

Audit Report

Department of Public Health

Audit of the Cost Savings and Other
Aspects of the Privatization of the
Laboratory Operations of the
Commonwealth Health Center

As of December 11, 1995

(Report No. AR-96-08)



Office of the Public Auditor
Commonwealth of the Northern Mariana Islands



Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

2nd Floor J.E.Tenorio Building
Gualo Rai, Saipan, MP 96950

Mailing Address:
P.O. Box 1399
Saipan, MP 96950
E-mail Address:
public.auditor@saipan.com
☎ (670) 234-6481/2
Fax: (670) 234-7812

October 16, 1996

Dr. Isamu J. Abraham
Secretary
Department of Public Health
Saipan, MP 96950

Dear Dr. Abraham:

Subject: **Final Audit Report- Cost Savings and Other Aspects of the Privatization of the Laboratory Operations of the Commonwealth Health Center, Report No. AR-96-08**

The enclosed audit report presents the results of our audit of the cost savings and other aspects of the privatization of the laboratory operations of the Commonwealth Health Center (CHC) as of December 11, 1995, the effective date of the laboratory services contract awarded to Clinical Laboratories of the CNMI (CL-CNMI). The objectives of our audit were to determine whether (1) the privatization of the CHC laboratory resulted in an annual \$1.6 million savings as provided by CHC to the House Committee on Health, Education, and Welfare, (2) the laboratory equipment was sold at fair market value, and (3) the privatization will increase the cost of laboratory services in the CNMI.

The audit showed that (1) privatization did not result in a \$1.6 million annual savings because the savings projection did not take into account revenues received while being operated by CHC. Our review showed that in privatizing, CHC is losing about \$260,000 per year (Appendix A), or \$1.3 million over the five-year contract period. After receiving our draft report, CHC made a new estimate showing annual savings of \$4,374 after including revenues lost. The correct figure may never be known because records are not available from which a completely accurate computation can be made. The exact figure, however, is not that important. What is important is that full disclosure be made prior to privatizing. It appears to us that revenues were ignored purposely to mislead government officials into believing that substantial amounts of money are being saved.

The audit also showed that (2) equipment costing \$427,717 was sold for \$147,662, the net book value which, however, may have no relationship to actual useful life or market value (included

was equipment costing \$159,054 which was transferred at no cost because it was fully-depreciated for accounting purposes), and (3) the privatization of the CHC laboratory resulted substantially in a private monopoly through which CL-CNMI is allowed to control the cost of laboratory services to the public.

Accordingly, we recommended that before proceeding with the privatization of any other operations of CHC, the Secretary of the Department of Public Health (DPH) should (1) prepare a profit and loss analysis to determine if the privatization will result in an overall financial benefit to the CNMI Government, (2) establish the fair market value of assets to be sold by determining the actual worth of the items instead of using book values, and (3) establish a regulatory mechanism to control the cost of services being privatized if a private monopoly or a near-monopoly environment is being created.

By letter dated August 12, 1996 (**Appendix B**), the DPH Secretary generally presented arguments against the points raised in the draft audit report. The DPH Secretary's response, however, consists mainly of opinions and arguments without accompanying supporting documents. During our exit conference on July 24, 1996, we specifically requested the DPH Secretary to provide the Office of the Public Auditor (OPA) with all necessary documents which could support DPH's arguments against the matters discussed in the draft audit report. However, the DPH Secretary's letter response dated August 12, 1996 did not provide any supporting documents to substantiate DPH's comments to the draft audit report. Nevertheless, we analyzed the opinions presented in the response to determine whether the arguments have merit and have revised our report where appropriate.

Although the response did not present concise comments to the audit report, we believe that the following are the main arguments made by the DPH Secretary: (1) CHC's operation of the laboratory was not profitable as DPH's recomputation still resulted in a small savings, (2) the privatization resulted in a total first year advantage of \$300,573, (3) OPA's findings contained only soft figures and did not provide sufficient hard numbers, (4) there was no material difference between the fair market value and the net book value of the laboratory equipment, (5) it was prudent not to provide a salvage value for the laboratory equipment, (6) the "package deal" arrangement on the sale of the laboratory equipment resulted in a better deal for DPH, (7) leasing the laboratory equipment should not be an option because CHC would be retaining title to old and obsolete equipment, (8) DPH assigns a higher priority to provide quality service than the issue of monopoly, (9) there are various situations where competition can exist, and cost of services can be contained, and (10) it would have been inappropriate and unlawful for DPH to include provisions in the contract to monitor or approve CL-CNMI's fees.

Regarding DPH's comments (1) to (3), we conclude that the comments were lacking either in merit or supporting documents. Accordingly, OPA maintains the position that (a) CHC's operation of the laboratory was profitable, (b) the privatization did not result in a first year advantage of \$300,573 but instead annual net profit of \$260,019 was lost, and (c) OPA's figures

were reliable as they were based on official DOF expenditure reports and DPH's own records. Regarding DPH's comments (4) to (7), OPA concludes that the response generally lacks documents to support DPH's position. Accordingly, DPH's comments do not show a basis to revise the audit findings. On DPH's comments (8) to (10), OPA concludes that DPH (a) did not specifically address our finding about the transfer of a government monopoly to a private monopoly, (b) did not provide adequate evidence that competition on laboratory services has existed in the CNMI, and (c) provided legal analysis showing that the CNMI Government cannot control prices of existing private companies unless approved by the Legislature under its police powers, and inappropriately applied that analysis to this instance involving a contract between the CNMI Government and a private company wherein the parties are generally free to contract as they wish. Accordingly, DPH's comments do not provide a basis for revising the audit findings, except that we revised recommendation no. 3 to require DPH to at least monitor the prices charged by CL-CNMI since the contract has already been signed. OPA needs additional information to resolve or close the recommendations. The status of recommendations and the additional information required to resolve or close them are shown in **Appendix C** of the audit report.

