

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

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

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September 2019  
A-07-19-00572

# *Office of Inspector General*

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## Report in Brief

Date: September 2019  
Report No. A-07-19-00572

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



### Why OIG Did This Review

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

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

Previous OIG reviews found that Medicare contractors did not always correctly identify and claim nonqualified costs.

Our objective was to determine whether the calendar years (CYs) 2007 through 2014 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 Review

We reviewed \$1,047,241 of Medicare nonqualified costs that NGS claimed for Medicare reimbursement on its ICPs for CYs 2007 through 2014.

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

### What OIG Found

NGS claimed nonqualified costs of \$1,047,241 for Medicare reimbursement for CYs 2007 through 2014; however, we determined that the allowable nonqualified costs during this period were \$75,421. The difference, \$971,820, constituted unallowable Medicare nonqualified costs that NGS claimed on its ICPs for CYs 2007 through 2014. NGS claimed these unallowable Medicare nonqualified costs because it did not calculate those costs in accordance with Federal regulations and the Medicare contracts' requirements.

### 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 Medicare nonqualified costs of \$971,820 for CYs 2007 through 2014.

NGS did not specifically agree or disagree with our finding and recommendation. NGS did not dispute our classification of its Empire Plan as a deferred compensation plan, but it asked us to reconsider our approach to Federal fiscal years (FYs) 2000 through 2006 costs associated with an entity (Empire) that was subsequently consolidated into NGS. NGS referred to other audits of those costs and stated that an adjustment had been proposed to CMS to change the historical treatment of the Empire costs to be consistent with NGS's practice for its other pension plans. In addition, NGS did not agree with our methodology in incorporating adjustments from other ICP audits.

We revised some of our calculations of the nonqualified costs for this final report. The audits that reviewed Empire's costs for FYs 2000 through 2006, most of which were performed by independent accounting firms, did not properly identify the plan type before making their determinations. Also, the FYs 2000 through 2006 timeframe was outside our audit period.

NGS did not give us a CMS-approved copy of the proposal to change the cost accounting methodology. Even if NGS had done so, we are required to audit to the criteria relevant to the plan we are reviewing. Because Empire cannot be considered a pension plan, those criteria are Cost Accounting Standards 415. In addition, we incorporated the ICP audit adjustments because the ICP audit report from independent accounting firms has been issued in final. We incorporated those adjustments into our own findings. Therefore, we maintain that our finding and recommendation, as revised, are valid.

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## INTRODUCTION

### WHY WE DID THIS REVIEW

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) reviews found that Medicare contractors did not always correctly identify and claim nonqualified costs.

At CMS's request, the OIG, Office of Audit Services, Region VII pension audit team reviews the cost elements related to qualified defined-benefit, nonqualified defined-benefit, postretirement benefit (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 (FACPs), Incurred Cost Proposals (ICPs), or both.

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

### OBJECTIVE

Our objective was to determine whether the calendar years (CYs) 2007 through 2014 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 Anthem, Inc. (formerly WellPoint, Inc.). NGS administered Medicare Parts A and B under cost reimbursement contracts with CMS until its contractual relationships ended on July 13, 2013, and August 20, 2012, respectively. Effective November 17, 2006, WellPoint consolidated its Government contracting segments into one segment, AdminaStar Federal, Inc. (AdminaStar), which included the following Government contracting segments: AdminaStar; Anthem Health Plans of Maine, Inc.; Anthem Health Plans of New Hampshire, Inc.; United Government Services, LLC (UGS); and WellChoice, Inc. (formerly Empire). As of that same date, AdminaStar changed its corporate name to NGS.

With the implementation of Medicare contracting reform,<sup>1</sup> NGS continued to perform Medicare work as a MAC. NGS was awarded the MAC contracts for Medicare Durable Medical Equipment (DME) and Medicare Parts A and B, Jurisdiction B and Jurisdiction 13, effective January 1, 2006, and March 18, 2008, respectively.<sup>2,3</sup> NGS continued its MAC work after again being awarded the DME contract, Jurisdiction B, on September 2, 2010. NGS was also awarded the Medicare Parts A and B contracts (which include home health and hospice services) for Jurisdiction 6 and Jurisdiction K, effective September 27, 2012, and February 22, 2013, respectively.<sup>4,5</sup>

## **Nonqualified Plans**

Anthem sponsors two nonqualified plans: the Anthem, Inc., Comprehensive Non-Qualified Deferred Compensation Plan (Anthem Plan) and the Empire Blue Cross and Blue Shield Supplemental Cash Balance Pension Plan (Empire). Anthem 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. Empire's primary purpose is to replace pension benefits which are lost because of a key employee's elective deferral of compensation or because of the limitations on benefits or includible compensation imposed by the Internal Revenue Code of 1986.

