Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

CGS ADMINISTRATORS, LLC, CLAIMED SOME UNALLOWABLE MEDICARE EXCESS PLAN COSTS FOR FISCAL YEAR 2011

Inquiries about this report may be addressed to the Office of Public Affairs at Public.Affairs@oig.hhs.gov.

Patrick J. Cogley
Regional Inspector General
for Audit Services

November 2014
A-07-14-00448

Office of Inspector General

http://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.

EXECUTIVE SUMMARY

CGS Administrators, LLC, claimed unallowable Excess Plan costs of approximately $10,000 for Medicare reimbursement for fiscal year 2011.

WHY WE DID THIS REVIEW

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

For this review, we focused on one Medicare contractor, CGS Administrators, LLC (CGS). In particular, we examined the allowable NQDBP costs (referred to in this report as "Excess Plan costs") that CGS claimed for Medicare reimbursement on its Final Administrative Cost Proposals (FACPs). Although CGS employees are not eligible to participate in the Excess Plan, Blue Cross Blue Shield of South Carolina (BCBS South Carolina), as the parent company, is permitted to allocate Excess Plan costs to CGS.

The objective of this review was to determine whether the fiscal year (FY) 2011 Excess Plan costs that CGS claimed for reimbursement under its fiscal intermediary and carrier contracts, and reported on its FACP, were allowable and correctly claimed.

BACKGROUND

During our audit period, CGS was a subsidiary of BCBS South Carolina, whose home office is in Columbia, South Carolina. BCBS South Carolina acquired CGS effective June 1, 2011. CGS administered Medicare Part B carrier operations under cost reimbursement contracts with CMS. With the implementation of Medicare contracting reform, CGS continued to perform Medicare work after being awarded the Medicare administrative contractors (MAC) contracts for Medicare Parts A and B Jurisdiction 15, effective July 8, 2010.

This report addresses the Excess Plan costs claimed by CGS under the provisions of its fiscal intermediary and carrier contracts. We are addressing the Excess Plan costs claimed by CGS under the provisions of its MAC contracts in a separate review.

WHAT WE FOUND

CGS claimed Excess Plan costs of $13,363 for Medicare reimbursement for FY 2011; however, we determined that the allowable Excess Plan costs for this period were $3,039. The difference, $10,324, represented unallowable fiscal intermediary and carrier contract Excess Plan costs that CGS claimed on its FACP for FY 2011. CGS's claimed Excess Plan costs are unallowable because the costs were not calculated in accordance with Federal regulations.

WHAT WE RECOMMEND

We recommend that CGS revise its FACP for FY 2011 to reduce its claimed Medicare Excess Plan costs by $10,324.

AUDITEE COMMENTS AND OUR RESPONSE

In written comments on our draft report, CGS stated that it agreed with our calculations of the impact to CGS expenses charged to the FACP. CGS added that it disagreed with our finding "…at the BCBSSC [BCBS South Carolina] level." In this context, CGS referred to "direction" it had received from BCBS South Carolina; and it included, as part of its comments, information provided by BCBS South Carolina. That information, quoted by CGS, said that CGS (and BCBS South Carolina) did not concur with our recommendation, for two reasons, which we summarize in the remainder of this paragraph and the next. BCBS South Carolina said that the change it made in its Excess Plan (which formed the basis of our finding) was unintentional. BCBS South Carolina also said that because it was amending the Excess Plan document to make the plan compliant with the FAR as a pension plan, it would be burdensome for BCBS South Carolina to have to account for the Excess Plan as initially compliant with the FAR, and then as noncompliant for a time period, and then as compliant once again.

BCBS South Carolina suggested, as an alternative to our recommendation, a course of action in which BCBS South Carolina would correct its "inadvertent change" to the Excess Plan by amending it retroactively and restoring the offer of a benefit that is payable for life at the option of the employee. BCBS South Carolina also stated that it had established a policy that its defined-benefit plans may not be amended without considering the CAS effects, so as to avoid any future unintended changes to its plans.

Nothing in CGS's comments or BCBS South Carolina's information caused us to change our finding or recommendation. We based our audit on the plan document in effect at the time of our review. Moreover, BCBS South Carolina's statement that it would be burdensome to account for the plan using different methodologies has no bearing on our finding or recommendation. Our prior audit of the Excess Plan (A-07-07-00235, issued October 18, 2007) accounted for costs using the pay-as-you-go methodology because the plan did not satisfy the requirements of CAS 412.50(c)(3).

