

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**BLUE CROSS BLUE SHIELD OF
TENNESSEE DID NOT CLAIM SOME
ALLOWABLE RESTORATION
SUPPLEMENTAL EXECUTIVE
RETIREMENT PLAN COSTS FOR
FISCAL YEARS 2008 AND 2009**

*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

November 2012
A-07-12-00394

Office of Inspector General

<https://oig.hhs.gov/>

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

Office of Audit Services

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These assessments help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

Office of Evaluation and Inspections

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

Office of Investigations

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

Office of Counsel to the Inspector General

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <https://oig.hhs.gov/>

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

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

BACKGROUND

Blue Cross Blue Shield of Tennessee (BCBS Tennessee), doing business as Riverbend Government Benefits Administrator, administered Medicare Part A operations under cost reimbursement contracts with the Centers for Medicare & Medicaid Services (CMS) until the contractual relationship was terminated August 1, 2009.

Effective January 1, 2006, BCBS Tennessee created the Restoration Supplemental Executive Retirement Plan for Certain Employees of Blue Cross Blue Shield of Tennessee (R-SERP). The R-SERP is a nonqualified defined-contribution pension plan designed to provide supplemental benefits for BCBS Tennessee's Retirement Saving Program and Retirement Accumulation program.

CMS reimburses a portion of its contractors' R-SERP costs. In claiming R-SERP costs, contractors must follow cost reimbursement principles contained in the Federal Acquisition Regulation and applicable Cost Accounting Standards (CAS) as required by the Medicare contracts.

OBJECTIVE

Our objective was to determine whether the R-SERP costs claimed by BCBS Tennessee for Medicare reimbursement for fiscal years (FY) 2008 and 2009 were allowable and correctly claimed.

SUMMARY OF FINDING

BCBS Tennessee did not claim all of the allowable R-SERP costs for FYs 2008 and 2009. Specifically, BCBS Tennessee claimed R-SERP costs of \$36,006 for Medicare reimbursement during FYs 2008 and 2009; however, we determined that allowable CAS-based R-SERP costs during this period were \$38,434. The difference, \$2,428, constituted allowable Medicare R-SERP costs that BCBS Tennessee did not claim on its Final Administrative Cost Proposals (FACP) for FYs 2008 and 2009. BCBS Tennessee did not claim these allowable R-SERP costs primarily because it did not include R-SERP costs for calendar year 2009 on its FY 2009 FACP.

RECOMMENDATION

We recommend that BCBS Tennessee revise its FACPs to claim the additional allowable R-SERP costs of \$2,428.

AUDITEE COMMENTS

In written comments on our draft report, BCBS Tennessee concurred with our recommendation and stated that it would work directly with CMS to resolve this issue.

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

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	1
Blue Cross Blue Shield of Tennessee and Medicare	1
Restoration Supplemental Executive Retirement Plan	1
OBJECTIVE, SCOPE, AND METHODOLOGY	1
Objective	1
Scope.....	1
Methodology	2
FINDING AND RECOMMENDATION	2
FEDERAL REQUIREMENTS	2
ALLOWABLE RESTORATION SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN COSTS NOT CLAIMED	3
RECOMMENDATION	4
AUDITEE COMMENTS	4
 APPENDIXES	
A: BLUE CROSS BLUE SHIELD OF TENNESSEE STATEMENT OF ALLOWABLE RESTORATION SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN COSTS FOR FISCAL YEARS 2008 AND 2009	
B: AUDITEE COMMENTS	

INTRODUCTION

BACKGROUND

Blue Cross Blue Shield of Tennessee and Medicare

Blue Cross Blue Shield of Tennessee (BCBS Tennessee), doing business as Riverbend Government Benefits Administrator, administered Medicare Part A operations under cost reimbursement contracts with the Centers for Medicare & Medicaid Services (CMS) until the contractual relationship was terminated August 1, 2009.

Restoration Supplemental Executive Retirement Plan

Effective January 1, 2006, BCBS Tennessee created the Restoration Supplemental Executive Retirement Plan for Certain Employees of Blue Cross Blue Shield of Tennessee (R-SERP).¹ The R-SERP is a nonqualified defined-contribution pension plan designed to provide supplemental benefits for BCBS Tennessee's Retirement Saving Program and Retirement Accumulation program.

