

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NATIONAL GOVERNMENT SERVICES,
INC., ACCURATELY CALCULATED
HOSPICE CAP AMOUNTS BUT DID NOT
COLLECT ALL CAP OVERPAYMENTS**

*Inquiries about this report may be addressed to the Office of Public Affairs at
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Deputy Inspector General
for Audit Services

November 2022
A-06-21-08004

Office of Inspector General

<https://oig.hhs.gov>

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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.

Report in Brief

Date: November 2022

Report No. A-06-21-08004

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



Why OIG Did This Audit

To ensure that hospice care does not exceed the cost of conventional care at the end of life, there are two annual limits (called caps) to payments made to hospices, the inpatient cap and the aggregate cap. The cap amounts are calculated annually, and any amount paid to a hospice above either cap amount is an overpayment and must be repaid to Medicare. The Centers for Medicare & Medicaid Services (CMS) contracts with three Medicare administrative contractors (MACs) to calculate cap amounts and recover overpayments. This audit is part of a series of audits regarding MACs' oversight of hospice cap calculations.

Our objective was to determine whether NGS accurately calculated cap amounts and collected cap overpayments in accordance with CMS requirements.

How OIG Did This Audit

Our audit covered the cap calculation process for all 1,966 hospices in NGS's Jurisdictions 6 and K that participated in the Medicare hospice program in cap year 2019 and 3 prior cap years. For the 2019 cap calculations, NGS calculated aggregate cap overpayments totaling \$186.1 million for 515 hospice providers. For the lookback calculations of 3 prior cap years, NGS calculated additional net lookback aggregate overpayments totaling \$27.3 million for 673 hospice providers. For cap year 2019, NGS calculated overpayments totaling \$213.4 million.

National Government Services, Inc., Accurately Calculated Hospice Cap Amounts but Did Not Collect All Cap Overpayments

What OIG Found

NGS accurately calculated all cap amounts and collected or attempted to collect \$211.3 million of the \$213.4 million in total cap overpayments in accordance with CMS requirements. However, NGS did not attempt to collect the remaining \$2.1 million in net lookback overpayments because of its internal policy of not pursuing lookback cap calculation amounts that were less than a set threshold.

Additionally, against CMS requirements, NGS instructed hospices to wait to submit the overpayments calculated on their cap determination notices until the hospice received a demand letter from NGS, which took an average of more than 2 months after the due date for hospices to file the cap determination notices. Of 30 judgmentally sampled hospices, 13 reported cap overpayments, totaling \$8.1 million, on their cap determination notices. Nine of those 13 hospices did not remit their overpayments, totaling \$6.1 million, when they filed their cap determination notices as required. Because of NGS's instructions, the Federal Government lost the benefit of having the overpayment funds for its use for an additional average of more than 2 months.

What OIG Recommends and NGS Comments

We recommend that NGS (1) collect \$2.1 million in lookback overpayments and return \$22,576 in lookback refunds resulting from 2019 hospice cap calculations for lookback years, (2) discontinue its internal policy of waiving certain overpayment collections related to lookback years and start collecting all hospice cap overpayments and paying refunds in accordance with CMS requirements, and (3) change its instructions on the cap determination notices to follow the CMS requirement that hospices remit overpayments at the time they submit their cap determination notice.

NGS concurred with our third recommendation and said that it had already changed its instructions. NGS did not concur with our first and second recommendations and stated that its internal policy of not pursuing certain lookback cap calculation amounts conforms to CMS requirements. After reviewing NGS's comments, we maintain that our findings and recommendations are valid.

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INTRODUCTION

WHY WE DID THIS AUDIT

The use of hospice care has grown steadily in recent years, with Medicare paying approximately \$23 billion for hospice services to nearly 1.7 million hospice beneficiaries in 2021. To ensure that hospice care does not exceed the cost of conventional care at the end of life, there are two annual limits (called caps) to payments made to hospices. Hospices that receive claim payments exceeding the cap amounts must repay the difference (overpayment) to Medicare. The Centers for Medicare & Medicaid Services (CMS) contracts with three Medicare administrative contractors (MACs) to calculate cap amounts and recover overpayments. National Government Services, Inc. (NGS), is one of the MACs, and it processed hospice claims and oversaw the hospice cap calculation process and overpayment collection process for 1,966 hospices for cap year 2019. This audit is part of a series of audits regarding MACs' oversight of hospice cap calculations.