This report addresses the nonqualified costs that NGS claimed under the provisions of its MAC contracts and CAS- and FAR-covered contracts, for the Plan A, Plan B, and UGS pension plans. We are addressing the Supplemental Executive Retirement Plan (SERP) costs that NGS claimed under the provisions of its FACP contract in a separate review.

## **Accounting Methodologies**

The Medicare contracts require NGS to calculate nonqualified costs in accordance with the FAR and CAS 412 and 413. The FAR and the CAS require that the costs for nonqualified plans be

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<sup>1</sup> 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 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.

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

<sup>3</sup> Medicare Parts A and B Jurisdiction 13 consists of the States of Connecticut and New York.

<sup>4</sup> Medicare Part 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, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

<sup>5</sup> 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.

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.

### **Incurred Cost Proposal Audits**

At CMS's request, CliftonLarsonAllen LLP (CLA) and Kearney & Company (Kearney) performed audits of the ICPs that NGS submitted for the periods of 2007 through 2014. The objectives of the CLA and Kearney reviews 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 CLA and Kearney audit findings and recommendations when computing the allowable nonqualified costs discussed in this report.

We incorporated the results of the CLA and Kearney 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 CLA and Kearney audit reports, to determine the final indirect cost rates and the total allowable contract costs for NGS for CYs 2007 through 2014. 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>6</sup>

### **HOW WE CONDUCTED THIS REVIEW**

We reviewed \$1,047,241 of Medicare nonqualified costs that NGS claimed for Medicare reimbursement on its ICPs for CYs 2007 through 2014.<sup>7</sup>

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.

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<sup>6</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.

<sup>7</sup> NGS's ICPs included only direct nonqualified costs related to the Medicare segment. We followed NGS's methodology, and for that reason, our audited nonqualified costs included only direct nonqualified costs related to the NGS Medicare segment.



Appendix A contains details of our audit scope and methodology.

## FINDING

NGS claimed nonqualified costs of \$1,047,241 for Medicare reimbursement for CYs 2007 through 2014; however, we determined that the allowable nonqualified costs during this period were \$75,421. The difference, \$971,820, constituted unallowable Medicare nonqualified costs that NGS claimed on its ICPs for CYs 2007 through 2014. NGS claimed these unallowable Medicare nonqualified costs because it did not calculate these costs in accordance with Federal regulations and the Medicare contracts' requirements.

### ALLOCABLE NONQUALIFIED PLAN

During this audit, we calculated the allocable nonqualified costs, for CYs 2007 through 2014, in accordance with Federal requirements. We determined that the allocable nonqualified costs for CYs 2007 through 2014 totaled \$264,521. NGS identified its allocable nonqualified costs of \$1,681,648. Therefore, NGS overstated the allocable nonqualified costs by \$1,417,127.

We used these allocable nonqualified costs to determine allowable nonqualified costs for Medicare reimbursement. Table 1 below compares the allocable nonqualified costs that we determined for CYs 2007 through 2014 with the costs that NGS reported for the same timeframe.

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

CY	Allocable Per Audit	Per NGS	Difference
2007	\$162,064	\$88,106	\$73,958
2008	34,725	202,729	(168,004)
2009	15,475	204,444	(188,969)
2010	9,348	205,278	(195,930)
2011	18,616	227,061	(208,445)
2012	11,550	215,299	(203,749)
2013	7,985	323,376	(315,391)
2014	4,758	215,355	(210,597)
<b>Total</b>	<b>\$264,521</b>	<b>\$1,681,648</b>	<b>(\$1,417,127)</b>

### NONQUALIFIED PLANS COSTS CLAIMED

NGS claimed nonqualified costs of \$1,047,241 on its ICPs for CYs 2007 through 2014. We calculated the allowable Medicare nonqualified costs in accordance with the FAR and the CAS. For details on the Federal requirements, see Appendix B.

