOWABLE POSTRETIREMENT BENEFIT PLAN COSTS CLAIMED

After incorporating the results of the Farr ICP audits, we determined that the allowable PRB costs for CYs 2014 through 2016 were \$55,357. Thus, Cahaba CSA claimed \$675,457 of unallowable Medicare PRB costs on its ICPs for CYs 2014 through 2016. Cahaba CSA claimed these unallowable Medicare PRB costs primarily because it based its claim for Medicare reimbursement on an incorrect methodology. More specifically, Cahaba CSA incorrectly calculated its allocable PRB costs using the accrual method instead of the pay-as-you-go method.

We 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 below. (Our calculation does not appear in this report because those rate computations that Cahaba CSA used in its ICPs, and to which we referred as part of our audit, are proprietary information.) Table 2 below compares the Cahaba CSA Medicare segment PRB costs that we calculated (using our adjusted indirect cost rates) to the PRB costs that Cahaba CSA claimed for Medicare reimbursement for CYs 2014 through 2016.

**Table 2: Comparison of Allowable PRB Costs and Claimed PRB Costs**

<b>CY</b>	<b>Allowable Per Audit</b>	<b>Per Cahaba CSA</b>	<b>Difference</b>
2014	\$0	\$0	\$0
2015	16,647	727,168	(710,521)
2016	38,710	3,646	35,064
<b>Total</b>	<b>\$55,357</b>	<b>\$730,814</b>	<b>(\$675,457)</b>

## RECOMMENDATION

We recommend that Cahaba Safeguard Administrators, LLC, work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare PRB costs of \$675,457 for CYs 2014 through 2016.

## AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, Cahaba CSA did not concur with our finding. Cahaba CSA did not directly address our recommendation, but its comments made clear that it did not agree with our recommendation.

A summary of Cahaba CSA's main points and our responses follow. Cahaba CSA stated that an accrual method of accounting is an appropriate method to calculate allocable PRB costs provided that the guidelines contained in the FAR are satisfied. Cahaba CSA also said that the rationale for our finding was unclear but added that it believes that we based our finding (that Cahaba CSA incorrectly calculated the PRB costs using the accrual method instead of the pay-

as-you-go method) on our “concern over the effectiveness of the restriction on Cahaba CSA’s retiree medical account” under the FAR. Cahaba CSA explained the steps that it had taken to ensure that it could calculate its PRB costs using the accrual method and provided documentation of an agreement between HBS and BCBS Alabama, as well as communications with CMS, to support its position.

Cahaba CSA’s comments, from which we have removed several attachments that contained personally identifiable information (PII), appear as Appendix C. We have forwarded Cahaba CSA’s written comments in their entirety to CMS.

After reviewing Cahaba CSA’s comments, we maintain that all of our calculations of the Medicare PRB costs remain valid and that both our finding and recommendation remain valid as well. We have concerns about several provisions of the agreement between HBS and BCBS Alabama and we continue to believe that the funding mechanisms that Cahaba CSA has in place do not satisfy the requirements of the FAR.

## **ALLOWABILITY OF USE OF AN ACCRUAL METHOD OF ACCOUNTING**

### **Auditee Comments**

Cahaba CSA stated that an accrual method of accounting is an appropriate method to calculate allocable PRB costs provided that the guidelines contained in the FAR are satisfied. Cahaba CSA also said that the rationale for our finding was unclear but added that it believes that we based our finding (that Cahaba CSA incorrectly calculated the PRB costs using the accrual method instead of the pay-as-you-go method) on our “concern over the effectiveness of the restriction on Cahaba CSA’s retiree medical account under FAR 31.205-6(o)(2)(iii)(B).” This provision of the FAR states that accrued PRB costs must “[b]e paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.”