In addition, we inquired from officials and a consultant of the Governor's office about the CNMI Government's plans for privatization and were told that a committee was established to consider what should be privatized. Also, we were told that DPH undertook privatization without asking for the committee's consideration and advice. In addition, although DPH has expressed the opinion that it cannot control prices of the CL-CNMI laboratory without legislation, DPH never consulted with or notified the Legislature that such action was necessary.


While there appears to be no legislation, policies, or procedures regarding who should make the decisions to privatize, it appears to us that privatization of the CHC laboratory is a more important step than, for instance, contracting out services such as gardening. Accordingly, all concerned parties including the Governor, the privatization committee, and the Legislature should have been, but were not, fully and accurately informed about all aspects.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An open recommendation is one where no action or plan of action has been made by the client (department or agency). A resolved recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame for action. A closed recommendation is one in which the client has taken sufficient action to meet the intent of the recommendation or we have withdrawn it.

Please provide us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective action will take longer than 30 days, please provide us the information every 60 days until we notify you that

the recommendation has been closed.

Sincerely,


Leo L. LaMotte
Public Auditor, CNMI

cc: Governor
Lt. Governor
Tenth CNMI Legislature
Chairwoman, House Committee on Health, Education and Welfare
Attorney General
Secretary of Finance
Special Assistant for Management and Budget
Public Information Officer
Press

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The audit showed that privatization did not result in a \$1.6 million savings as predicted by the Commonwealth Health Center (CHC) because the savings prediction did not take into account revenues received while being operated by CHC. Our review showed that in privatizing, CHC is losing about \$260,000 per year or \$1.3 million over the five-year contract period. The audit also showed that equipment costing \$427,717 was sold for \$147,662, the net book value which, however, may have no relationship to actual useful life or market value (included was equipment costing \$159,054 which was transferred at no cost because it was fully-depreciated for accounting purposes). Furthermore, the privatization of the CHC laboratory resulted substantially in a private monopoly through which the Clinical Laboratories of the CNMI (CL-CNMI) is allowed to control the cost of laboratory services to the public.

INTRODUCTION

This audit was requested by the Chairwoman of the House Committee on Health, Education, and Welfare. The request included an audit of the cost savings and overall financial benefit to the CNMI Government of the privatization of the CHC laboratory. We also reviewed other financial aspects of the privatization including the sale of the CHC laboratory equipment and the effect of the privatization on the cost of laboratory services in the CNMI.

The CHC laboratory was privatized by contracting a private laboratory, the Clinical Laboratories of the CNMI (CL-CNMI), for five years and three weeks beginning on December 11, 1995. Accordingly, the Department of Public Health (DPH) sold the existing laboratory equipment, and office furniture and equipment to CL-CNMI, as well as laboratory supplies, materials, chemicals, and other agents used in testing. In addition, the laboratory space and six units of government-

owned housing were leased to CL-CNMI.

The accounting firm of Deloitte & Touche was contracted by DPH to prepare an analysis to assist in the privatization of the laboratory. Deloitte & Touche stated in a letter report that the privatization of the laboratory will create real cost savings of approximately \$1.6 million annually, aside from producing new rental revenue on the lease of the laboratory space. The \$1.6 million savings consists of laboratory operating expenses which, according to Deloitte & Touche, will be avoided because of the privatization. This audit was made to determine the real financial benefit resulting from privatization of the CHC laboratory to the CNMI Government.

Furthermore, DPH stated in a hearing held earlier this year by the House Committee on Health, Education, and Welfare that the cost of laboratory services under CL-CNMI is probably lower than that of CHC. This audit

was also performed to determine the real effect of the privatization on the cost of laboratory services in the CNMI.

The objectives of our audit were to determine whether (1) the privatization of the CHC laboratory resulted in an annual \$1.6 million savings as provided by CHC to the House Committee on Health, Education, and Welfare, (2) the laboratory equipment was sold at fair market value, and (3) the privatization will increase the cost of laboratory services in the CNMI.

FINDINGS

Profitability of the CHC Laboratory

Deloitte & Touche reported that the privatization of the CHC laboratory will create real cost savings of approximately \$1.6 million per year. In addition, the privatization allowed CHC to generate annual rental revenue of \$186,700. Our audit showed, however, that (1) the cost savings is actually a transfer of operating costs to CL-CNMI and a more realistic estimate of such cost transfer is about \$1,386,730 per year, (2) privatization did not result in a \$1.6 million annual savings because the savings projection did not take into account revenues received while being operated by CHC, and (3) in privatizing, according to fiscal year 1995 records, CHC is losing about \$260,000 per year (Appendix A), or \$1.3 million over five years, the term of CL-CNMI's current contract. This occurred because the decision to privatize the laboratory did not consider the net financial effect of such

action on the CNMI Government.

