

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

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

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**Amy J. Frontz
Deputy Inspector General
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**December 2022
A-07-22-00628**

Office of Inspector General

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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: December 2022

Report No. A-07-22-00628

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



Why OIG Did This Audit

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

The HHS, OIG, Office of Audit Services, Region VII pension audit team reviews the cost elements related to qualified defined-benefit, postretirement benefit, 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 correctly identify and claim nonqualified costs.

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

How OIG Did This Audit

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

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

What OIG Found

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

What OIG Recommends and Auditee Comments

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

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

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INTRODUCTION

WHY WE DID THIS AUDIT

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

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

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

OBJECTIVE

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

BACKGROUND

National Government Services, Inc., and Medicare

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

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

² DME Jurisdiction B consists of the States of Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio, and Wisconsin.

operations under MAC contracts for Jurisdictions 6 and K, effective September 27, 2012, and February 22, 2013, respectively.^{3, 4}

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

Nonqualified Plan

Anthem sponsors the Anthem, Inc., Comprehensive Non-Qualified Deferred Compensation Plan (Anthem Plan). The plan's primary purpose is to provide deferred compensation for a select group of management or highly compensated employees within the meaning of the Employee Retirement Income Security Act of 1974.

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

Accounting Methodologies

The Medicare contracts require NGS to calculate nonqualified costs in accordance with the FAR and the CAS. The FAR and the CAS require that the costs for nonqualified plans be measured under either the accrual method or the pay-as-you-go method. Under the accrual method, allowable costs are based on the annual contributions that the employer deposits into its trust fund. For nonqualified plans that are not funded through the use of a funding agency, costs are to be accounted for under the pay-as-you-go method. This method is based on the actual benefits paid to participants, which are comprised of lump-sum payments and annuity payments.⁶

³ Medicare Parts A and B Jurisdiction 6 consists of the States of Illinois, Minnesota, and Wisconsin. NGS's jurisdiction for home health and hospice services consists of the States of Alaska, Arizona, California, Hawaii, Idaho, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Washington, and Wisconsin, and the U.S. Territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands.

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

⁵ For each CY, each Medicare contractor submits to CMS an ICP that reports the Medicare direct and indirect costs that the contractor incurred during that year. The ICP and supporting data provide the basis for the CMS Contracting Officer and the Medicare contractor to determine the final billing rates for allowable Medicare costs.

⁶ The pay-as-you-go method is a method of recognizing costs only when benefits are paid to retired employees or their beneficiaries.

Incurred Cost Proposal Audits

At CMS's request, Kearney & Company, P.C. (Kearney), CohnReznick, LLC (CohnReznick), and CliftonLarsonAllen LLP (CLA) performed audits of the ICPs that NGS submitted for the periods of 2015 through 2018. The objectives of the Kearney, CohnReznick, and CLA ICP audits were to determine whether costs were allowable in accordance with the FAR, the U.S. Department of Health and Human Services Acquisition Regulation, and the CAS.

For our current audit, we relied on the Kearney, CohnReznick, and CLA ICP audit findings and recommendations when computing the allowable nonqualified costs discussed in this report.

We incorporated the results of the Kearney, CohnReznick, and CLA ICP audits into our computations of the audited indirect cost rates, and ultimately the nonqualified costs claimed, for the contracts subject to the FAR. CMS will use our report on allowable nonqualified costs, as well as the Kearney, CohnReznick, and CLA ICP audit reports, to determine the final indirect cost rates and the total allowable contract costs for NGS for CYs 2015 through 2018. The cognizant Contracting Officer will perform a final settlement with NGS to determine the final indirect cost rates. These rates ultimately determine the final costs of each contract.⁷

HOW WE CONDUCTED THIS AUDIT

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

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

Appendix A contains details of our audit scope and methodology.

FINDING

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

⁷ In accordance with FAR 42.705-1(b)(5)(ii) and FAR 42.705-1(b)(5)(iii)(B), the cognizant Contracting Officer shall "[p]repare a written indirect cost rate agreement conforming to the requirements of the contracts" and perform a "[r]econciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement," respectively.

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

ALLOCABLE NONQUALIFIED PLAN COSTS OVERSTATED

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

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

Table 1: Allocable Nonqualified Costs

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

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

UNALLOWABLE NONQUALIFIED PLAN COSTS CLAIMED

NGS claimed nonqualified costs of \$668,819 for Medicare reimbursement, through its ICPs, for CYs 2015 through 2018. After incorporating the results of the Kearney, CohnReznick, and CLA ICP audits, we determined that the allowable nonqualified costs for CYs 2015 through 2018 were \$11,054. Thus, NGS claimed \$657,765 of unallowable nonqualified costs on its ICPs for CYs 2015 through 2018. This overclaim occurred because NGS based its claim for Medicare reimbursement on incorrect allocable nonqualified costs included in the indirect cost rates on the ICPs.

In accordance with the FAR and the CAS, we calculated the allowable nonqualified costs based on actual payments to nonqualified participants in accordance with CAS 415.40(a). Accordingly, we determined that the allowable nonqualified costs for CYs 2015 through 2018, calculated under the pay-as-you-go method, totaled \$11,054.

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

Table 2: Comparison of Allowable Nonqualified Costs and Claimed Nonqualified Costs⁸

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

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

RECOMMENDATION

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

AUDITEE COMMENTS

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

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

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

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

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

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

METHODOLOGY

To accomplish our objective, we:

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

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

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

- *National Government Services, Inc., Claimed Some Unallowable Medicare Supplemental Executive Retirement Plan Costs Through Its Incurred Cost Proposals (A-07-22-00625).*

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

APPENDIX B: FEDERAL REQUIREMENTS RELATED TO NONQUALIFIED PLAN COSTS

FEDERAL REGULATIONS

FAR 31.001 defines “deferred compensation” as follows:

‘Deferred compensation’ means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

The allowability of costs for deferred compensation plans is governed by FAR 31.205-6. FAR 31.205-6(k) states that costs shall be measured, assigned, and allocated in accordance with CAS 415.

Federal regulations (FAR 52.216-7(a)(1)) address the invoicing requirements and the allowability of payments as determined by the Contracting Officer in accordance with FAR subpart 31.2.

Federal regulations (CAS 415.40(a)) state that the cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee.

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

- (1) There is a requirement to make the future payment(s) which the contractor cannot unilaterally avoid.
- (2) The deferred compensation award is to be satisfied by a future payment of money, other assets, or shares of stock of the contractor.
- (3) The amount of the future payment can be measured with reasonable accuracy.
- (4) The recipient of the award is known.

- (5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.
- (6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

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

MEDICARE CONTRACTS

The Medicare contracts require NGS to submit invoices in accordance with FAR 52.216-7, "Allowable Cost & Payment." (See our citation to FAR 52.216-7(a)(1) in "Federal Regulations" above.)



December 5, 2022

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

Re: Report Number A-07-22-00628

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

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

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

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

Sincerely,

/Todd W. Reiger/

Todd W. Reiger, CPA
Medicare Chief Financial Officer

Copy: Jane Hite-Syed
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Jeff Wilson (OIG)