### **Office of Inspector General Response**

The primary concern that underpinned our finding involved HBS’s use, in lieu of a trust, of a money market account, which does not constitute a restricted account as required by the FAR. Because the funding mechanism used by Cahaba CSA did not satisfy the requirements of the FAR, Cahaba CSA could not use the accrual method to calculate its PRB costs. For that reason, we calculated the audited Medicare PRB costs using the pay-as-you-go method. Contrary to Cahaba CSA’s assertion, we clearly conveyed the rationale for our finding and recommendation both in our draft report itself and in communications with HBS officials before we issued the draft report.

## **APPROPRIATE FUNDING MECHANISM TO RESTRICT POSTRETIREMENT BENEFIT FUNDS**

### **Auditee Comments**

Cahaba CSA referred to the criteria we cite (Appendix B) and stated that our position appeared to be that the use of a trust (such as a Voluntary Employees' Beneficiary Association (VEBA) trust) is required and that funds cannot be effectively restricted unless they are held in a trust. Cahaba CSA described that position as inconsistent with the wording of the FAR and contrary to discussions that Cahaba CSA had had with CMS regarding the use of an accrual method.

Cahaba CSA also referred to specific steps it took to comply with the guidance set forth in FAR 31.205-6(o)(2)(iii) to use an accrual method. Cahaba CSA cited a written agreement between HBS and BCBS Alabama (the Agreement) (included with Cahaba CSA's written comments in Appendix C), which, according to Cahaba CSA, is "unambiguous that the [PRB] funds cannot be used 'for any purpose' other than 'for benefit or premium payments for the [retiree medical plan].'" Cahaba CSA added that BCBS Alabama holds the PRB funds in a money market account owned and controlled by BCBS Alabama as the insurer. "The funds are not owned by HBS or Cahaba CSA and neither HBS nor Cahaba CSA (or any of their subsidiaries) have any access to these funds." Cahaba CSA also stated that the Audit Committee of the BCBS Alabama Board of Directors approved this funding arrangement in July 2015.

### **Office of Inspector General Response**

We disagree with Cahaba CSA's statement that we regard the use of a trust (such as a VEBA trust) as a required mechanism for the effective restriction of PRB funds. Although it is true that all of the contractors whose PRB costs we have previously audited have used either a restricted trust account or a VEBA trust, we recognize that other mechanisms may be appropriate. When determining whether a funding mechanism is appropriate, we defer to the requirements of the FAR. If the mechanism effectively restricts the PRB funds, it would be allowable under the FAR. We note, though, that a trust is the most effective mechanism in this particular situation, as its purpose is to provide legal protection for the trustor's assets. The use of a trust would also ensure that those assets are distributed according to the wishes of the trustor.

In this context, we also disagree with Cahaba CSA's statement that its money market account and the Agreement satisfy the requirements of the FAR and therefore permit the use of accrual accounting. Neither the money market account itself nor the Agreement effectively restricts the use of Cahaba CSA's PRB funds, as required by the FAR. A money market account is simply an account that allows HBS (the intermediate home office to which Cahaba CSA reports) to accrue interest on its deposits and disburse those funds as well. A money market account offers no protection that the funds would be distributed in accordance with the terms of the PRB plan document.

Moreover, the terms of the Agreement permit BCBS Alabama to terminate it. This provision limits HBS's ability to effectively restrict the PRB funds and to ensure that they would be used solely for their intended purpose. As Cahaba CSA stated in its written comments, under the Agreement neither Cahaba CSA nor HBS controls the PRB funds. In effect, then, these funds remain under the control of BCBS Alabama, which is under no legal obligation to ensure that those funds are used for their intended purpose.

To expand upon these concerns, we note three issues that call into question Cahaba CSA's statement that its funding mechanism and the Agreement satisfy the requirements of the FAR. First, the Agreement contains a contingency clause, which states:

In the event Blue Cross [i.e., BCBS Alabama] terminates this Agreement, HBS will do one of the following:

- a) Close the Restricted Account and transfer the funds to:
  - i. A Voluntary Employees' Beneficiary Association; or
  - ii. A trust . . . .