Subsequent Action

After receiving our draft report, CHC made a new estimate showing annual savings of \$4,374 after including fiscal year 1994 revenues lost. The correct figure may never be known because records are not available from which a completely accurate computation can be made. The exact figure, however, is not that important. What is important is that full disclosure be made prior to privatizing. It appears to us that revenues were ignored purposely to mislead Government officials into believing that substantial amounts of money are being saved.

Sale of CHC Laboratory Equipment

The laboratory services agreement between DPH and the contractor stated that the laboratory furniture and equipment were to be sold at their assessed fair market value. Our audit showed, however, that (1) the selling price of the laboratory equipment was practically the same amount computed by Deloitte and Touche as the net book value of the items, and (2) much of the laboratory equipment had "0" net book value and, accordingly, was transferred at no cost to CL-CNMI. This occurred because DPH used the net book value in pricing the equipment instead of determining its actual fair market value. As a result, equipment costing \$427,717 was transferred to CL-CNMI for \$147,662, the net book value which, however, may have no relationship to actual useful life or market

value (included was equipment costing \$159,054 which was transferred at no cost because it was fully-depreciated for accounting purposes).

Effect of the Privatization on the Cost of Laboratory Services

One of the general goals of privatization should be to ensure that privatization does not cause an increase in the cost of services. Accordingly, the government should not create a monopoly, should promote competition, and should develop a regulatory mechanism to protect against price increases. Our audit showed, however, that the privatization of the CHC laboratory resulted substantially in a private monopoly through which CL-CNMI is allowed to control the cost of laboratory services to the public. This occurred because the contract signed by DPH and CL-CNMI did not provide for any control by DPH over the rates of laboratory tests. As a result, the cost of laboratory services in the CNMI can increase, and for many tests has increased, at the will of the contractor.

RECOMMENDATIONS

Accordingly, we recommend that before proceeding with the privatization of any other operations of CHC, the Secretary of DPH should:

1. Prepare a profit and loss analysis to determine if the privatization will result in an overall financial benefit to the CNMI Government. The analysis should determine if the returns from selling

an operation or activity will exceed the returns from government ownership.

2. Establish the fair market value of assets to be sold by determining the actual worth of the items instead of using book values.
3. Establish regulatory mechanisms to control the cost of services being privatized if a private monopoly or near-monopoly environment is being created.

DPH'S RESPONSE AND OPA'S COMMENTS TO THE RESPONSE

In his letter response dated August 12, 1996 (**Appendix B**), the DPH Secretary generally presented arguments against the points raised in the draft audit report. Although the response did not present concise comments to the audit report, we believe that the following are the main arguments by the DPH Secretary:

Profitability of the CHC Laboratory

In the letter response, DPH stated that (1) CHC's operation of the laboratory was not profitable as its recomputation still resulted in a small savings, (2) the privatization resulted in a total first year advantage of \$300,573, and (3) the findings of the Office of the Public Auditor (OPA) contained only soft figures and did not provide sufficient hard numbers.

OPA's Comments

The DPH Secretary's response con-

sists mainly of opinions and arguments without accompanying supporting documents. During our exit conference on July 24, 1996, we specifically requested the DPH Secretary to provide OPA with all necessary documents which could support DPH's arguments against the matters discussed in the draft audit report. However, the DPH Secretary's letter response dated August 12, 1996 did not provide any supporting documents to substantiate DPH's comments to the draft audit report. Nevertheless, we analyzed the opinions presented in the response to determine whether the arguments have merit and have revised our report where appropriate.

Regarding DPH's comments to the findings presented in Part 1, OPA concludes that the comments were lacking either in merit or supporting documents. Accordingly, OPA maintains the position that (1) CHC's operation of the laboratory was profitable as our computation showed an annual net profit of \$260,019, (2) the privatization did not result in a first year advantage of \$300,573 but instead annual net profit of \$260,019 was lost, and (3) OPA's figures were reliable as they were based on official DOF expenditure reports and DPH's own records.

In addition, DPH failed to disclose or recognize revenue until OPA made the computation. Regardless of whether OPA's figures are more correct is not nearly as important as the fact that Government officials should be furnished all relevant infor-

mation not just information favoring and information slanted toward privatization.

Sale of CHC Laboratory Equipment

The letter response indicated agreement with the recommendation to sell assets at their fair market value, however, the response stated that (1) DPH cannot agree that there was a material difference between the fair market value and the net book value of the laboratory equipment, (2) the laboratory equipment had significantly decreased in value and therefore it was prudent not to provide a salvage value for this equipment, (3) the "package deal" arrangement on the sale of the laboratory equipment resulted in a better deal for DPH instead of selling the equipment on a piece-by-piece basis, and (4) DPH does not agree that laboratory equipment should have been leased because CHC would gain no benefit in retaining title to old and obsolete equipment.

OPA's Comments

Regarding DPH's comments to the findings presented in Part 2, OPA concludes that the response generally lacks documents to support DPH's position. Accordingly, DPH's comments do not show a basis to revise the audit findings.