OBJECTIVE

Our objective was to determine whether NGS accurately calculated cap amounts and collected cap overpayments in accordance with CMS requirements.

BACKGROUND

Medicare Part A Hospice Benefit

Title XVIII of the Social Security Act (the Act) established the Medicare program, which provides health insurance coverage to people aged 65 and over, people with disabilities, and people with end-stage renal disease. Medicare Part A, also known as hospital insurance, provides for the coverage of various types of services, including hospice services. The Medicare hospice benefit can provide great comfort to beneficiaries, families, and caregivers at the end of a beneficiary's life. To be eligible for Medicare hospice care, a beneficiary must be certified as terminally ill (i.e., having a medical prognosis that life expectancy is 6 months or less if the disease runs its normal course). The Medicare hospice benefit has four levels of care (routine home care, continuous home care, inpatient respite care, and general inpatient care), and Medicare provides an all-inclusive payment based on the level of care.

Hospice Aggregate Cap

Payments made to hospices are limited by inpatient cap and aggregate cap amounts.¹ The cap amounts are calculated annually, and any amount paid to a hospice above either cap

¹ NGS did not have any hospices with inpatient cap overpayments for cap year 2019; therefore, the inpatient cap calculation is not discussed in this report.

amount is an overpayment and must be repaid to Medicare (42 CFR §§ 418.302(f)(4) and 418.308(d)).

For calculating both types of caps, MACs use beneficiary count² and claim payment information that is queried from the Provider Statistical and Reimbursement System (PS&R) for each hospice. The PS&R system is a web-based, centralized system that is housed at CMS and accumulates statistical and reimbursement data for Medicare Part A claims (e.g., hospice claims).

The aggregate cap amount represents the maximum amount of Medicare payments a hospice could have received for a cap year. To calculate this amount for a hospice, NGS multiplies the number of Medicare beneficiaries a hospice served by the statutory cap amount. The cap amount is not applied individually to the payments received for each beneficiary, but rather to the total payments across all Medicare beneficiaries served by the hospice in the cap year. The cap amount is adjusted every year; the intent of the cap is to ensure that payments for hospice care would not be higher than what Medicare would have paid for a beneficiary if the beneficiary had been treated in a conventional setting. An example of an aggregate cap calculation for one hospice is in Table 1.

Table 1: Aggregate Cap Calculation

Medicare Beneficiary Count per the PS&R	50
Statutory Cap Amount for Cap Year 2019	\$29,205
Aggregate Cap Amount for Cap Year 2019 (beneficiary count multiplied by cap amount)	\$1,460,250

In the above example, if payments made to the hospice were less than the aggregate cap amount, there is no overpayment. Conversely, if payments made to the hospice exceeded the aggregate cap amount, the difference is considered an overpayment.

When a beneficiary receives hospice services in more than 1 cap year, the beneficiary count is allocated to each cap year based on the percentage of total hospice days that occurred in each cap year. For the second cap year, NGS must adjust the previous year's (i.e., the first cap year that hospice service was provided) cap calculation if the beneficiary count has changed. If a beneficiary continues to receive hospice care into a third cap year, NGS must adjust the cap calculations again for both previous cap years so that each beneficiary is counted only one time for his or her total hospice days.

The following example and Tables 2 and 3 (next page) demonstrate how a beneficiary count can change. A beneficiary elected hospice on July 20, 2019 (cap year 2019), and received hospice care until January 16, 2020 (cap year 2020). The beneficiary received hospice care for 180 total days, 72 days in cap year 2019 and 108 days in cap year 2020. Table 2 shows the initial 2019

² The beneficiary count represents the number of beneficiaries who receive hospice care during the cap year.

cap year beneficiary count for the 72 days of care provided during cap year 2019. Table 3 shows the beneficiary count for the 2020 cap year and the adjusted count for the 2019 cap year.