If BCBS Alabama has the option to terminate the Agreement, and chooses to do so, the PRB funds would return to the custody of HBS. In such a case, those funds could be used for other purposes than those described in the PRB plan document. If the Agreement were to be terminated, HBS would be subject to no legal instrument governing the use of those funds. Accordingly, a more appropriate course of action would have been for Cahaba CSA to have initially deposited its PRB funds into a VEBA or approved trust, rather than (as stated in the Agreement) designating either of those funding mechanisms as a contingency option.

Second, we noted during our audit work that at least two versions of the Agreement existed. When we questioned HBS officials about these different versions, they replied that HBS had to revise the Agreement to account for the fluctuations in the assumptions in rates of return that were specified in the Agreement. In an email to us dated May 6, 2020, HBS officials stated: "In retrospect, the Agreement probably shouldn't have noted a specific return rate since returns fluctuate over time, and it isn't practical to make an Agreement revision every time they fluctuate. This language will likely be modified in a future revision." Given the fact that the Agreement has already been revised and—as HBS acknowledges—will be revised further in the future, we have no assurance that this Agreement restricts the use of Cahaba CSA's PRB funds.

Finally, we are concerned that PRB funds maintained in a money market account could be subject to garnishment by creditors. We discussed this possibility with HBS officials before we issued our draft report; however, neither HBS nor Cahaba CSA has given us documentation explaining how those funds would be restricted from creditors in the event of dissolution or bankruptcy filing. If HBS and Cahaba CSA used an approved trust account or VEBA trust as the funding mechanism for these PRB funds, the possibility of garnishment would be avoided.

For all of the reasons stated above, the money market account and the Agreement itself do not comply with FAR 31.205-6(o)(III)(B), which states: “Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.” In light of the fact that the Agreement can be revised or terminated, the PRB funds are not “effectively restricted.” Furthermore, because the funds are not effectively restricted, Cahaba CSA cannot use the accrual method to calculate its allocable PRB costs, and it therefore did not comply with the requirements of the FAR when it elected to use that accounting method. As a result, we calculated the allowable PRB costs using the pay-as-you-go method, as required by the FAR.

## **CAHABA SAFEGUARD ADMINISTRATORS, LLC, COMMUNICATIONS WITH CMS**

### **Auditee Comments**

Cahaba CSA stated that it took several operational steps to ensure that it was permitted to use the accrual method. Cahaba CSA said that HBS provided a copy of the Agreement to CMS, Office of the Actuary (CMS OACT), in August 2015. In addition, Cahaba CSA referred to email communications that HBS had with CMS OACT in September 2015 to confirm the effective date of Cahaba CSA’s accounting method. HBS told CMS at that time that it had elected to use accrual accounting, and it said that it gave CMS OACT documentation of the Audit Committee of the BCBS Alabama Board of Directors’ approval of this funding arrangement. Cahaba CSA added that HBS proceeded with the Agreement because “CMS, raising no objections or concerns, seemingly approved of the arrangement.”

Cahaba CSA summed up its written comments by stating:

We strongly believe that the account is effectively restricted per the requirements of the FAR and that any position by [Office of Inspector General] that would retroactively disallow PRB cost would be inequitable given the fact that the details of the Agreement and intended use of an accrual method were fully disclosed to and discussed with CMS in 2015 during implementation. Not being made aware of government concerns we were unable to revise the practice to remove government concerns and avoid substantial analysis of potential cost disallowances.

### **Office of Inspector General Response**

We acknowledge that HBS discussed the use of accrual accounting with CMS. However, the email communications that Cahaba CSA provided with its written comments (which we have removed from Appendix C because they contain personally identifiable information) do not show that CMS expressly granted Cahaba CSA approval to use accrual accounting or a money market under the current conditions. We have continued to consult with CMS OACT on this issue, and in consideration of all of the facts related to Cahaba CSA’s use of the money market

account and the accrual method of accounting, CMS OACT continues to agree with and support our finding and recommendation. In fact, CMS OACT has conveyed to us its additional concerns regarding this PRB plan, which with CMS OACT's permission appear as Appendix D.