Effect of the Privatization on the Cost of Laboratory Services

In the letter response, DPH (1) did not specifically address the finding

that CL-CNMI is a private monopoly but instead DPH emphasized its higher priority to provide quality service, (2) provided various situations where competition can exist, and cost of services can be contained, and (3) stated that it would have been inappropriate and unlawful for DPH to include provisions in the contract to monitor CL-CNMI's fees, or to approve CL-CNMI's fee schedules.

On the issue of monopoly, DPH stated that the delivery system in the CNMI is similar to that of a small hospital in the U.S. farm belt where it is the only facility within a 200-mile radius.

OPA's Comments

Regarding DPH's comments to the findings presented in Part 3, OPA concludes that DPH (1) did not specifically address our finding about the transfer of a government monopoly to a private monopoly, (2) did not provide adequate evidence that competition on laboratory services has existed in the CNMI, and (3) provided legal analysis showing that the CNMI Government cannot control prices of existing private companies unless approved by the Legislature under its police powers, and inappropriately applied that analysis to this instance involving a contract between the CNMI Government and a private company wherein the parties are generally free to contract as they wish.

In addition, from the personal experience of OPA staff members from the U.S. farm belt, there are no places with an area 400 miles in diam-

eter (200-mile radius) in the U.S. farm belt where only one hospital and laboratory is available. This is another example of DPH's over/under statements when its purpose is served.

As for controlling prices, normally the parties to a contract are free to set whatever terms and conditions they agree upon. In fact, the CNMI has existing contracts which contain price controls.

We inquired from officials and a consultant of the Governor's office about the CNMI Government's plans for privatization and were told that a committee was established to consider what should be privatized. Also, we were told that DPH undertook privatization without asking for the committee's consideration and advice. In addition, although DPH has expressed the opinion that it cannot control prices of the CL-CNMI laboratory without legislation, DPH never consulted with or notified the Legislature that such action was necessary. While there appears to be no legislation, policies, or procedures regarding who should make the decisions to privatize, it appears to us that privatization of the CHC laboratory is a more important step than, for instance, contracting out services such as gardening. Accordingly, all concerned parties including the Governor, the privatization committee, and the Legislature should have been, but were not, fully and accurately informed about all aspects.

Accordingly, DPH's comments do not provide a basis for revising the audit

findings. However, we revised recommendation no. 3 to require DPH to at least monitor the prices charged by CL-CNMI since the contract has already been signed.

Control Over Privatization in the CNMI should be Established

The question arises as to where the authority to privatize is vested. Here in the CNMI, some may argue that there is broad statutory authority to enter into contracts, thereby privatizing government operations; however, there appears to be no legislation, policies, or procedures regarding who should make decisions to privatize. Information available to us shows that other jurisdictions have addressed the issue in specific terms. For instance, Guam prohibits privatization without legislative approval.

Also, we did not find any CNMI policies, procedures, or regulations setting forth requirements to be met before contracting-out (privatizing) government operations. Information available to us shows that in the U.S. Federal Government, the Office of Management and Budget (OMB) has issued Circular A-76 setting forth a mandatory process for executive agencies to follow when they contract-out to commercial activities, such as a requirement that an existing in-house activity shall not be converted to a private contract on the basis of economy unless the projected cost advantage to the government is at least 10

percent of Government personnel cost. In addition, the U.S. Congress has specifically directed the Department of Defense to give notice to Congress and make certain reports prior to conversion from in-house production to contract.

We believe that legislation establishing authority to decide on privatization of government operations would help ensure that certain objectives of privatization are attained and related matters are addressed. In our opinion, establishing specific requirements helps ensure that relevant information about the privatization, such as cost comparison analysis or profit/loss analysis, is provided to decision makers *before* undertaking any privatization of government operations.

We are providing this information for the Legislature, the Executive branch, and autonomous agencies with a strong suggestion that some control over privatization in the CNMI be established.

STATUS OF AUDIT RECOMMENDATIONS

All three recommendations are open and accordingly, we need additional information to resolve or close these recommendations. The status of recommendations and the additional information required to resolve or close them are shown in **Appendix C** of the audit report.

Introduction

Background

Chairwoman Maria "Malua" T. Peter of the House Committee on Health, Education, and Welfare requested that we review the cost savings and the overall financial benefit to the CNMI Government of the privatization of the CHC laboratory and the effect of the privatization on the cost of laboratory services in the CNMI.

The CHC laboratory was privatized by contracting a private laboratory, the Clinical Laboratories of the CNMI (CL-CNMI), to provide laboratory services to the public and private sectors of the CNMI for five years and three weeks beginning on December 11, 1995. In contracting the laboratory services at CHC, the Department of Public Health (DPH) also sold to CL-CNMI the existing laboratory equipment costing \$427,717, as well as expensed office furniture and equipment, for \$165,421, and laboratory supplies, reagents, and materials for DPH's purchase cost of \$194,078. In addition, the laboratory space, including the pathology post-mortem room, was leased for \$143,500 per annum, and six units of government-owned housing were leased for \$43,200 per annum, for a total of \$186,700 in yearly rental income.

In addition, a letter report prepared by the accounting firm of Deloitte & Touche stated that the privatization of the CHC laboratory will create a real cost savings of approximately \$1.6 million annually, aside from producing new rental revenue on the lease of the laboratory space and housing units. The \$1.6 million savings consists of laboratory operating expenses which, according to Deloitte & Touche, will be avoided because of the privatization.