Table 2: Beneficiary Count for Cap Year 2019

Cap Year	Number of Days	Total Days	Beneficiary Count (cap year days divided by total days)
2019 Cap Year (July 20 – September 30, 2019)	72 days	72	1.00

Table 3: Beneficiary Count for Cap Years 2019 and 2020

Cap Year	Number of Days	Total Days	Beneficiary Count (cap year days divided by total days)
2019 Cap Year (July 20 – September 30, 2019)	72 days	180	.4
2020 Cap Year (October 1 – January 16, 2020)	108 days	180	.6
Total	180 days		1.00

The process of redetermining the cap calculations based on the change in beneficiary counts for previous years is referred to as a “lookback.” NGS calculates each hospice’s aggregate cap amount for a specific cap year a total of four times, consisting of the initial cap calculation year and 3 lookback years. For example, the initial cap calculation for 2016 was performed after the 2016 cap year had ended. For cap year 2017, NGS performed a lookback of 2016. For cap year 2018, NGS performed lookbacks of 2017 and 2016. For cap year 2019, NGS performed lookbacks of 2018, 2017, and 2016. After the third lookback, NGS will not review the cap calculation for the initial cap year again. As a result, the 2019 cap calculation was the final lookback at 2016.

Cap Determination Notices

Hospices must file their self-determined aggregate cap determination notice (cap determination notice) with their MAC no later than 5 months after the end of the cap year and remit any overpayment due at that time (42 CFR § 418.308(c)). The MAC then reconciles all payments at the final cap determination.

Extended Repayment Schedule Process

If a hospice cannot repay a cap overpayment immediately, it may submit an Extended Repayment Schedule (ERS) request to NGS. If approved, a hospice may receive up to 60 months to repay an overpayment. NGS may approve ERS requests up to 36 months, but CMS

must approve ERS requests for 37 to 60 months. If a hospice does not make ERS payments, NGS classifies the debt as currently not collectible and refers the debt to the Department of the Treasury. According to CMS, debt that is currently not collectible is unlikely to be collected.³

HOW WE CONDUCTED THIS AUDIT

Our audit covered the cap calculation process for all 1,966 hospices in NGS's Jurisdictions 6 and K, 836 of which had net cap overpayments totaling \$213.4 million for cap year 2019. NGS's calculation process for cap year 2019 did not identify any inpatient cap overpayments. We reviewed the templates that NGS and hospices used to calculate aggregate cap amounts to determine whether they were functioning appropriately. We also judgmentally selected 30 hospices to determine whether NGS followed its processes and whether the calculations in the templates were accurate.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology.

FINDINGS

NGS accurately calculated all cap amounts and collected or attempted to collect \$211.3 million of the \$213.4 million in total cap overpayments in accordance with CMS requirements.⁴ However, NGS did not attempt to collect \$2.1 million in net lookback overpayments because of its internal policy of not pursuing lookback cap calculation amounts that were less than a set threshold.⁵

Additionally, against CMS requirements, NGS instructed hospices to wait to submit the overpayments calculated on their cap determination notices until the hospice received a demand letter from NGS, which took an average of over 2 months after the due date for hospices to file the cap determination notices. Of 30 judgmentally sampled hospices, 13

³ Chapter 5, section 400.20, of the CMS *Medicare Financial Management Manual*, Pub. No. 100-06, states that debt that is classified as currently not collectible is a debt that is at least 180 days delinquent. According to CMS, any debt that is classified as currently not collectible is unlikely to be collected.

⁴ The cap overpayments that NGS attempted to collect but was unable to totaled approximately \$56 million (i.e., 27 percent of the \$211.3 million in cap overpayments for cap year 2019) and were classified as currently not collectible.

⁵ The exact net lookback overpayments were \$2,138,011, which consisted of overpayments due from hospices of \$2,160,587 and refunds due to hospices of \$22,576.

reported cap overpayments totaling \$8.1 million on their cap determination notices. Nine of those 13 hospices did not remit their overpayments as required, totaling \$6.1 million, when they filed their cap determination notices. Because of NGS’s instructions, the Federal Government lost the benefit of having the overpayment funds for its use for an additional average of more than 2 months.

