

Contractor Ineligible Dependent Health Care Costs—The Gift That Keeps on Giving

Written by Nick Sanders

Wednesday, 30 March 2011 00:00

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We also reported—

DCAA auditors ‘should verify that contractors have adequate procedures to ensure payment of insurance premiums or claims are only being made related to employees and their eligible dependents.’ A contractor's failure to have adequate procedures in this area will be treated as ‘an internal control deficiency in the contractor's accounting system and a CAS 405 noncompliance, if applicable.’ Further, inclusion of costs related to ineligible dependents/spouses in cost estimates may be treated as inadequacies in the contractor's estimating system. Previous DCAA audit guidance (MRD 08-PAS-403(R), dated 12/19/2008) directs that a single control objective failure should lead to a recommendation of system inadequacy. An inadequate estimating system is a nuisance, but an inadequate accounting system can prevent a contractor from receiving any cost-reimbursement contract. (Ref. FAR 16.301-3(a)(1).) Accordingly, a threat to the adequacy of a contractor's accounting system internal controls must be taken very seriously.

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2. As part of resolving the CAS noncompliance, contractors must submit a "cost impact proposal" calculating the impact to affected to their CAS-covered contracts.

3. The cost impact proposal must calculate the impact(s) to all affected contracts for all years in which the contractor included the "expressly unallowable" costs.

4. By "all years" the DCAA means "all affected years, including years that have had the indirect rates settled (closed years)."

5. If the contractor's cost impact proposal "does not include both open and closed years," then the DCAA auditors should report it as "inadequate for audit."

6. If the contractor "refuses to submit an adequate cost impact," then the auditors will "develop a reasonable estimate of the cost impact (a ROM) and recommend that the Contracting Officer pursue remedies as outlined in FAR 30.605(i) and 30.604(i)."

There are so many problems with the guidance that it's difficult to muster the patience to even organize the issues in a logical fashion. To keep us from tearing our hair out or howling at the moon, we're going to pose our concerns in the form of questions—in a quasi-Socratic dialog kind of thing.

Question: The contractor's costs associated with ineligible dependents are unallowable because such costs violate its policies and the plan coverage rules. Why are such costs thought to be expressly unallowable?

Question: If the costs are unallowable because they violate policy and plan rules, can the contractor make such costs allowable by (a) changing its policy and (b) renegotiating plan rules?

Question: Under CAS 416, insurance costs are measured on the basis of (a) premium paid or (b) projected average loss. Use of actual claims experience or actual claims paid is not an acceptable measurement method, unless the actual experience approximates one of the accepted methods. Given this—

1. Premium costs are shared between company and employee. For many companies, the family rate is the highest rate and the number of dependents is irrelevant. So, what is the company's share of premium costs associated with ineligible dependents when there are sufficient eligible dependents to qualify for family coverage in any case?

2. By and large, ineligible dependents are adult children who have reached age 21 without attending college the requisite amount. What is the incremental premium cost associated with young adults? Is it higher, or lower, than the premium cost associated with mature adults in their 40's, 50's, and/or 60's?

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Question: What is the purpose of negotiating a final indirect cost rate, and "closing" a year to further adjustment, or "closing" a contract to further adjustment, when DCAA and the FAR Councils think that contracts in closed years should be part of a cost impact analysis?

Question: Given that FAR 4.703 states that records must only be retained by a contractor for three years after receipt of final payment associated with its government contracts, why would anybody expect that a contractor would be able to prepare an adequate cost impact proposal for its closed years?

Question: Given that the enabling CAS Board statute reserves the right to interpret CAS regulations exclusively to the CAS Board, what was the statutory basis for the FAR Councils' 2005 interpretation of the cost impact regulations that required contracts in closed fiscal years to be included in the cost impact proposal?

Question: Where in FAR or CAS is the DCAA given authority to review a contractor's cost impact analysis for "adequacy"? Where in the CAS regulations are the criteria for an "adequate" cost impact analysis spelled out?

Question: If the contractor cannot or will not provide sufficient information to calculate a cost impact, how will DCAA calculate its ROM impact? What level of accuracy do you think DCAA will be able to achieve on its own?

Question: If you are a contractor caught in this swamp bog of bureaucratic bungling, this morass of regulatory misadventure, this mountain from a molehill, this tempest in a teapot, then how to you resolve it—other than by litigation? If you litigate, how much time and effort will that take? Who is going to pay for all that?

Answer: This insanity can be stopped, but only if adults step in to supervise the children. DCMA and DCAA are clearly caught up in "much ado about nothing" and DOD leadership needs to realize the price that is being paid by its contractors, who will have to resolve these issues through the courts—since they see no other avenue available to them.

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On “MRD 11-PAC-002(R)” link to: DCAA MRD – Contractor Ineligible Healthcare Costs.pdf file attached

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