DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General
Offices of Audit Services

Region VII
601 East 12th Street
Room 284A
Kansas City, Missouri 64106

NOV 01 2007

Report Number: A-07-07-01041

Ms. Janet Kyle
Medicare – Vice President
Mutual of Omaha
P.O. Box 1602
Omaha, Nebraska 68101

Dear Ms Kyle:

Enclosed is the U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), final report entitled "Mutual of Omaha's Medicare Final Administrative Cost Proposals for Fiscal Years 2004 Through 2006." We will forward a copy of this report to the HHS action official noted on the following page for review and any action deemed necessary.

The HHS action official will make final determination as to actions taken on all matters reported. We request that you respond to this official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

Pursuant to the principles of the Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law 104-231, OIG reports generally are made available to the public to the extent the information is not subject to exemptions in the Act (45 CFR part 5). Accordingly, within 10 business days after the final report is issued, it will be posted on the Internet at http://oig.hhs.gov.

If you have any questions or comments about this report, please do not hesitate to call me, or contact Chris Bresette, Audit Manager, at (816) 426-3201 or through e-mail at Chris.Bresette@oig.hhs.gov. Please refer to report number A-07-07-01041 in all correspondence.

Sincerely,

Patrick J. Cogley
Regional Inspector General
for Audit Services

Enclosure

Direct Reply to HHS Action Official:

Mr. Tom Lenz
Consortium Administrator
Centers for Medicare & Medicaid Services
601 East 12th Street, Suite 235
Kansas City, MO 64106

Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

MUTUAL OF OMAHA'S MEDICARE FINAL ADMINISTRATIVE COST PROPOSALS FOR FISCAL YEARS 2004 THROUGH 2006

Daniel R. Levinson
Inspector General

November 2007
A-07-07-01041

Office of Inspector General

http://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:

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The Office of Audit Services (OAS) provides all 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.

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Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
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In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), Office of Inspector General, Office of Audit Services reports are made available to members of the public to the extent the information is not subject to exemptions in the act. (See 45 CFR Part 5.)

OAS FINDINGS AND OPINIONS

The designation of financial or management practices as questionable or a recommendation for the disallowance of costs incurred or claimed, as well as other conclusions and recommendations in this report, represent the findings and opinions of the HHS/OIG/OAS. Authorized officials of the HHS divisions will make final determination on these matters.

EXECUTIVE SUMMARY

BACKGROUND

Title XVIII of the Social Security Act established the Health Insurance for the Aged and Disabled (Medicare) program, which provides for a hospital insurance program (Part A) and a related supplementary medical insurance program (Part B). Centers for Medicare & Medicaid Services (CMS) administers the Medicare program through contracts with private organizations that process and pay Medicare claims. The contracts provide for reimbursement of allowable administrative costs incurred in processing Medicare claims.

During the audit period, which covered fiscal years (FY) 2004 through 2006, CMS contracted with the Mutual of Omaha Insurance Company (Mutual) to serve as a Medicare contractor. Mutual processed Hospital Insurance (Part A) claims for all States except New York. Mutual reported Medicare costs totaling $201,818,684 in its Final Administrative Cost Proposals (cost proposals) for FYs 2004 through 2006.

OBJECTIVE

Our objective was to determine whether the administrative costs that Mutual reported in its cost proposals were reasonable, allowable, and allocable in accordance with part 31 of the Federal Acquisition Regulation (FAR) and the Medicare contract.

SUMMARY OF FINDINGS

Mutual reported expenditures that substantially complied with the FAR and the Medicare contract provisions. However, Mutual reported, in its cost proposals, $1,266 that was not allowable. These costs were for entertainment ($840) and lobbying ($426), and as such, did not meet the criteria for Federal reimbursement.

RECOMMENDATION

We recommend that Mutual refund to the Federal Government the $1,266 of unallowable costs.

MUTUAL’S COMMENTS

In written comments on our draft report, Mutual agreed with all of our findings and provided us with information as to its plans to eliminate unallowable entertainment and embedded lobbying expenses from its claim for future reimbursement.