We have reviewed the requirements set forth in the FAR and our position has not changed. Given that Cahaba CSA's PRB funds were deposited into a money market account and in light of our concerns about the Agreement that is in place, we continue to believe that these funding mechanisms do not satisfy the requirements of the FAR.

## **APPENDIX A: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

We reviewed \$730,814 of Medicare PRB costs that Cahaba CSA claimed for Medicare reimbursement on its ICPs for CYs 2014 through 2016.

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

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

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed the portions of the FAR and Medicare contracts applicable to this audit;
- reviewed information provided by Cahaba CSA to identify the amounts of PRB costs used in Cahaba CSA's calculation of indirect cost rates for CYs 2014 through 2016;
- determined the extent to which Cahaba CSA incurred PRB costs by paying premiums relating to PRB coverage;
- reviewed the results of the Farr ICP audits and incorporated those results into our calculations of allowable PRB costs;
- used information provided by Cahaba CSA's actuarial consulting firm, including benefit payments and employee contributions to calculate pay-as-you-go PRB costs that were allowable for Medicare reimbursement for CYs 2014 through 2016; and
- provided the results of our audit to Cahaba CSA officials on July 13, 2020; and
- after receiving Cahaba CSA's written comments, consulted the CMS OACT, which provides technical actuarial advice, and incorporated its input (Appendix D) into our response for this final report.

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

- *Cahaba Government Benefits Administrators, LLC, Did Not Claim Some Allowable Medicare Pension Costs Through Its Incurred Cost Proposals (A-07-19-00575);*
- *Cahaba Safeguard Administrators, LLC, Claimed Some Unallowable Medicare Pension Costs Through Its Incurred Cost Proposals (A-07-19-00576); and*
- *Cahaba Government Benefits Administrators, LLC, Claimed Some Unallowable Medicare Postretirement Benefit Costs Through Its Incurred Cost Proposals (A-07-19-00577).*

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 objective. We believe that the evidence obtained provides a reasonable basis for our finding and conclusions based on our audit objective.

## **APPENDIX B: FEDERAL REQUIREMENTS RELATED TO REIMBURSEMENT OF POSTRETIREMENT BENEFIT COSTS**

### **FEDERAL REGULATIONS**

Federal regulations (FAR 31.205-6(o)) require that PRB accrual costs be determined in accordance with SFAS 106 and funded into a dedicated trust fund, such as a Voluntary Employee Benefit Association trust. The FAR states that accrual accounting may be used to determine the allowable PRB costs if the cost is measured and assigned (actuarially determined) according to generally accepted accounting principles based on amortization of any transition obligation. Costs attributable to past service (transition obligation) must be assigned under the delayed recognition methodology described in paragraphs 112 and 113 of SFAS 106. The FAR also states that allowable costs must be funded by the time set for filing the Federal income tax return or any extension thereof, and must comply with the applicable standards promulgated by the Actuarial Standards Board.

Federal regulations (FAR 31.205-6(o)(2)) address the allowability of pay-as-you-go PRB costs and require that PRB costs be assigned to the period in which the benefits are actually provided, or when the costs are paid to an insurer, provider, or other recipient for current-year benefits or premiums.

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.

### **MEDICARE CONTRACTS**

The Medicare contracts require Cahaba CSA 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



October 16, 2020

Department of Health and Human Services  
Office of Inspector General  
Office of Audit Services  
Attention: Jenenne Tambke, Assistant Regional Inspector General for Audit Services  
Region VII  
601 East 12<sup>th</sup> Street, Room 0429  
Kansas City, Missouri 64106

RE: Report Number A-07-19-00578 Cahaba Safeguard Administrators, LLC, Claimed Some Unallowable Medicare Postretirement Benefit Costs Through Its Incurred Cost Proposals

Dear Ms. Tambke,

As set forth in more detail below, management of Cahaba Safeguard Administrators, LLC (“Cahaba CSA”) does not concur with the OIG’s finding in its draft audit report that Cahaba CSA incorrectly calculated allocable PRB costs for contract years 2014 – 2016.

