



**EDDIE BAZA CALVO**  
Governor

**RAY TENORIO**  
Lieutenant Governor

*Office of the Governor of Guam.*

February 9, 2016

Ms. Susan Offut  
Chief Economist  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Ms. Offut:

I am writing to request the Government Accountability Office's (GAO) review on the Department of Health and Human Services (HHS) – Centers for Medicare and Medicaid Services (CMS) interpretation of their exemption authority on adjustments to Medicare reimbursements for the Guam Memorial Hospital Authority (GMHA). The details surrounding this request are outlined below and in the accompanying attachments.

Specifically, the issue is whether or not there is an exemption provision that the Secretary of HHS can employ to permit the processing of the FY 2009 – 2012 Adjustment requests (42 CFR 413.40(g)) from GMHA. Given the special circumstances that GMHA faces—reduced service quality and growing costs from millions in Medicare reimbursement shortfalls due to previous GMHA Administration failures—processing these requests is crucial.

CMS interprets that they have no exemption authority. My legal team's research indicates the Secretary of HHS has the authority pursuant to 42 USC 1395ww (b)4(A)(i).

Request GAO provide a ruling as to whether this authority is applicable to the circumstance, and whether the FY 2009 – 2012 Adjustments can be processed by HHS under this authority.

A second issue is the applicability of the Notice of Program Reimbursement (NPR) settlement process to the audit conducted on GMHA's FY 2013 cost report. Initially, CMS garnished \$400,640 from GMHA without a demand letter. We are pleased that CMS recognized the process-related error and returned the garnishment. However, the garnishment was immediately reprocessed without providing GMHA with the appropriate period of appeal. While still awaiting a return of the garnished funds, I believe it is inappropriate to restart the process for the following reasons:




Susan Offut  
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- The audit was conducted as part of the Medicare TEFRA Rebasing process, and thus the amount is incorrect in the context of the standard reimbursement process which this NPR is triggering.
- GMHA waived its appeal of the NPR which was processed on the condition that this issue would be resolved administratively.
- The garnishment will be moot when CMS renders a decision on GMHA's Rebasing request.

CMS has been very helpful throughout this process. Your assistance in this request will help facilitate outstanding issues. Thank you in advance for your attention in this matter.

Sincerely,



**EDDIE BAZA CALVO**  
Governor of Guam

**Enclosures:**

Adjustment Review Request  
Financial Statement 2013-2014  
Schedules

cc: *Assistant Director Debra Draper*