CMS reimburses a portion of its contractors' R-SERP costs. In claiming R-SERP costs, contractors must follow cost reimbursement principles contained in the Federal Acquisition Regulation (FAR) and applicable Cost Accounting Standards (CAS) as required by the Medicare contracts.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the R-SERP costs claimed by BCBS Tennessee for Medicare reimbursement for FYs 2008 and 2009 were allowable and correctly claimed.

Scope

We reviewed BCBS Tennessee's R-SERP costs claimed on its Final Administrative Cost Proposals (FACP) for FYs 2008 and 2009, which totaled \$36,006. Achieving the objective did not require that we review BCBS Tennessee's internal control structure. We reviewed the controls related to the R-SERP costs that BCBS Tennessee claimed for Medicare reimbursement to ensure that those costs were allowable in accordance with the FAR and the CAS.

We performed fieldwork at BCBS Tennessee's office in Chattanooga, Tennessee, during November and December 2011.

¹ The R-SERP plan was effective January 1, 2006. However, BCBS Tennessee did not claim any R-SERP costs for Medicare reimbursement until fiscal year (FY) 2008. Therefore, this report addresses only the allowable R-SERP costs for Medicare reimbursement during FYs 2008 and 2009.

Methodology

We obtained information from BCBS Tennessee regarding costs associated with the R-SERP for FYs 2008 and 2009.² We identified the R-SERP costs for the Total Company including the Medicare segment. BCBS Tennessee provided us with information on its R-SERP calculations.

We performed this review in conjunction with our audits of BCBS Tennessee's pension segmentation requirements (A-07-12-00389) and pension costs claimed for Medicare reimbursement (A-07-12-00390). We also used the information obtained and reviewed during these audits in performing this review.

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 objective.

FINDING AND RECOMMENDATION

BCBS Tennessee did not claim all of the allowable R-SERP costs for FYs 2008 and 2009. Specifically, BCBS Tennessee claimed R-SERP costs of \$36,006 for Medicare reimbursement during FYs 2008 and 2009; however, we determined that allowable CAS-based R-SERP costs during this period were \$38,434. The difference, \$2,428, constituted allowable Medicare R-SERP costs that BCBS Tennessee did not claim on its FACPs for FYs 2008 and 2009. BCBS Tennessee did not claim these allowable R-SERP costs primarily because it did not include R-SERP costs for calendar year (CY) 2009 on its FY 2009 FACP.

FEDERAL REQUIREMENTS

The allowability of costs for deferred compensation plans are governed by FAR 31.205-6. FAR 31.205-6(k)(1) states that costs shall be measured, assigned, and allocated in accordance with CAS 415.

CAS 415.40(a) states: "The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee."

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:

² Through the August 1, 2009, contract termination date.

- (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.

FAR 31.201-2(a) further states, in part, that a cost must be reasonable to be allowable. In addition, FAR 31.205-6(b)(2) provides that comparable market data be used to evaluate the reasonableness of compensation. Furthermore, FAR 31.201-6(a) states: "When an unallowable cost is incurred, its directly associated costs are also unallowable." R-SERP benefits are directly associated with compensation because the benefits are based on the salary histories of the recipients.

Additionally, FAR 31.205-6(p) states: "Costs incurred ... for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year ... are unallowable...."

ALLOWABLE RESTORATION SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN COSTS NOT CLAIMED

BCBS Tennessee claimed R-SERP costs of \$36,006 for Medicare reimbursement on its FACPs for FYs 2008 and 2009.³ We calculated the R-SERP costs in accordance with CAS 415 and determined that the allowable CAS-based R-SERP costs for FYs 2008 and 2009 were \$38,434.

Thus, BCBS Tennessee did not claim \$2,428 of allowable R-SERP costs on its FACPs for FYs 2008 and 2009. This underclaim occurred primarily because BCBS Tennessee did not claim R-SERP costs attributable to CY 2009 on its FY 2009 FACP.