- The OIG’s draft audit report states that Cahaba CSA used an incorrect methodology when claiming PRB costs for Medicare reimbursement. Specifically, the draft report provides that “Cahaba CSA incorrectly calculated its allocable PRB costs using the accrual method instead of the pay-as-you-go method.” It is important to note that an accrual method is an appropriate method provided the guidelines contained within FAR 31.205-6(o)(2)(iii) are satisfied.
- The rationale for the OIG’s finding is not explained within the draft report and, therefore, the basis for the OIG’s finding is unclear. However, based upon our communications with the OIG leading up to the draft audit report, we believe the OIG’s finding that Cahaba CSA incorrectly calculated the PRB costs using the accrual method instead of the pay-as-you-go method is based on the OIG’s concern over the effectiveness of the restriction on Cahaba CSA’s retiree medical account under FAR 31.205-6(o)(2)(iii)(B). FAR 31.205-6(o)(2)(iii)(B) states that accrued PRB costs must be “[b]e paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.”
- We note that the summary citation to FAR 31.205-6(o) included in Appendix B of the draft report states “[f]ederal regulations (FAR 31.205-6(o)) require that PRB cost be determined in accordance with SFAS 106 and funded into a dedicated trust fund, such as a Voluntary Employee Benefit Association trust.” It appears the OIG’s position is that the use of a trust (such as a VEBA) is required and funds cannot be effectively restricted unless held in a trust. The OIG’s position is (a) inconsistent with the wording of the FAR and (b) contradicts our previous discussions with CMS regarding the arrangement and the use of an accrual method.

375 Riverchase Parkway East • Birmingham, AL 35244



- In order to comply with the specific guidance to use an accrual method as set forth in FAR 31.205-6(o)(2)(iii), (including effective restriction of funds), the following steps were taken:
  - Healthcare Business Solutions, LLC (“HBS”), Cahaba CSA’s parent company, paid PRB funds to its insurer, Blue Cross and Blue Shield of Alabama (“BCBSAL”), in order to establish and maintain a fund for the sole purpose of providing PRB to retirees.
  - A written agreement was entered into between HBS and BCBSAL which set forth the terms and conditions regarding the use of the funds paid by HBS to BCBSAL, a copy of which is enclosed herewith as Exhibit A (the “Agreement”). Paragraph 1 of the Agreement states “[t]he Restricted account will be used for the sole purpose of providing RMP benefits to and paying premiums for participants and is, therefore, not to be used for any other purpose.” Paragraph 1 also provides that it is “HBS’s intent that the Restricted Account meets the requirements for Federal Acquisition Regulations (“FAR”) as well as the requirements for United States Generally Accepted Accounting Principles as prescribed by Accounting Standards Codification 715 and any Internal Revenue Service tax code requirements.” Furthermore, Paragraph 4 of the Agreements states, “[f]unds will not be withdrawn for any other purpose other than for benefit or premium payments for the RMP.” The Agreement is unambiguous that the funds cannot be used “for any purpose” other than “for benefit or premium payments for the RMP.”
  - The PRB funds are held by BCBSAL in a money market account owned and controlled by BCBSAL as the insurer. The funds are not owned by HBS or Cahaba CSA and neither HBS nor Cahaba CSA (or any of their subsidiaries) have any access to these funds.
  - As noted in the minutes from the meeting of the Audit Committee of the BCBSAL Board of Directors (the “BCBSAL Audit Committee”) held on July 21, 2015, the BCBSAL Audit Committee approved the funding arrangement and purpose of the funds received from HBS. The minutes of such BCBSAL Audit Committee expressly provide that the “account would be strictly used to pay HBS’ retiree medical expenses.” A copy of such Audit Committee minutes are attached hereto as Exhibit B. Like the Agreement, the BCBSAL Audit Committee minutes are unambiguous that the funds are to be “strictly used” for retiree medical expenses.
  - In addition to the operational steps above, the Agreement and use of an accrual method was discussed directly with CMS in 2015.
    - A copy of the Agreement was provided via email to the CMS Office of the Actuary in August 2015.
    - Another email communication from September 2015 includes CMS Office of the Actuary specifically asking a question to confirm the accounting effective date. The Company’s response to this question states the accounting method was the “accrued method.”
    - A copy of the BCBSAL Alabama Audit Committee minutes documenting Board approval of the restricted funding arrangement was provided to the CMS Office of the Actuary in September 2015.