We suggest that CGS consult with CMS (the cognizant Federal agency) to explore whether a retroactive plan amendment is permissible and what effects such an amendment would have on future cost accounting periods. We maintain that our finding and recommendation, as stated, remain valid and solidly supported by Federal regulations.

TABLE OF CONTENTS

INTRODUCTION

WHY WE DID THIS REVIEW

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

For this review, we focused on one Medicare contractor, CGS Administrators, LLC (CGS). In particular, we examined the allowable NQDBP costs (referred to in this report as "Excess Plan costs") that CGS claimed for Medicare reimbursement on its Final Administrative Cost Proposals (FACPs). Although CGS employees are not eligible to participate in the Excess Plan, Blue Cross Blue Shield of South Carolina (BCBS South Carolina), as the parent company, is permitted to allocate Excess Plan costs to CGS.

OBJECTIVE

Our objective was to determine whether the fiscal year (FY) 2011 Excess Plan costs that CGS claimed for reimbursement under its fiscal intermediary and carrier contracts, and reported on its FACP, were allowable and correctly claimed.

BACKGROUND

CGS Administrators, LLC

During our audit period, CGS was a subsidiary of BCBS South Carolina, whose home office is in Columbia, South Carolina. BCBS South Carolina acquired CGS effective June 1, 2011. CGS administered Medicare Part B carrier operations under cost reimbursement contracts with CMS. With the implementation of Medicare contracting reform,[1] CGS continued to perform Medicare work after being awarded the MAC contracts for Medicare Parts A and B Jurisdiction 15, effective July 8, 2010. [2]

[1] Section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P. L. No. 108-173, required CMS to transfer the functions of fiscal intermediaries and carriers to Medicare administrative contractors (MACs) between October 2005 and October 2011. Most, but not all, of the MACs are fully operational; for jurisdictions where the MACs are not fully operational, the fiscal intermediaries and carriers continue to process claims. For purposes of this report, the term "Medicare contractor" means the fiscal intermediary, carrier, or MAC, whichever is applicable.

[2] Medicare Parts A and B Jurisdiction 15 consists of the States of Kentucky and Ohio. Jurisdiction 15 also includes home health and hospice services provided in the States of Colorado, Delaware, Iowa, Kansas, Maryland, Missouri, Montana, Nebraska, North Dakota, Pennsylvania, South Dakota, Utah, Virginia, West Virginia, and Wyoming, and in the District of Columbia.

Blue Cross Blue Shield of South Carolina Excess Plan

BCBS South Carolina sponsors an Excess Plan whose primary purpose is to provide a benefit to a select group of management or highly compensated employees. The Excess Plan is designed to restore benefits to participants who lost benefits under the BCBS South Carolina qualified defined-benefit plan because of the Internal Revenue Code, section 401(a)(17), limit. Because CGS was a subsidiary of BCBS South Carolina during our audit period, BCBS South Carolina allocated Excess Plan costs to CGS.

BCBS South Carolina defined its Excess Plan as an NQDBP and calculated its costs pursuant to CAS 412.

This report addresses the Excess Plan costs claimed by CGS under the provisions of its fiscal intermediary and carrier contracts. We are addressing the Excess Plan costs claimed by CGS under the provisions of its MAC contracts in a separate review.

HOW WE CONDUCTED THIS REVIEW

We reviewed $13,363 of Excess Plan costs claimed by CGS for Medicare reimbursement on its FACP for FY 2011.[3]

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

CGS claimed Excess Plan costs of $13,363 for Medicare reimbursement for FY 2011; however, we determined that the allowable Excess Plan costs for this period were $3,039. The difference, $10,324, represented unallowable fiscal intermediary and carrier contract Excess Plan costs that CGS claimed on its FACP for FY 2011. CGS's claimed Excess Plan costs are unallowable because the costs were not calculated in accordance with Federal regulations.

EXCESS PLAN COSTS CLAIMED

CGS claimed Excess Plan costs of $13,363 for Medicare reimbursement, under the provisions of its fiscal intermediary and carrier contracts, on its FY 2011 FACP. BCBS South Carolina and CGS calculated CGS's Excess Plan costs on the premise that the Excess Plan was an NQDBP.

[3] Because FY 2010 claimed costs were immaterial, we included those costs with FY 2011 claimed costs.