Based on the above, DPH was expected to benefit in yearly cost savings and rental income totaling \$1,786,700, as well as from the one-time revenue on the sale of the laboratory equipment, furniture, and supplies totaling \$359,499. This audit was performed to determine the real financial benefit from the privatization of the CHC laboratory to the CNMI Government.

Furthermore, DPH stated in a hearing held earlier this year by the House Committee on Health, Education, and Welfare that the cost of laboratory services under CL-CNMI is probably lower than it was under CHC. This audit was also performed to determine the real effect of the privatization on the cost of laboratory services in the CNMI.

**Objectives,
Scope, and
Methodology**

The objectives of our audit were to determine whether (1) the privatization of the CHC laboratory resulted in an annual \$1.6 million savings as provided by CHC to the House Committee on Health, Education, and Welfare, (2) the laboratory equipment was sold at fair market value, and (3) the privatization will increase the cost of laboratory services in the CNMI.

The scope of our audit was limited to the evaluation of the cost savings and rental income on the privatization against the foregone revenues from CHC's discontinuance of its laboratory operations, comparison of the rates of laboratory services before and after the privatization, and review of the laboratory equipment's depreciation schedule prepared by Deloitte & Touche. We reviewed the cost savings computation of Deloitte & Touche and prepared independent cost computations.

As part of our audit, we obtained additional information through interviews with employees of DPH, Deloitte & Touche, and CL-CNMI. Also, we obtained relevant documents and reports from the Department of Finance and at CHC.

**Prior Audit
Coverage**

The Office of the Public Auditor has not audited the CHC laboratory prior to this audit.

Findings and Recommendations

Financial Effect of the CHC Laboratory Privatization

The audit showed that privatization did not result in a \$1.6 million annual savings because the savings prediction did not take into account revenues received while being operated by CHC. Our review showed that in privatizing, according to fiscal year 1995 records, CHC is losing about \$260,000 per year (**Appendix A**), or \$1.3 million over five years, the term of CL-CNMI's current contract. The audit also showed that equipment costing \$427,717 was sold for \$147,662, the net book value which, however, may have no relationship to actual useful life or market value (included was equipment costing \$159,054 which was transferred at no cost because it was fully-depreciated for accounting purposes). Furthermore, the privatization of the CHC laboratory resulted substantially in a private monopoly through which CL-CNMI is allowed to control the cost of laboratory services to the public.

PART I - PROFITABILITY OF THE CHC LABORATORY

Deloitte & Touche reported that the privatization of the CHC laboratory will create real cost savings of approximately \$1.6 million per year. In addition, the privatization allowed CHC to generate annual rental revenue of \$186,700. Our audit showed, however, that (1) the cost savings are actually a transfer of operating costs to CL-CNMI and a more realistic estimate of such cost transfer is about \$1,386,730 per year, (2) privatization did not result in a \$1.6 million annual savings because the savings prediction did not take into account revenues received while being operated by CHC, and (3) in privatizing, according to fiscal year 1995 records, CHC is losing about \$260,000 per year (**Appendix A**), or \$1.3 million over five years, the term of CL-CNMI's current contract. This occurred because the decision to privatize the laboratory did not consider the net financial effect of such action on the CNMI Government.

Discussion

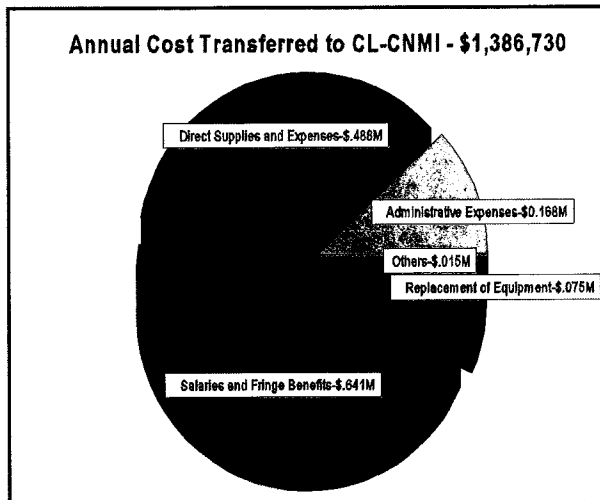
Prior to the privatization of the CHC laboratory, DPH contracted the accounting firm of Deloitte & Touche to prepare certain financial information and analysis. One of the requirements of CHC was the determination of the operating cost of the laboratory. In its letter report dated December 7, 1995, Deloitte & Touche stated that CHC was incurring \$1.6 million annually for the operation of the laboratory which could be avoided if the operation was contracted to a private company.

Our audit showed that the \$1.6 million termed as "cost savings" was not a cost savings because it was only an estimate of the operating costs that would be

transferred by DPH to CL-CNMI as a result of the privatization. Such cost savings should be more appropriately called transfer of operating cost or simply "cost transfer."