- HBS proceeded with the Agreement and use of the accrual method since both were fully disclosed and discussed with CMS and CMS, raising no objections or concerns, seemingly approved of the arrangement.<sup>1</sup>
- As noted above, FAR 31.205-6(o)(2)(iii)(B) states that accrued PRB costs must be “[b]e paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes (emphasis added).” Although the use of a VEBA or trust may be more common, the FAR does not mandate the use of a trust in order to use an accrual method. In addition to a VEBA or trust, funds may also be “paid to an insurer” or “otherwise effectively restricted” so that they cannot be used for any other purpose. The purpose of the Agreement is to ensure that the funds paid by HBS to BCBSAL are (a) “paid to an insurer” and (b) “effectively restricted”, so that they cannot be used for purposes other than providing PRB to retirees. The Agreement and Audit Committee minutes are clear that the funds paid by HBS (the employer) to BCBSAL (the insurer) can only be used for one purpose, to pay for retiree medical expenses.
- Although not addressed in the draft audit report, in the discussions leading up to the draft report, the OIG auditors communicated that the BCBSAL board level approval is a reason they believe the funds are not effectively restricted. They argued that HBS’ management could change the agreement at any time and gain access to the funds held by BCBSAL. We disagree. The Agreement does not give HBS the unilateral right to terminate the Agreement (only BCBSAL has the unilateral right to terminate the Agreement). Furthermore, even if BCBSAL were to terminate the Agreement, the Agreement specifies that the funds will be transferred to a VEBA or trust. If HBS does not transfer the funds to a VEBA or trust, HBS is required to terminate the retiree medical plan and treat any surplus assets in accordance with paragraph 5 of the Agreement, which would require a return to CMS of any required amounts in accordance with FAR 31.205-6(o)(2)(iii)(G)(5).

We ask that the OIG and CMS revisit the FAR and the requirements set forth therein in order to utilize the accrual method. In addition, we also ask that the OIG review the 2015 communications (submitted with this response as Exhibit C) between HBS and CMS regarding how HBS intended to satisfy the FAR’s requirements to use of the accrual method. We strongly believe that the account is effectively restricted per the requirements of the FAR and that any position by OIG that would retroactively disallow PRB cost would be inequitable given the fact that the details of the Agreement and intended use of an accrual method were fully disclosed to and discussed with CMS in 2015 during implementation. Not being made aware of government concerns we were unable to revise the practice to remove government concerns and avoid substantial analysis of potential cost disallowances.

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<sup>1</sup> We note that CMS would have no reason to disagree with HBS’ use of the accrual method since the FAR supports the arrangement described by HBS to CMS.



If you should have questions regarding this report, please contact Jon-Michael Ogletree, CFO, at (205)-820-6012 or via e-mail at [jogletree@csallc.com](mailto:jogletree@csallc.com).

Sincerely,

/Randy Heal/  
Randy Heal  
President  
Cahaba Safeguard Administrators, LLC

# EXHIBIT A - RMP Agreement



## **Retiree Medical Plan Restricted Account Agreement between Healthcare Business Solutions, LLC and Blue Cross and Blue Shield of Alabama**

This Restricted Account Agreement (“Agreement”) , effective the 1st day of January, 2015, (“Effective Date”), is entered into by and between Healthcare Business Solutions, LLC (“HBS”), with its primary offices located at 500 Corporate Parkway, Birmingham, Alabama 35242, and Blue Cross and Blue Shield of Alabama (“Blue Cross”), with its primary offices located at 450 Riverchase Parkway East, Birmingham, Alabama 35244-1814. HBS and Blue Cross are referred to herein separately as a “Party” and collectively as the “Parties.”