NGS DID NOT COLLECT ALL OVERPAYMENTS FROM LOOKBACK YEARS

Payments made to a hospice that exceed the cap amount are overpayments and must be repaid to the Medicare program.⁶ NGS’s policy was to waive collection or payment when the cap calculation for a lookback year resulted in an overpayment or refund of less than a set threshold. As a result, NGS did not attempt to collect \$2.1 million from hospices. Table 4 identifies the uncollected and non-refunded amounts associated with this policy for the 3 lookback years associated with the 2019 cap year.

Table 4: Yearly Totals of Uncollected Overpayments and Amounts Not Refunded Resulting From Cap Year 2019 Lookback Calculations

Lookback Year	Number of Hospices With Overpayments Less Than a Set Threshold	Total Amount of Uncollected Overpayments	Number of Hospices With Amounts Not Refunded	Total Amount Not Refunded	Net Lookback Overpayment Totals
2018	65	\$329,754	3	\$6,145	\$323,609
2017	183	826,987	1	2,934	824,053
2016	231	1,003,846	7	13,497	990,349
Total	479	\$2,160,587	11	\$22,576	\$2,138,011

NGS INSTRUCTED HOSPICE PROVIDERS NOT TO SUBMIT OVERPAYMENTS THAT WERE CALCULATED ON THEIR CAP DETERMINATION NOTICES

Federal regulations (42 CFR 418.308(c)) state that hospices must file their cap determination notice with their MAC no later than 5 months after the end of the cap year and remit any overpayment due at that time. NGS instructed hospices to wait to submit the overpayments calculated on their cap determination notices until the hospice received a demand letter from NGS, which took an average of more than 2 months after the due date for hospices to file the cap determination notices. Of 30 judgmentally sampled hospices, 13 reported cap overpayments totaling \$8.1 million on their cap determination notices. Nine of those 13 hospices did not remit their overpayments as required, totaling \$6.1 million, when they filed their cap determination notices. Because of NGS’s instructions, the Federal Government lost the benefit of having the overpayment funds for its use for an additional average of more than 2 months.

⁶ 42 CFR § 418.308(d).

RECOMMENDATIONS

We recommend that NGS:

- collect \$2,160,587 in lookback overpayments and return \$22,576 in lookback refunds resulting from 2019 hospice cap calculations for lookback years,
- discontinue its internal policy of waiving certain overpayment collections related to lookback years and start collecting all hospice cap overpayments and paying refunds in accordance with CMS requirements, and
- change its instructions on the cap determination notices to follow the CMS requirement that hospices remit overpayments at the time they submit their cap determination notice.

NGS COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, NGS did not concur with our first and second recommendations. NGS concurred with our third recommendation and said that it had already changed its instructions to follow the CMS requirement that hospices remit overpayments at the time they submit their cap determination notice.

As for our first and second recommendations, NGS stated that its internal policy of not pursuing certain lookback cap calculation amounts conforms to CMS requirements.

NGS's comments are included in their entirety as Appendix B.

After reviewing NGS's comments, we maintain that our findings and recommendations are valid. While NGS claimed that its internal policy of not pursuing certain lookback cap calculation amounts conforms to CMS requirements, NGS did not cite any such requirements in its comments. Federal regulations state that payments made to a hospice that exceed the cap amount are overpayments and must be repaid to the Medicare program.⁷

OTHER MATTERS

HIGH DOLLAR AMOUNTS OF HOSPICE CAP OVERPAYMENTS CLASSIFIED AS CURRENTLY NOT COLLECTIBLE

Chapter 4 of the CMS *Medicare Financial Management Manual* outlines various collection requirements that MACs must follow for Medicare provider overpayments. These requirements include a timeline for sending an initial demand letter, contacting the providers,

⁷ 42 CFR § 418.308(d).

processing ERS requests, and suspending payments, among other things. Chapter 5, section 400.20, of the *CMS Medicare Financial Management Manual*, Pub. No. 100-06, states that debt that is 180 days delinquent must be classified as currently not collectible.