We reviewed Deloitte & Touche's computations for the \$1.6 million cost transfer and noted that estimates for some of the operating expenses were higher than actual figures. For instance, the amount of personnel cost was based on budgeted amounts instead of actual expenditures for salaries and fringe benefits. We learned that expenditure reports for fiscal year 1995 were not yet available when Deloitte & Touche made the estimate. Also, the \$1.6 million included items which were not avoided by the privatization, such as expenses for utilities and cleaning services. The lease agreement between DPH and CL-CNMI covering the lease of the laboratory space provides that DPH shall continue to pay for utilities, housekeeping and cleaning, garbage disposal, and security services.

To determine a realistic amount of the operating cost that was transferred to CL-CNMI, we identified those expenses which were avoided by privatizing the laboratory based on fiscal year 1995 expenditure reports from the Department of Finance. Our computations show that total annual operating costs of \$1,386,730 could be avoided by the privatization. The chart at the right shows the breakdown of the \$1,386,730 cost that was



transferred to CL-CNMI. Although the computed cost transfer consisted mainly of recurring expenses close to \$1.3 million which are directly attributable to the laboratory, it also included about \$90,000 in yearly replacement cost of furniture and equipment, and allocated expenses for communications, fuel and lubricants, office supplies, and personnel training.

In privatizing the laboratory, DPH has transferred certain costs and generated rental revenue but it has also lost the revenue from operation of the laboratory. As part of our analysis, we estimated the amount of revenue generated by the laboratory using fiscal year 1995 figures. Based on available information, the laboratory generated a net realizable revenue of \$1,833,449 per year. This amount is more than the combined cost transfer and rental income from the privatization of \$1,573,430. Therefore, CHC's direct operation of the laboratory was more profitable in terms of overall financial benefit than contracting it to a private company. This resulted in an estimated foregone net income of about

\$260,000 per year (rounded off) from the privatization of the laboratory, as shown in the following table.

Particulars	Amount
Net Realizable Revenue from Laboratory Operations	\$1,833,449
Less: Cost Transfers	
Expenses Directly Identifiable to the Laboratory	\$1,297,093
CHC Expenses Allocated to the Laboratory	14,637
Estimated Yearly Replacement Cost of	
Furniture and Equipment	75,000
	1,386,730
Estimated Net Profit on the Operation of the Laboratory by CHC	\$446,719
Less: CHC's Rental Revenue on the Lease of Laboratory Space	186,700
Foregone Profit on the Privatization of the Laboratory	\$260,019

The laboratory services agreement between DPH and CL-CNMI is for five years and three weeks from December 11, 1995. Therefore, the potential loss to the CNMI Government on this contract would be about \$1.3 million (\$260,000 times five years). The details of the above computation are presented in **Appendix A**.

We believe that the profitability of the laboratory was not a factor in deciding to privatize the laboratory. Based on our discussions with DPH employees knowledgeable about the privatization, DPH proceeded with the privatization without preparing a comparative profit and loss analysis. Furthermore, we were told that the determination of the revenue generated by the laboratory was not a priority when the privatization of the laboratory was being planned.

Subsequent Action

After receiving our draft report, CHC made a new estimate showing annual savings of \$4,374 after including fiscal year 1994 revenues lost. The correct figure may never be known because records are not available from which a completely accurate computation can be made. The exact figure, however, is not that important. What is important is that full disclosure be made prior to privatizing. It appears to us that revenues were ignored purposely to mislead Government officials into believing that substantial amounts of money are being saved.

PART 2 - SALE OF CHC LABORATORY EQUIPMENT

The laboratory services agreement between DPH and the contractor stated that the laboratory furniture and equipment were to be sold at their assessed fair market value. Our audit showed, however, that (1) the selling price of the laboratory equipment was practically the same amount computed by Deloitte and Touche as the net book value of the items, and (2) much of the laboratory equipment had "0" net book value and, accordingly, was transferred at no cost to CL-CNMI. This occurred because DPH used the net book value in pricing the equipment instead of determining its actual fair market value. As a result, equipment costing \$427,717 was transferred to CL-CNMI for \$147,662, the net book value which, however, may have no relationship to actual useful life or market value (included was equipment costing \$159,054 which was transferred at no cost because it was fully-depreciated for accounting purposes).

Discussion

Section 3.1 of the laboratory services agreement approved by DPH states that the laboratory furniture and equipment were to be sold to CL-CNMI for a total sum of \$165,421, the assessed fair market value of such furniture and equipment.

Our audit showed, however, that the assessed fair market value of the laboratory equipment included in the contract was practically the same amount estimated by Deloitte & Touche as the net book value of the items. Deloitte and Touche computed a net book value of \$147,662 on capitalized equipment (those items costing \$500 and above) and \$17,591 on expensed items for a total of \$165,253. The capitalized equipment was depreciated using the straight-line method¹ over estimated life of six years, except for six storage containers which were depreciated over ten years. In addition, according to Deloitte & Touche, the value of the expensed items (those amounting to less than \$500) was determined based on judgment and on available catalogs. We did not review the value of the expensed items because it was insignificant compared to the laboratory equipment.