## UNALLOWABLE NONQUALIFIED PLANS COSTS CLAIMED

After incorporating the results of the CLA and Kearney ICP audits, we determined that the allowable nonqualified costs for CYs 2007 through 2014 were \$75,421. Thus, NGS claimed \$971,820 of unallowable nonqualified costs on its ICPs for CYs 2007 through 2014. This overclaim occurred primarily because NGS did not calculate its nonqualified costs in accordance with Federal regulations and the Medicare contracts' requirements. More specifically, NGS based its claim for Medicare reimbursement on an incorrect cost accounting method and used unallowable compensation when calculating its nonqualified costs for Medicare reimbursement.

In accordance with the FAR and the CAS, we calculated the allowable nonqualified costs based on actual payments to nonqualified plans participants in accordance with CAS 415.40(a). Accordingly, we determined that the allowable nonqualified costs for CYs 2007 through 2014, calculated under the pay-as-you-go method, totaled \$75,421.

Table 2 below compares the allowable nonqualified costs with the costs claimed on NGS's ICPs.

**Table 2: Medicare Segment Allowable Nonqualified Costs<sup>8</sup>**

<b>CY</b>	<b>Allowable Per Audit</b>	<b>Per NGS</b>	<b>Difference</b>
2007	\$18,206	\$0	\$18,206
2008	17,958	42,483	(24,525)
2009	7,472	98,341	(90,869)
2010	4,762	127,653	(122,891)
2011	10,867	132,402	(121,535)
2012	7,780	144,445	(136,665)
2013	3,878	298,120	(294,242)
2014	4,498	203,797	(199,299)
<b>Total</b>	<b>\$75,421</b>	<b>\$1,047,241</b>	<b>(\$971,820)</b>

### Costs Based on Incorrect Cost Accounting Method

The Medicare contracts require that nonqualified costs be calculated in accordance with the FAR and the CAS. NGS defined its nonqualified costs in accordance with CAS 412. However, neither of the nonqualified plans offered a benefit that is payable for life; therefore, neither

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<sup>8</sup> Our calculations incorporated the rate ceilings associated with the Medicare Parts A and B and DME contracts. We applied the indirect cost rate associated with these contracts when computing the allowable nonqualified costs for the Medicare Parts A and B and DME contracts. The amounts identified in this table represent the allowable Medicare nonqualified costs during our audit period and do not represent the Total Company allowable costs on the ICPs.

qualified as a “pension plan” as defined in FAR 31.001. Thus, NGS did not claim costs in accordance with Federal regulations.

Anthem accounted for its nonqualified plans as pension plans; however, neither of the nonqualified plans met the FAR 31.001 definition of a “pension plan.” Because these plans did not qualify as pension plans, we applied the criteria that govern deferred compensation plans. Accordingly, we determined that Anthem’s nonqualified plans met the definition of a “deferred compensation plan” under FAR 31.001. Therefore, NGS should have calculated its nonqualified costs in accordance with FAR 31.205-6(k) and CAS 415. Specifically, NGS should have identified the nonqualified costs in accordance with the regulations for a deferred compensation plan and should have calculated those costs in accordance with the FAR and CAS 415.

Because the nonqualified plans are not pension plans, we calculated NGS’s nonqualified costs in accordance with CAS 415. Because no obligations were incurred (that is, the nonqualified plans did not meet all of the conditions specified in CAS 415.50(a)), we based the allowable costs on actual payments to nonqualified plans participants in accordance with CAS 415.40(a).

NGS claimed these unallowable nonqualified costs because it based its claim for Medicare reimbursement on an incorrectly calculated amount that, because of the incorrect classification of the nonqualified plans as pension plans, did not comply with Federal regulations.

For details on the Federal requirements, see Appendix B.