INTRODUCTION

BACKGROUND

Title XVIII of the Social Security Act established the Health Insurance for the Aged and Disabled (Medicare) program, which provides for a hospital insurance program (Part A) and a related supplementary medical insurance program (Part B). The Centers for Medicare & Medicaid Services (CMS) administers the program through contracts with private organizations that process and pay Medicare claims.

CMS's contracts provide for the reimbursement of allowable administrative costs incurred in processing Medicare claims. After the close of each fiscal year (FY), contractors submit a Final Administrative Cost Proposal (cost proposal) reporting Medicare costs. Once CMS accepts a cost proposal, the contractor and CMS negotiate a final settlement of allowable administrative costs.

During our audit period (FYs 2004 through 2006), CMS contracted with the Mutual of Omaha Insurance Company (Mutual) to serve as a Medicare contractor. Mutual processed Hospital Insurance (Part A) claims for all states except New York.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether the administrative costs that Mutual reported in its cost proposals were reasonable, allowable, and allocable in accordance with part 31 of the Federal Acquisition Regulation (FAR) and the Medicare contract.

Scope

Our review covered the period October 1, 2003 through September 30, 2006 (FYs 2004 through 2006). For this period, Mutual reported Medicare costs totaling $201,818,684. This total included pension costs of $1,691,701 that we excluded from this review because pension costs will be the subject of a separate audit. In planning and performing our audit, we reviewed the internal controls that Mutual had in place to allocate costs to cost objectives in accordance with the FAR and the Medicare contract. This analysis was for the purpose of accomplishing our objective and not to provide assurance on the internal control structure.

We conducted fieldwork at Mutual's office in Omaha, Nebraska from January through July 2007.

METHODOLOGY

To accomplish the objective, we:

- reviewed applicable Medicare laws, regulations, and guidelines; the applicable sections of the FAR; relevant Department of Health and Human Services (HHS) Departmental Appeals Board (DAB) decisions; as well as Mutual's contract with CMS;

- reviewed, for calendar years 2004 and 2005, both the independent auditor's reports and the independent auditor's letters related to internal controls, to identify any possible weaknesses in Mutual's internal control structure that could affect the allowability of administrative costs;

- reconciled the cost proposals to Mutual's accounting records and to the independently audited financial statements for FYs 2004 and 2005 (we were unable to do so for FY 2006 because the audited financial statements had not yet been prepared);

- performed analytical tests of Mutual's trial balances;

- judgmentally selected and reviewed invoices, expense vouchers and reports, and journal entries;

- interviewed Mutual officials about their cost accumulation processes for cost proposals and gained an understanding of their cost allocation systems;

- reviewed payroll journals, corporate bonus plans, and personnel records; and

- tested costs for allocability, reasonableness, and allowability.

We conducted our review in accordance with generally accepted government auditing standards.

FINDINGS AND RECOMMENDATIONS

Mutual reported expenditures that substantially complied with the FAR and the Medicare contract provisions. However, Mutual reported, in its cost proposals, $1,266 that was not allowable. These costs were for entertainment ($840) and lobbying ($426), and as such, did not meet the criteria for Federal reimbursement.

Entertainment Costs

Section 31.205-14 of the FAR provides guidance for "Entertainment costs" as follows: "Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable."

The DAB has sustained disallowances for meal costs, which it characterized as entertainment costs, on the grounds that "applicable cost principles generally preclude claims for meal costs."[1] Specifically, the DAB referred to a "general principle that meal costs are properly considered entertainment costs." In addition, the DAB, citing precedent, stated that " '[e]xpenses for meals are subject to strict scrutiny in view of the cost principles' prohibition against paying for entertainment costs with federal grant funds,' " and added that " 'meals not taken in connection with travel are presumed to be a personal expense unless the business transacted is documented, and the reason for conducting business over a meal is also documented.' "

Mutual incorrectly reported $840 of entertainment costs that are not allowable. The $840 includes:

- $808 for meals for purposes that were not connected with travel. On two separate occasions, Mutual employees and its clients met for dinner. The accounting entries contained indications that they conducted business dinner meetings. However, Mutual did not provide documentation supporting the business transacted during these meals or the reason why it was necessary to conduct business over a meal. Further, Mutual could not provide a receipt for one of the meals. As such, the $808 is unallowable as "entertainment costs."