Our review of Deloitte & Touche's net book value computations showed 61 items of laboratory equipment with total cost of \$427,717, which consisted of \$159,054 in fully-depreciated equipment and \$268,663 in partially-depreciated equipment. The fully-depreciated equipment represents a majority of the 61 items of laboratory equipment as shown in the computation. This equipment was

¹ The formula in computing straight-line depreciation is: Acquisition Cost minus Salvage Value, divided by Estimated Useful Life. The salvage value is an estimate of the fair value of the item at the end of its estimated useful life. Useful life is frequently a book life which may have to do with accounting practices rather than an actual useful life.

transferred at no cost to CL-CNMI because the net book value computation was used in determining the selling price. We believe that these items should have been sold at some cost because our discussions with an officer of CL-CNMI showed that these items are still being used.

We noted that the straight-line depreciation computed by Deloitte and Touche did not consider the salvage value of the items. Because no salvage value was considered, all the items in the depreciation schedule would eventually have "0" net book value at the end of their estimated book life. Although it is probable that the acquisition cost of \$159,054 would not be significantly recovered, the equipment should have been sold at useful life or market value. For instance, an arbitrary recovery rate of 20 percent would have given the CNMI Government \$31,810 in additional revenue from the sale of this equipment.

For equipment which was not fully depreciated, the depreciation schedule showed total cost of \$268,663 with 45 percent accumulated depreciation, or a net book value of \$147,662. This equipment could be undervalued because it was sold at practically half its cost even though most items were purchased from 1991 to 1995.

The laboratory equipment will not revert back to the CNMI Government after the term of CL-CNMI's contract because DPH has sold them to the contractor. To avoid total loss of the laboratory equipment, DPH should have negotiated a lease with CL-CNMI because in a lease arrangement the CNMI Government retains ownership of the equipment. The government may sell its assets in a privatization process instead of leasing them but it should provide protection against possible undervaluation of the assets. As a protection against undervaluation of assets sold, other governments use "clawback", which is a practice of sharing in some future profits earned by the private company that took over the assets. A typical clawback may specify that if the private company sells the assets over a certain period at specified amounts, a portion of the proceeds will go to the government.

This situation occurred because DPH used the net book value in pricing the equipment instead of determining its useful life or actual fair market value, and without providing protection against undervaluation of the assets sold. In addition, we believe that a better approach in pricing material assets, such as the laboratory equipment, is by estimating the actual worth of the equipment instead of relying on book values.

As a result, equipment costing \$427,717 was sold for \$147,662 which was net book value but which may have no relationship to actual useful life or market value. Included in the total cost of \$427,717 was equipment costing \$159,054

which was transferred at no cost to CL-CNMI because it was fully-depreciated for accounting purposes.

PART 3 - EFFECT OF THE PRIVATIZATION ON THE COST OF LABORATORY SERVICES

One of the general goals of privatization should be to ensure that privatization does not cause an increase in the cost of services. Accordingly, the government should not create a monopoly, should promote competition, and should develop a regulatory mechanism to protect against price increases. Our audit showed, however, that the privatization of the CHC laboratory resulted substantially in a private monopoly through which CL-CNMI is allowed to control the cost of laboratory services to the public. This occurred because the contract signed by DPH and CL-CNMI did not provide for any control by DPH over the rates of laboratory tests. As a result, the cost of laboratory services in the CNMI can increase, and for many tests has increased, at the will of the contractor.

Discussion

One of the general goals in privatizing government services should be that the government ensure that the cost of such services to the public does not increase after privatization. If the service being privatized is a monopoly, it may need to be broken up prior to privatization or regulations may need to be established to protect consumers. A report issued by the U.S. General Accounting Office (GAO) dated December 15, 1995 regarding the privatization practices of foreign governments showed that some governments that privatized monopolies either (1) tried to create competition by eliminating statutes that prevented competitors from entering the market, or (2) broke up monopolies, thereby creating competition. The same GAO report stated that many governments continued to regulate their former monopolies of public services even after breaking them up. The report stated that this was necessary to protect the interests of the consumers by controlling the rates and services. In addition, the report stated that some governments regulate price increases to ensure that increases in the cost of services are no more than-and usually less than-the rate of inflation.

Our audit showed, however, that privatization of the CHC laboratory transferred a government monopoly to CL-CNMI, a private laboratory affiliated with the Clinical Laboratories of Hawaii. Before the privatization took effect on December 11, 1995, the CHC laboratory was the only major provider of laboratory services in the CNMI. Aside from being CHC's only provider of laboratory services, the CHC laboratory also handles the laboratory needs of the Tinian Health Center (THC) and Rota Health Center (RHC) for tests which are not available at those sites. We learned that THC and RHC were issued

certificates that allowed them to handle only certain laboratory tests (procedures). There are at least two private clinics on Saipan that provide laboratory services but available testings on site are limited to only a small number of tests compared with the CHC laboratory. There is also one Health Maintenance Organization on Saipan but services, including laboratory services, are provided only to its members. Accordingly, the CHC laboratory has no viable competitor in the CNMI and has, for all practical purposes, a monopoly on laboratory testing in the CNMI.

When the CHC laboratory was privatized on December 11, 1995, DPH knew that the privatization would increase the cost of certain types of laboratory tests. A comparison of CHC's existing laboratory fees with CL-CNMI's proposed fees was conducted by Deloitte & Touche which reported to DPH by letter dated December 7, 1995 that CL-CNMI's proposed rates would minimally increase the cost of laboratory services. Deloitte & Touche estimated that the potential price increase that could result from the privatization would not be more than \$1.03 per procedure, on average. In an interview, the Manager of CL-CNMI told us that the proposed rates are the ones currently being charged to patients.