### **Costs Based on Unallowable Compensation**

NGS identified \$1,047,241 as the allowable nonqualified costs for CYs 2007 through 2014. In our review of the benefit payment calculations, we determined that NGS based its claimed nonqualified costs on unallowable compensation. We obtained and recalculated one benefit payment using the compensation limits described in FAR 31.205-6(p) (Appendix B). This payment was made on behalf of one of the five most highly compensated employees in management positions at each of Anthem’s home offices and in management positions over each of the nonqualified plans’ Medicare segments. The benefit payment should have been limited to the compensation benchmarks determined by the Office of Federal Procurement Policy (OFPP).

In our recalculation of this benefit payment, we limited the participant’s compensation for the year in which he was considered one of the five most highly compensated employees in accordance with FAR 31.205-6(p). After recalculating this payment, we calculated the allowable nonqualified costs for CYs 2007 through 2014 to be \$75,421.

### **RECOMMENDATION**

We recommend that NGS work with CMS to ensure that its final settlement of contract costs reflects a decrease in Medicare nonqualified costs of \$971,820 for CYs 2007 through 2014.

## AUDITEE COMMENTS

In written comments on our draft report, NGS did not specifically agree or disagree with our finding and recommendation. NGS did not dispute our classification of Empire as a deferred compensation plan but it did dispute what it referred to as “the inconsistent treatment of the allowable benefit payments made from the plan [Empire] between 2000 and 2006.”

NGS stated that its standard practice was to amortize the lump sum payments over 15 years and added that our audit did not address those prior-period payments. Because these “initial pre-2007 benefit payments” fell outside our audit period, they were left out of the computation of allowable costs, resulting in a loss of \$476,000 of reimbursable costs.

NGS asked that, in light of this “unintended consequence,” we reconsider our approach to the pre-2007 benefit payments because FACP audits conducted before the formation of NGS<sup>9</sup> had reviewed the costs in question and, with the exception of a \$4,600 disallowance, found them to be reimbursable. NGS added that with the formation of NGS, “an adjustment was proposed to CMS” to change the historical treatment of the Empire costs to be consistent with NGS’s practice for its other pension plans, “which was to account for and recognize lump sum payments over a 15 year amortization period.”

In addition, NGS stated that it did not agree with the approach we took to calculate the unallowable nonqualified costs. Specifically, NGS did not agree with the incorporation of the previous pension audit costs for CYs 2007 through 2009 or the incorporation of the adjustments from the ICP audits. These adjustments, according to NGS, have not been “fully negotiated or vetted with CMS. . . . As a result, the unallowable costs cited in the recommendation of this report may be misrepresented by the inclusion of ICP audit adjustments that have not been fully negotiated.”

NGS also stated that it would work with CMS to negotiate the overall adjustments due to the ICP adjustments and our audited pension, PRB, nonqualified, and SERP costs and determine the overall impact to CMS.

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

## OFFICE OF INSPECTOR GENERAL RESPONSE

After reviewing NGS’s comments, we revised some of our calculations of the Medicare nonqualified costs for this final report. Our revisions to this final report, which resulted in an increase of \$3,647 in allowable nonqualified costs, were related to adjustments that were either incorrect or omitted from the ICPs calculations in our draft report. We maintain that our finding and recommendation, as revised, are valid.

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<sup>9</sup> See the discussion in “National Government Services, Inc., and Medicare” earlier in this report.

With respect to NGS's loss of \$476,000 of potentially reimbursable costs associated with Empire's pre-2007 benefit payments, NGS is incorrect in characterizing our findings as "inconsistent treatment." The FACP audits that reviewed Empire's costs for Federal fiscal years (FYs) 2000 through 2006, most of which were performed by independent accounting firms, did not properly identify the plan type before making determinations as to allowable costs. Moreover, the FYs 2000 through 2006 timeframe was outside our audit period, and as a result, we cannot opine as to whether the costs associated with FYs 2000 through 2006 are allowable.

Additionally, although NGS referred to an agreement proposed to CMS that allowed NGS to amortize the Empire lump-sum payments, NGS did not give us a CMS-approved copy of the proposal to change the cost accounting methodology for Empire. Even if CMS had agreed to such a proposal, FAR 31.001 states that if a plan does not offer a payment for life, it is not considered a pension plan. In such a case, the plan would be governed by CAS 415, which is the same regulation we applied during this review. Under CAS 415, lump-sum payments are not amortized and the full cost is recognized in the current accounting period. Notwithstanding the existence of a possible agreement, we are required to audit to the criteria relevant to the plan we are reviewing.