COSTS BASED ON NONQUALIFIED DEFINED-BENEFIT PENSION PLAN

The Medicare contracts require that Excess Plan costs be calculated in accordance with the FAR and the CAS. BCBS South Carolina defined its Excess Plan as an NQDBP and, accordingly, calculated the plan's costs as specified in CAS 412. However, BCBS South Carolina's Excess Plan did not offer a benefit that is payable for life at the option of the employees; therefore, it did not qualify as a "pension plan" as defined in FAR 31.001. Thus, CGS did not claim costs in accordance with Federal regulations.

CGS should have calculated its Excess Plan costs in accordance with FAR 31.205-6(k) and CAS 415. Specifically, CGS should have identified its Excess Plan costs in accordance with the regulations for a deferred compensation plan and should then have calculated those costs in accordance with the FAR and CAS 415.

For details on the Federal requirements, see Appendix B.

EFFECT OF INCORRECTLY CALCULATED COSTS

In light of these considerations, we recalculated the allowable Excess Plan costs in accordance with CAS 415 and determined that CGS's allowable Excess Plan costs for FY 2011 were $3,039. In accordance with CAS 415, we based the allowable costs on payments to Excess Plan participants. Thus, CGS claimed $10,324 of unallowable Medicare Excess Plan costs on its FACP for FY 2011. CGS claimed these unallowable Excess Plan costs because it based its claims for Medicare reimbursement on an incorrectly calculated amount that, due to the incorrect classification of the Excess Plan as a pension plan, did not comply with Federal regulations.

RECOMMENDATION

We recommend that CGS revise its FACP for FY 2011 to reduce its claimed Medicare Excess Plan costs by $10,324.

AUDITEE COMMENTS

In written comments on our draft report, CGS stated that it agreed with our calculations of the impact to CGS expenses charged to the FACP. CGS added that it disagreed with our finding "…at the BCBSSC [BCBS South Carolina] level." In this context, CGS referred to "direction" it had received from BCBS South Carolina; and it included, as part of its comments, information provided by BCBS South Carolina. That information, quoted by CGS, said that CGS (and BCBS South Carolina) did not concur with our recommendation, for two reasons, which we summarize in the remainder of this paragraph and the next. BCBS South Carolina said that the change it made in its Excess Plan (to remove the benefit that is payable for life at the option of the employee) was unintentional, in the sense that BCBS South Carolina sought to simplify elections for its retirees. BCBS South Carolina stated that its intent was that the Excess Plan would continue to be recognized as a pension plan, but added that it "… did not consider that removing the life time payout option would change this status."

BCBS South Carolina also said that because it was amending the Excess Plan document to reinstate the lifetime payout option and make the plan compliant with the FAR as a pension plan, it would be burdensome for BCBS South Carolina to have to account for the Excess Plan as initially compliant with the FAR, and then as noncompliant for a time period, and then as compliant once again.

BCBS South Carolina thus suggested, as an alternative to our recommendation, a course of action in which BCBS South Carolina would correct its "inadvertent change" to the Excess Plan by restoring the offer of a benefit that is payable for life at the option of the employee. BCBS South Carolina requested that this corrective action be considered effective retroactive to the effective date of the amendment removing the lifetime payout option. BCBS South Carolina also stated that it had established a policy that its defined-benefit plans may not be amended without considering the CAS effects, so as to avoid any future unintended changes to its plans.

CGS's comments (including the quoted information that was provided to CGS by BCBS South Carolina) are included in their entirety as Appendix C.

OFFICE OF INSPECTOR GENERAL RESPONSE

Nothing in CGS's comments or BCBS South Carolina's information caused us to change our finding or recommendation. We based our audit on the plan document in effect during the time of our review. The plan document, as stated, did not offer a benefit that is payable for life, as required by FAR 31.001; therefore, the Excess Plan as constituted at the time of our review did not meet the definition of a pension plan as specified in the relevant criteria.

Moreover, BCBS South Carolina's statement that it would be burdensome to account for the plan using different methodologies has no bearing on our finding or recommendation. Since the inception of the Excess Plan, we have audited the plan using the pay-as-you-go accounting method. Our prior audit of the Excess Plan noted that the plan document contained language that would allow the benefits to be forfeitable, which did not satisfy with the requirements of CAS 412.50(c)(3).[4] Therefore, our prior audit accounted for costs using the pay-as-you-go methodology. To claim that it would now be burdensome to account for the plan using different accounting methods is therefore inaccurate.

We suggest that CGS consult with CMS (the cognizant Federal agency) to explore whether a retroactive plan amendment is permissible and what effects such an amendment would have on future cost accounting periods. We maintain that our finding and recommendation, as stated, remain valid and solidly supported by Federal regulations.