³ The allowable R-SERP costs for FY 2009 were attributable to the R-SERP costs for October 1, 2008, through August 1, 2009.

The table below compares allowable R-SERP costs with the R-SERP costs claimed on BCBS Tennessee’s FACPs. Appendix A contains additional details on allowable R-SERP costs.

<u>Medicare R-SERP Costs</u>			
Fiscal Year	Allowable Per Audit	Claimed by BCBS Tennessee	Difference
2008	\$21,610	\$33,436	(\$11,826)
2009	16,824	2,570	14,254
Total	\$38,434	\$36,006	\$2,428

BCBS Tennessee is required to calculate R-SERP costs for Medicare reimbursement in accordance with CAS 415. BCBS Tennessee did not claim any R-SERP costs attributable to CY 2009 on its FY 2009 FACP. As a result, BCBS Tennessee did not claim \$2,428 of allowable R-SERP costs.

RECOMMENDATION

We recommend that BCBS Tennessee revise its FACPs to claim the additional allowable R-SERP costs of \$2,428.

AUDITEE COMMENTS

In written comments on our draft report, BCBS Tennessee concurred with our recommendation and stated that it would work directly with CMS to resolve this issue.

BCBS Tennessee’s comments are included in their entirety as Appendix B.

APPENDIXES

**APPENDIX A: BLUE CROSS BLUE SHIELD OF TENNESSEE STATEMENT OF
ALLOWABLE RESTORATION SUPPLEMENTAL EXECUTIVE RETIREMENT
PLAN COSTS FOR FISCAL YEARS 2008 AND 2009**

Year	Allocable R-SERP Costs	Medicare Salary Ratio	Medicare Allowable R-SERP Costs
	1/	2/	3/
2008	\$328,414	6.58%	\$21,610
2009	440,423	3.82%	16,824
Total	\$768,837		\$38,434

ENDNOTES

- 1/ Blue Cross Blue Shield of Tennessee (BCBS Tennessee) provided us with the Restoration Supplemental Executive Retirement Plan (R-SERP) calculations for each calendar year. In accordance with Federal Acquisition Regulation 31.205-6p, we limited participants' salaries in those calculations to the executive compensation limits. We converted the calendar year R-SERP payments to a fiscal year basis (October 1 through September 30). We calculated the fiscal year R-SERP payments as 1/4 of the prior year's R-SERP payments plus 3/4 of the current year's R-SERP payments.

- 2/ BCBS Tennessee provided the Total Company Medicare salary ratio for each fiscal year. We verified the percentages and determined that they were reasonable.

- 3/ Medicare allowable R-SERP costs are allocable R-SERP costs multiplied by the Medicare salary ratio.

APPENDIX B: AUDITEE COMMENTS



of Tennessee

plans for better health. plans for a better life.™

1 Cameron Hill Circle
Chattanooga, TN 37402

bcbst.com

October 17, 2012

Patrick J. Cogley
Regional Inspector General for Audit Services
Department of Health & Human Services
Office of Inspector General
Office of Audit Services, Region VII
601 East 12th Street, Room 0429
Kansas City, MO 64016

Re: Report Number: A-07-12-00394

Mr. Cogley:

This letter is in response to your letter dated September 24, 2012, and the attached draft report entitled *Blue Cross Blue Shield of Tennessee Did Not Claim Some Allowable Restoration Supplemental Executive Retirement Plan Costs for Fiscal Years 2008 and 2009*. As requested, following are our comments on the summary recommendation set forth in the report including a statement of concurrence as well as a statement describing the nature of the corrective action taken or planned to be taken.

Recommendation: Revise BCBST FACPs to Claim the additional allowable R-SERP costs of \$2,428

We concur with this recommendation and will work directly with CMS to resolve this issue.

If you have questions or comments regarding this response or require anything further from us please contact me by e-mail at Ralph.Woodard@BCBST.com or by phone at 423-535-5192.

Sincerely,

A handwritten signature in blue ink that reads "T. Ralph Woodard, Jr." with a stylized flourish at the end.

T. Ralph Woodard, Jr.
Chief Financial Officer, Riverbend Government Benefits Administrator, Inc.