### **Recitals**

WHEREAS, HBS and two of its subsidiaries, Cahaba Government Benefit Administrators and Cahaba Safeguard Administrators (collectively, the “Subsidiaries”) provide a retiree medical plan (“RMP”) benefit to employees;

WHEREAS, HBS, a Blue Cross subsidiary, is tasked with funding the amount of each calendar year’s valuation for the RMP benefit expenses and premiums of HBS and the Subsidiaries and depositing that amount into a certain restricted account (the “Restricted Account”) prior to filing the federal tax return for the corresponding year;

WHEREAS, Blue Cross is an insurer and will use the Restricted Account established, pursuant to the terms and conditions set forth herein; and

WHEREAS, the Parties have agreed to their respective rights and obligations, as set forth in this Agreement.

### **Agreement**

NOW THEREFORE, the Parties agree as follows:

#### **1. Restricted Account Purpose**

The Restricted Account will be used for the sole purpose of providing RMP benefits to and paying premiums for participants and is, therefore, not to be used for any other purpose. This Restricted Account was approved by the Audit Committee of the Board of Directors of Blue Cross. It is HBS's intent that the Restricted Account meets the requirements for Federal Acquisition Regulations (“FAR”) as well as the requirements for United States Generally

Accepted Accounting Principles as prescribed by Accounting Standards Codification 715 and any Internal Revenue Service tax code requirements.

## **2. Restrictions**

The Restricted Account is a money market account. Blue Cross will separately manage the Restricted Account and will not link it to other Blue Cross accounts. Blue Cross Treasury Operations will report the account balance on a daily basis to HBS through the cash sheet report and will report the approved bank reconciliations on a monthly basis through bank statements. Account transactions will be performed by Blue Cross at the request of the appropriate HBS staff.

## **3. Deposits**

HBS will utilize the services of an actuarial firm to prepare the yearly plan valuation in accordance with the applicable Actuarial Standards of Practice as issued by the Actuarial Standards Board and the requirements set forth in FAR 31. This firm will also determine the RMP expense for the calendar year, and HBS will deposit that amount into the Restricted Account.

## **4. Investments**

The Restricted Account earns a monthly rate of twenty (20) basis points. Funds will not be withdrawn for any other purpose other than for benefit or premium payments for the RMP.

## **5. Actuarial Gains and Losses**

Actuarial gains and losses will be handled in accordance with the requirements of Cost Accounting Standards. In the event of a plan termination or curtailment of benefits, HBS shall return any required amounts to CMS.

## **6. Compliance with IRS Guidelines**

From review of the IRS regulations, there are no special considerations required by HBS or Blue Cross for the restricted account.

## **7. Contingency**

In the event Blue Cross terminates this Agreement, HBS will do one of the following:

- a) Close the Restricted Account and transfer the funds to:
  - i. A Voluntary Employees' Beneficiary Association; or
  - ii. A trust
- b) Terminate the RMP and treat the surplus assets in accordance with Paragraph 5 of this Agreement.

**APPENDIX D: MEMORANDUM FROM CENTERS FOR MEDICARE  
& MEDICAID SERVICES, OFFICE OF THE ACTUARY**



DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard, Mail Stop N3-01-21  
Baltimore, Maryland 21207-0512

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**M E M O R A N D U M**

**To:** Jeff Wilson, Senior Auditor, HHS OIG OAS

**From:** Russ Weatherholtz, Pension Actuary, CMS OACT

**Date:** October 16, 2020

**Subject:** Accrual Cost Considerations for the Healthcare Business Solutions, LLC Postretirement Medical Plan (HBS PRB)

CMS disagrees with Cahaba’s argument that they are properly funding the HBS PRB plan, but we have a few thoughts concerning their accrued cost calculations that they should consider in addition to the improper funding.