With respect to NGS's statement that it disagreed with our calculation of the unallowable nonqualified costs because the incorporation of the adjustments from the ICP audits had not been negotiated with CMS, we incorporated those findings and recommendations because the ICP audit report has been issued in final. We followed the ICP auditors' methodology and incorporated the pension adjustments from the ICP audit findings into our own calculations. Therefore, our computations do not misrepresent the indirect cost rates or the resulting unallowable pension costs.

In view of these considerations, we continue to support our calculations of the audited nonqualified costs for CYs 2007 through 2014. Accordingly, we maintain that our finding and recommendation, as revised, remain valid.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

We reviewed \$1,047,241 of Medicare nonqualified costs that NGS claimed for Medicare reimbursement on its ICPs for CYs 2007 through 2014.

Achieving our objective did not require that we review NGS's overall internal control structure. We reviewed the internal controls related to the nonqualified costs that were included in NGS's ICP 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 and Empire plan documents;
- reviewed accounting records and information provided by NGS to identify the amounts of nonqualified costs claimed for Medicare reimbursement for CYs 2007 through 2014;
- calculated the allowable nonqualified costs in accordance with applicable provisions of the FAR and the CAS;
- reviewed the results of CLA's and Kearney's ICP audit and incorporated those results into our calculations of allowable nonqualified costs;
- incorporated information from the CMS PRB Settlement Agreement;<sup>10</sup> and
- provided the results of our review to NGS officials on April 30, 2019.

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

- *National Government Services, Inc., Understated Its Allocable Pension Costs for Calendar Years 2006 Through 2009 (A-07-14-00453; May 21, 2015);*

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<sup>10</sup> On August 22, 2017, CMS and NGS executed this agreement, which closed the prior accounting periods for the PRB costs claimed from FY 2007 through FY 2009. This agreement also allowed NGS to change its method of accounting for the PRBs from the accrual basis to pay-as-you-go (cost basis).

- *National Government Services, Inc., Claimed Some Unallowable Medicare Pension Costs Through Its Incurred Cost Proposals (A-07-19-00564);*
- *National Government Services, Inc., Claimed Some Unallowable Medicare Supplemental Executive Retirement Plan Costs Through Its Incurred Cost Proposals (A-07-19-00565);*  
and
- *National Government Services, Inc., Did Not Claim Some Medicare Postretirement Benefit Plan Costs Through Its Incurred Cost Proposals (A-07-19-00566).*

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

## **APPENDIX B: FEDERAL REQUIREMENTS RELATED TO NONQUALIFIED PLAN COSTS**

### **FEDERAL REGULATIONS**

FAR 31.001 defines a “pension plan” as follows:

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

FAR 31.001 also defines “deferred compensation” as follows:

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

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

Federal regulations (FAR 31.205-6(p)) state that costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, OFPP, are unallowable.

Federal regulations (FAR 52.216-7(a)(1)) address the invoicing requirements and the allowability of payments as determined by 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 and 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 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 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.)



MEDICARE

A CMS Medicare Administrative Contractor  
<http://www.NGSMedicare.com>

August 8, 2019

Sent via Email

Mr. Patrick J. Cogley  
 Regional Inspector General for Audit Services  
 Office of Audit Services, Region VII  
 601 East 12<sup>th</sup> Street, Room 0429  
 Kansas City, Missouri 64106

Reference: Report Number A-07-19-00572

Dear Mr. Cogley:

We are in receipt of the draft audit entitled "National Government Services, Inc. Claimed Some Unallowable Medicare Nonqualified Plan Costs Through Its Incurred Cost Proposals". Thank you for the opportunity to respond to the facts and reasonableness of the recommendation presented in the report.

#### Pre-2007 Empire Plan Costs

As outlined in the draft report, NGS accounted for its nonqualified plans as pension plans. As a result, when benefit payments were made in the form of a lump sum, NGS sought reimbursement of those payments over a 15 year period as an amortized cost. This approach was applied consistently to all benefit payments incurred prior to and during the audit period of 2007 thru 2014.