- $32 for limousine and taxi services. Because these costs were related to celebrating a non-employee's birthday, and were then classified as a social activity, the $32 is an unallowable entertainment cost.

Lobbying Activities

According to Article V, "Prohibition Against Use of HHS Funds to Influence Legislation or Appropriations," of Appendix A of Mutual's contract with CMS, "[n]o part of any funds under this agreement shall be used to pay the salaries or expenses of any Contractor, or agent acting for the Contractor, to engage in any activity designed to influence legislation or appropriations pending before the Congress. Lobbying costs are defined in and are unallowable in accordance with FAR 31.205-22."

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[1] Ohio Department of Job and Family Services, DAB No. 1961 (2005). Although this decision involved a State agency and so the provisions of OMB Circular A-87 applied, the relevant language in FAR 31.205-14 is substantially the same.

Section 31.205-22(a)(4) of the FAR states that lobbying costs are not allowable when the amounts include: "[a]ny attempt to influence— (i) The introduction of Federal, state, or local legislation, or (ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign. . . ."

Mutual incorrectly reported $426 for lobbying activities. Mutual made several payments for membership dues, which are allowable; however, there were lobbying costs embedded within these amounts. These fees aided lobbying efforts, which included attempts to influence Federal legislation. Because Mutual did not reduce the membership dues by the portion that represented lobbying activities, Mutual incorrectly reported $426 on its cost proposals.

RECOMMENDATION

We recommend that Mutual refund to the Federal Government the $1,266 of unallowable costs.

MUTUAL'S COMMENTS

In written comments on our draft report, Mutual agreed with the findings contained within our draft report. Specifically, Mutual indicated that in its claims for future reimbursement it would:

- ensure that all meal expenses not associated with business travel contain documentation in support of the business transacted during the meal,
- eliminate from its claim for Federal reimbursement any unallowable entertainment expenses that classify as social activity costs, and
- eliminate any lobbying expense embedded within membership costs.

Mutual's comments are included in their entirety as the Appendix.

APPENDIX

CMS CENTERS for MEDICARE & MEDICAID SERVICES

MUTUAL of OMAHA INSURANCE COMPANY
Medicare Division
P.O. Box 1602 • Omaha, NE 68101
mutualmedicare.com
A CMS Contracted Intermediary

October 19, 2007

Mr. Patrick J. Cogley
Regional Inspector General
For Audit Services
Office of Inspector General
Region VII
601 East 12th Street Room 284A
Kansas City, Missouri 64106

Dear Mr. Cogley:

This letter is in response to the draft audit report dated October 5, 2007 relating to the review of Mutual of Omaha's (Mutual's) Final Administrative Cost Proposals (FACPs) for the period October 1, 2003 through September 30, 2006. Mutual agrees with the findings contained within the draft audit report.

The report proposes to eliminate $840 of entertainment costs deemed unallowable during audit. In an effort to better document any entertainment expenses claimed in the future, Mutual will ensure all meal expenses that are not associated with business travel contain documentation in support of the business transacted during the meal. Mutual will also be sure to eliminate from its claim for reimbursement any unallowable entertainment expenses that classify as social activity costs.

The report also proposes to eliminate $426 of lobbying expenses deemed unallowable during audit. Mutual will eliminate from its claim for future reimbursement any lobbying expense embedded within membership costs.

Thank you for the opportunity to respond to the draft report. Please contact me at 402-351-2001 if you have any questions regarding Mutual's response.

Sincerely,

Tom Messersmith

Tom Messersmith
First Vice President-Medicare Financial Officer
Mutual of Omaha Insurance Company

Cc: Nanette Foster-Reilly, Kansas City Regional Office
Joni Jones, Kansas City Regional Office
Pat Shiverdecker, Mutual of Omaha
Janet Kyle, Mutual of Omaha
Martha Zajicek, Mutual of Omaha
Jayne Kavan, Mutual of Omaha