[4] *Review of Excess Plan Costs Claimed by Blue Cross Blue Shield of South Carolina for Medicare Reimbursement for Fiscal Years 1996 – 2004* (A-07-07-00235, issued October 18, 2007).

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed $13,363 of Excess Plan costs that CGS claimed for Medicare reimbursement on its FACP for FY 2011.

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

We performed our audit work in April 2014.

METHODOLOGY

To accomplish our objective, we:

- reviewed the portions of the FAR, CAS, and Medicare contracts applicable to this audit;
- reviewed BCBS South Carolina's plan document;
- reviewed accounting records and information provided by CGS to identify the amount of Excess Plan costs claimed for Medicare reimbursement for FY 2011;
- reviewed Total Company benefit payment information and Total Company salary information provided by BCBS South Carolina for the Excess Plan;
- using the information provided by BCBS South Carolina, determined the amount of benefits paid to participants in accordance with Federal regulations;
- calculated allowable Excess Plan costs in accordance with applicable provisions of the FAR and the CAS; and
- provided the results of our review to CGS officials on June 17, 2014.

We performed this review in conjunction with the following audit and used the information obtained during this audit: *Blue Cross Blue Shield of South Carolina Overstated Its Allocable Medicare Excess Plan Costs for Calendar Years 2006 Through 2011* (A-07-14-00445).

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 REIMBURSEMENT OF EXCESS PLAN COSTS

FAR 31.001 defines a pension plan as follows:

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

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 regulation (CAS 415.40(a)) states 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 regulation (CAS 415.50(a)) states:

> 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 which 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 regulation (CAS 415.50(b)) states: "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."

APPENDIX C: AUDITEE COMMENTS

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We IMPACT lives.

October 3, 2014

Mr. Patrick J. Cogley
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-07-14-00448

Dear Mr. Cogley:

We are responding to the U.S. Department of Health and Human Services, Office of Inspector General, draft report dated October 1, 2014 and entitled *CGS Administrators, LLC, Claimed Some Unallowable Medicare Excess Plan Costs for Fiscal Year 2011.*

The report contains the following recommendation:

> We recommend that CGS revise its FACP for FY 2011 to reduce its claimed Medicare Excess Plan costs by $10,324.

CGS received indirect allocations from the Blue Cross Blue Shield of South Carolina (BCBSSC) Excess Benefit plan through home office allocations from the parent company. As part of an audit of the Excess Plan of BCBSSC, it was determined that the allocated amount to CGS was incorrect. While we agree with the calculations of the impact to CGS expenses charged to the FACP, we disagree with the finding at the BCBSSC level. This response is based on direction from BCBSSC and the information below was provided by them to include in our response.

> We do not concur with the recommendation and offer an alternative corrective action. Our reason for non-concurrence is two-fold. First, and most significantly, the change to the Excess Plan by BCBSSC was unintentional. The amendment was made to conform the Excess Plan election to the options provided under BCBSSC's non-qualified defined contribution plan and thereby simplify elections for BCBSSC's retirees. The amendment would enable them to manage both of their nonqualified plans with one election. Of course the intent was that the plan would continue to be recognized as a pension plan but, unfortunately, BCBSSC did not consider that removing the life time payout option would change this status.

Second, BCBSSC is in the process of amending the plan to reinstate the lifetime payout which will make the plan FAR compliant as a pension plan. It would be burdensome to account for the plan as being initially FAR compliant followed by a noncompliant period and then finally revert back to being FAR compliant again. This would create the need for future calculations to account for the plan as a deferred compensation plan as well as a pension plan.

Our alternative action is for BCBSSC to correct its inadvertent change to the Excess Plan by restoring the offer of a benefit that is payable for life at the option of the employee. This amendment is not complicated and will be completed as soon as possible. We request that this corrective action be considered effective retroactively to the effective date of the amendment removing the lifetime payout option. Further, BCBSSC has established a policy that its defined benefit plans may not be amended without considering the CAS effects to avoid any future unintended changes to its plans such as this.

CGS' assumption is that this revised approach provided by BCBSSC is accepted by the audit firm which would then nullify the audit findings for the CGS FY 2011 FACP. Thus, we do not plan on adjusting our reported costs at this time. We appreciate the opportunity to comment on the recommendation. Please let me know if you have questions or need additional information regarding our response.

Sincerely,

Michael Logan
Vice President and CFO

Cc: Steve Bishop, CGS
Robert Madgett, CGS
Larry Kennedy, CGS