As part of NGS' cost claim, a component of reimbursement is for the Empire Blue Cross and Blue Shield Supplemental Cash Balance Pension Plan (hereinafter referred to as the "Empire Plan"). During the audit period of 2007 thru 2014, benefit payments of \$82K were paid from the Empire Plan and amortized over 15 years generating reimbursement of \$28K (inclusive of the FACPs & ICPs). Thru the audit, the designation of the Empire Plan as a deferred compensation plan and not a pension plan, resulted in the immediate recognition of the costs incurred during the audit period as an allowable cost when paid (the total benefit payments of \$82K).

NGS does not dispute the OIG's classification of the Empire Plan as a deferred compensation plan. NGS, however, does dispute the inconsistent treatment of the allowable benefit payments made from the plan between 2000 and 2006. As previously stated, NGS' practice entailed recognizing lump sum payments into reimbursement over a 15 year period. Thru the audit, the pre-2007 payments generating amortization during the audit period were not addressed. As a result, and based on the revised characterization of the current costs, the remaining amortization on the pre-2007 costs incurred were dropped out as a claimed cost in any period resulting in a \$476K loss of reimbursement (inclusive of the FACPs and ICPs) of otherwise allowable costs to NGS. This seems to be an unintended consequence simply because the initial pre-2007 benefit payments fell outside the current audit period.



NGS requests that the OIG reconsider the approach related to the pre-2007 benefit payments based on the following events:

- Prior to formation of NGS, the costs in question had been reviewed thru Empire's Final Administrative Cost Proposal (FACP) audits. Empire had previously recognized these payments as a reimbursable cost when paid. The FACP audits largely found these costs allowable with the exception of \$4600.
- With the formation of NGS in 2006, an adjustment was proposed to CMS to change the historical treatment of the Empire Plan costs to be consistent with the NGS practice on other pension plans, which was to account for and recognize lump sum payments over a 15 year amortization period. The adjustments were made to FACP closing agreements for FY00-FY04 and thru revised FACP filings for FY05-06 to incorporate this proposed change in treatment of the Empire Plan costs.

Respectively, NGS requests that the pre-2007 Empire Plan benefit payments be included in allowable reimbursement as these costs had previously been determined allowable. To accomplish this, NGS recommends continuing the current cost recovery approach for the pre-2007 benefit payments as the associated costs will be fully amortized by August, 2021.

#### NGS Incurred Cost Proposal Adjustments

NGS is not in agreement with the approach taken to develop the unallowable costs cited in the report. The approach consisted of impacting indirect rates not only for the cited OIG findings, but also for audit findings that haven't been fully negotiated or vetted with CMS related to open NGS Incurred Cost Proposal (ICP) audits for years 2007 thru 2014. These proposed ICP adjustments require further discussion with CMS prior to finalizing the ICPs for these cost report years. The incorporation of these adjustments is in no way a concession or agreement by NGS to the proposed ICP adjustments. As a result, the unallowable costs cited in the recommendation of this report may be misrepresented by the inclusion of ICP audit adjustments that have not been fully negotiated.

NGS will work with CMS to complete its negotiations of the proposed ICP audit adjustments for 2007 thru 2014. Thru that process, the audited non-qualified plan costs identified in this report (including audited pension, post-retirement and SERP costs identified in other reports) along with the final audited and agreed to ICP adjustments will be incorporated into the respective ICP reports to develop the net impact due to or from CMS.

#### Conclusion

Going forward, NGS will recognize the reimbursement for benefit payments made under its nonqualified plans under the guidelines specified within CAS 415. Additionally, processes will be established to ensure that when applicable, the compensation benchmarks are applied to compensation used in determining benefit payments.

If you have any further questions or need additional clarification, I can be reached at 414-207-2517 or via email at [todd.reiger@anthem.com](mailto:todd.reiger@anthem.com).

Sincerely,

/s/Todd W. Reiger

Todd W. Reiger, CPA  
Medicare Chief Financial Officer  
National Government Services, Inc.

CC: Andrew Conn – NGS  
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Rachel Fleischer – FGS  
Tom Healy – FGS  
Renee Sherrill – FGS  
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