Although NGS followed CMS debt collection requirements, NGS could not collect a material amount of cap overpayments for cap year 2019. NGS attempted to collect approximately \$56 million of the \$211.3 million (27 percent) in total cap overpayments for cap year 2019; however, the overpayments were classified as currently not collectible. According to CMS, any debt that is classified as currently not collectible is unlikely to be collected.

While not specifically required, NGS performs, on its own initiative, a cap overpayment analysis for currently not collectible debts by State and provides this analysis to CMS, Unified Program Integrity Contractors, and other Medicare program integrity officials.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered the cap calculation processes for all 1,966 hospices operated in NGS's Jurisdictions 6 and K for cap year 2019. For the 2019 cap calculation, NGS calculated aggregate cap overpayments totaling \$186,141,773 for 515 hospice providers. For the lookback calculations of 3 prior cap years, NGS calculated additional net lookback aggregate overpayments totaling \$27,257,173 for 673 hospice providers. In total for cap year 2019, NGS calculated overpayments totaling \$213,398,946.

We assessed the design, implementation, and operating effectiveness of NGS's internal controls over its hospice cap calculation and overpayment collection processes and tested cap and overpayment calculations for accuracy.

We conducted our fieldwork virtually and in the Oklahoma City field office due to the Covid-19 pandemic.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and CMS guidance;
- met with CMS officials to discuss its oversight of the hospice cap calculation process;
- gained an understanding of the hospice cap calculation and debt collection requirements;
- met with NGS officials to gain an understanding of, and obtain its policies and procedures on, the hospice cap calculation and debt collection process;
- requested a hospice list from CMS and reconciled it to NGS's list of hospices in its jurisdictions to ensure the completeness of the hospice population for cap year 2019;
- judgmentally selected 30 hospices, requested the financial documentation associated with the 2019 cap calculation process of the 30 hospices, and analyzed their cap calculations and overpayments, if any, to determine whether NGS followed its processes and the calculations were accurate;
- reviewed electronic templates NGS and hospices use to calculate cap amounts to ensure the formulas were functioning appropriately and resulted in complete and accurate calculations;

- reviewed spreadsheets NGS used to calculate cap amounts and overpayments to determine whether the information used for the inpatient and aggregate cap calculations flowed similarly to our judgmental sample work and whether the cap calculations and overpayments were accurate;
- requested and reviewed financial documentation for all 515 hospices with overpayments for cap year 2019 and 673 hospices with overpayments for lookback years 2018, 2017, and 2016, including the financial documentation of the 30 sampled hospices listed above to determine whether overpayment balances were correct and documented appropriately;
- requested and reviewed the overpayment balances and collection statuses of all hospices with overpayments calculated during the 2019 cap calculation process;
- determined the total amount of uncollected overpayments for cap year 2019 and associated lookback years; and
- discussed the results of our audit with NGS officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: NGS COMMENTS



October 31, 2022

Patricia Wheeler
Regional Inspector General for Audit Services
Office of Inspector General
Office of Audit Services, Region VI
1100 Commerce Street, Room 632
Dallas, TX 75242

Report Number: A-06-21-08004

Dear Ms. Wheeler,

As requested, National Government Services (NGS) provides its written comments in response to the draft recommendations the Office of Inspector General made to NGS in draft report *National Government Services, Inc. Accurately Calculated Hospice Cap Amounts but Did Not Collect All Cap Overpayments*, A-06-21-08004.

- Draft Recommendation: Change its instructions on the cap determination notices to follow the CMS requirement that hospice remit overpayment at the time they submit their cap determination notice.

NGS Comment: NGS concurs and already completed the change to instructions.

- Draft Recommendation: Discontinue its internal policy of waiving certain overpayment collections related to lookback years and start collecting all hospice cap overpayments and refunds in accordance with CMS requirements.

NGS Comment: NGS does not concur. NGS policy conforms to CMS requirements.

- Draft Recommendation: Collect \$2,160,587 in lookback overpayments and return \$22,576 in lookback refunds resulting from 2019 hospice cap calculation for lookback years.

NGS Comment: NGS does not concur. NGS policy conforms to CMS requirements.

Sincerely,

/Jared Griep/

Jared Griep
Jurisdiction 6 Program Manager

/Thomas Hansen/

Thomas Hansen
Jurisdiction K Program Manager