*Funded benefit plans require a 5500 filing every year no matter how many eligible participants.*

The instructions to the IRS Form 5500 state the following:

- “Do Not File a Form 5500 for a Welfare Benefit Plan That Is Any of the Following:
  1. A welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and Unfunded...”

If Cahaba believes that they properly funded the HBS PRB, they should have filed 5500s for all plan years in which the funding has been in place. They should contact the Department of Labor’s Delinquent Filer Voluntary Compliance Program (DFVCP) to determine how to file all of the missed forms and how to pay the appropriate penalty for missing their filing deadlines.

We note that even though contacting the DFVCP would help demonstrate the sincerity of Cahaba’s funding intentions, the current money market account still does not represent effectively restricted funding of the HBS PRB.

*Cahaba's current calculation of accrued costs is overstated.*

Assuming that the accrual accounting method for computing HBS PRB costs was appropriate (a claim we are NOT making), the calculations proposed by HBS would require auditing. The methods used by HBS to compute accrued costs have issues that result in Cahaba overstating their accrued HBS PRB costs:

1. The effective date of the plan is January 1, 2015.

This is clearly stated in both the Restricted Agreement and in the plan document provided by Cahaba. As a result, there should be no costs claimed for 2014. Contributions made in August and September of 2015 should fund the 2015 PRB costs.

2. HBS PRB is not a new plan.

- Participants in HBS PRB are former participants of the Blue Cross Blue Shield of Alabama (BCBSAL) PRB plan;
- The benefits provided by the HBS PRB are the same as the benefits provided by the BCBSAL PRB plan;
- Service accrued as a BCBSAL PRB participant is included in the value of the benefit for the HBS PRB;
- The plan is closed to employees hired after July 1, 2013. There are no new participants in this plan.

3. There should be no Transition Obligation.

FAR 31.205-6(o)(2)(iii)(A)(i) states: "In the year of transition from the pay-as-you-go method to accrual accounting for purposes of Government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with sub paragraph (o)(2)(iii)(E) of this section..."

BCBSAL did not receive an approval for a change in accounting from pay-as-you-go to accrual accounting. When transferring the January 1, 2015 APBO from the BCBSAL segment to the HBS segment, Cahaba should have transferred an equal asset into the segment, consistent with the method used to maintain balance in a pension plan. CAS 413-50(c)(8) states: "If assets and liabilities are transferred, the amount of assets transferred shall be equal to the actuarial accrued liabilities transferred, determined using the accrued benefit cost method and long term assumptions..."

FAR 31.205-6(o)(3) states: "To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year." Since the APBO transferred from the BCBSAL PRB plan was never funded, it is unallowable.

As a result, the initial balance equation computed for the HBS PRB plan in the HBS column below should have been constructed according to the CMS column below:

	HBS		CMS
Effective Date	01/01/2014		01/01/2015
APBO	12,637,597		19,208,607
Assets	-		-
Funded Status	(12,637,597)		(19,208,607)
Transition Obligation	12,637,597		-
Prior Service Cost	-		-
Net Gain/Loss	-		-
	12,637,597		-
FAR Unallowable	-		(19,208,607)

The CMS initial setup segregates the service that employees accrued while participating in the BCBSAL PRB plan from the service that they now accrue as part of the HBS PRB plan. Only the cost of service accrued under the HBS PRB plan should be allowable. This results in significantly smaller annual accrued costs during the audit period than the annual PRB costs computed by Cahaba.

The facts set forth in this memo are extraneous to the current HBS PRB audit due to the fact that they apply to an unallowable cost method, but we hope that this additional information may be helpful to Cahaba as they work through how to utilize the current audit's findings.

Please let us know if you need any additional information.