



EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam.

President Barack Obama
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

January 23, 2015

Dear Mr. President:

I am writing to express my gratitude for the results on Guam that have resulted from your health-insurance meeting with the National Association of Insurance Commissioners (NAIC). You directed our concerns to the Administrator of the Centers for Medicare and Medicaid Services (CMS) and their response has resulted in meaningful progress on Guam. Since your meeting, CMS has taken the following actions:

- Removed the territories from the Public Health Service Act's (PHS Act) definition of "state" and relieved Guam of several unfunded mandates in the health care arena.
- Expedited the Guam Memorial Hospital Authority (GMHA)'s 2012 reimbursement based on 1998 cost data.
- Facilitated the recovery of cost reports lost to GMHA under a previous administration from CMS' contractor records. These cost reports were essential to preparing our requests to address Medicare reimbursement shortfalls.
- Engaged our representatives in an emergent atmosphere of cooperation that is productive and respectful of reforms achieved by Guam, including:
 - Recognition by CMS' staff that GMHA's new leadership has reformed issues with hospital practices under previous leadership, including providing reliable and comprehensive cost reports and reimbursement requests; and
 - Providing guidance that GMHA could utilize additional adjustments to the rate-of-increase ceiling (Adjustments) requests to address GMHA's immediate financial needs while accommodating CMS' review cycle.

This letter is to request your assistance continuing Health and Human Services' (HHS) and CMS' invaluable engagement of issues on Guam and the following actions:

- HHS' issuance of a waiver under the legislative authority provided in 42 USC 1395ww (b)4(A)(i) to process Adjustment requests filed for 2007 through 2012. A briefing on this authority is attached for your staff.
- Expedite the review and decision on the 2013 Adjustment request received by CMS' contractor on November 7, 2014.
- Expedite CMS' issuance of the Notice for Program Reimbursement (NPR) for the FY 2013 Cost Report and thus process the standard reimbursement for that year.
- Immediately process the permanent Adjustment (Rebasing) request which is ready to be filed as soon as the FY 2013 NPR is issued.

I am glad to see that the Adjustments and Rebasing discussed in this letter are among several issues the Department of Interior's (DOI) Inspector General are monitoring; GMHA's needs were detailed in DOI's study, including:

- *"The hospital's Medicare and Medicaid reimbursement rates have not kept pace with the cost of providing medical services, negatively affecting GMHA's cash flow." "Until this issue is resolved, GMHA will continue to pay significantly more in costs to treat Medicare and Medicaid patients than the reimbursement it receives."*
- *In 2013 there was a, "total reimbursement loss of \$2 million for Medicaid alone."*
- *"GMHA's financial situation may jeopardize the future medical needs of the citizens of Guam."*

I am available to discuss these issues with you or representatives from HHS at their earliest convenience. Your continued assistance has an important impact on the health and well-being of Guam and the U.S. citizens and military residing with us.

Sincerely,



EDDIE BAZA CALVO

cc: HHS Secretary Silvia Burwell; CMS Administrator Marilyn Tavenner; HHS IGA Director Paul Dioguardi; CMS Director of the Division of Acute Care Ing-Jye Cheng; CMS TEFRA Examiner Kathy Ellingson; GMHA Hospital Administrator/CEO Joseph Verga
[Attachment]

The Secretary of Health and Human Services may provide an exemption to allow for GMHA reimbursement adjustments in the years 2007 – 2012.

Per regulation 42 CFR 413.40 (e)(1), a hospital may request an increase to the rate-of-increase ceiling within 180 days after the date on the contractor's initial notice of program reimbursement (NPR) for the same cost reporting period.

Per U.S. law 42 USC 1395ww (b)4(A)(i), the Secretary has the authority to grant an exemption from this regulatory stipulation as well as methodology set forth in the legislation:¹

The Secretary shall provide for an exception and adjustment to (and in the case of a hospital described in subsection (d)(1)(B)(iii) of this section, may provide an exemption from) the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital's control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for the base period against which such increase is measured). The Secretary may provide for such other exemptions from, and exceptions and adjustments to, such method as the Secretary deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services [...] [emphasis added]

Additionally, per U.S. law 42 USC 1395ww (b)4(B)(iii), the Secretary has the authority to consider and incorporate factors not specified within the regulations for determining costs to be included in a rebasing decision:

(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration-

(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services. [emphasis added]

The following unique circumstances apply to GMHA:

- **Administrative Reform.** The current GMHA Administration was appointed and took office in the summer of 2012 to address significant management issues, including issues with cost report data and processing TEFRA requests. This Administration has reformed the hospital's management practices, established reporting credibility, and resolved debt issues, among other things.

¹ This legislative authority also trumps guidelines provided within the Provider Reimbursement Manual (Sec. 2931.1) which do "not have the effect of regulations." (Provider Reimbursement Manual, Forward)

- **Financial Need.** Notwithstanding, GMHA's reform, its solvency is at risk due to a number of factors not within its control, such as:
 - An increasingly aged and unhealthy population;
 - Rising energy costs;
 - The introduction of a new private hospital which reduces the proportion self-pay and insured patients as compared to poor uninsured and indigent patients; and
 - Mounting need for infrastructure improvement due to a lack of investments made in prior years, which could not be made by prior Administrations due to their inability to obtain support such as would have resulted from properly submitted Adjustment requests.

As such, GMHA requests that the Contractor review and provide its substantive recommendations, particularly with respect to the above enumerated factors, to HHS-CMS for GMHA's FY 2007 through FY 2012 Adjustment requests. Furthermore, GMHA requests that the Secretary exercise her authority to award GMHA an increase in reimbursement for these years. The Adjustment requests contain the analytic and substantive bases for this request.