Our comparison of CHC's fees with those of CL-CNMI, however, showed that the majority of the laboratory procedures, where a direct one-to-one comparison between CHC and CL-CNMI rates could be made, would increase after the privatization, with price increases ranging from a few cents to more than \$30 per test. Out of the 132 laboratory procedures we compared, CL-CNMI's fees were higher than CHC's on 74 laboratory procedures, 19 of which were higher by at least 50 percent. The privatization also caused the fees of some laboratory procedures to decrease; however, we believe that the overall net effect of the privatization is an increase in the cost of laboratory services in the CNMI. We projected the possible total cost of the 132 procedures using the recorded number of tests for these procedures during the first half of fiscal year 1995. Our projection shows that the increase in total cost of 74 procedures is 12 percent greater than the decrease in the cost of the other 58 procedures.

After CL-CNMI acquired operation of the CHC laboratory, it was also allowed to control the cost of laboratory services to the public, as it has no major competitor in the CNMI and there was no regulatory mechanism to monitor the fees charged to patients. Although the Manager of CL-CNMI stated that an increase in fees is not being planned, we believe that CL-CNMI will eventually increase its fees, especially if significant losses are being incurred for some services. A typical example of such losses involve services to indigent patients since purportedly nobody is denied services at the laboratory. Prior to the privatization, the cost of these services was absorbed by the CNMI government, and consequently by a broad base of taxpayers. With the onset of the privatiza-

tion, such losses can only be absorbed by increasing the fees charged to paying patients.

This resulted because the contract signed by DPH and CL-CNMI did not provide for any control of the rates of laboratory tests that would be charged by CL-CNMI. The contract only required CL-CNMI to maintain its fees at an "affordable" level, but did not define what is "affordable." In addition, the contract did not include provisions to monitor the fees, such as periodic reports on laboratory rates or consultation with and approval by DPH of proposed increases in fees that will be charged to patients. Since there are no major competing providers of laboratory services in the CNMI, DPH should have established a regulatory scheme to control the cost of laboratory services after privatization.

As a result, the cost of laboratory services in the CNMI can increase at the will of the contractor. In addition, we believe that the cost of laboratory services in the CNMI has increased and will probably increase further as a result of the privatization.

CONCLUSION AND RECOMMENDATIONS

The audit showed that privatization did not result in a \$1.6 million annual savings because the savings projection did not take into account revenues received while being operated by CHC. Our review showed that in privatizing, CHC is losing about \$260,000 per year (Appendix A), or \$1.3 million over the five-year contract period. In addition, 61 items of laboratory equipment with total cost of \$427,717 were sold for \$147,662 (a majority of the 61 items with a total cost of \$159,054 were transferred at no cost to CL-CNMI) because in determining their selling price, DPH used net book values which may have no relationship to actual useful life or market value. Furthermore, the privatization of the CHC laboratory resulted in a private monopoly and CL-CNMI was allowed to control the cost of laboratory services to the public.

Accordingly, we recommend that before proceeding with the privatization of any operations of CHC, the Secretary of DPH should:

1. Prepare a profit and loss analysis to determine if the privatization will result in an overall financial benefit to the CNMI Government. The analysis should determine if the returns from selling an operation or activity will exceed the returns from government ownership.
2. Establish the fair market value of assets to be sold by determining the actual worth of the items instead of using book values. To protect the CNMI

Government against undervaluation, DPH could require a share of profits earned by the private company in disposing of the acquired assets.

3. Establish a regulatory mechanism to control the cost of services being privatized if a private monopoly or near-monopoly environment is being created.

DPH'S RESPONSE AND OPA'S COMMENTS TO THE RESPONSE

In his letter response dated August 12, 1996 (**Appendix B**), the DPH Secretary generally presented arguments against the points raised in the draft audit report. Although the response did not present concise comments to the audit report, we believe that the following are the main arguments by the DPH Secretary:

Part I - Profitability of the CHC Laboratory

In the letter response, DPH stated that (1) CHC's operation of the laboratory was not profitable and DPH's recomputation still showed a small savings from privatization, (2) the privatization resulted in a total first year advantage of \$300,573, and (3) OPA's findings contained only soft figures and did not provide sufficient hard numbers. What follows are the details of DPH's comments to Part 1 of the audit report.

Net Profit or Loss on CHC's Operation of the Laboratory

DPH presented its computation of the estimated annual profit/loss of the CHC laboratory before privatization, which showed a net loss of \$4,374 (indicating that CHC's operation of the laboratory was not profitable). DPH showed that by adding its net loss figure of \$4,374 and the yearly rental income of \$186,700, the annual advantage of the privatization amounted to \$191,074.

The \$4,374 net operating loss of the CHC laboratory that was computed by DPH differed significantly from OPA's computation which showed a yearly net income of \$260,019. DPH presented a different figure for the estimated revenue, allowance for uncollectibles, and estimate of yearly replacement cost of laboratory furniture and equipment.

Estimate of Revenue. DPH argued that OPA's estimated annual revenue of \$2.8 million (**Appendix A**) was overstated, specifically that the average unit price of \$30 used by OPA in its computation was overstated. DPH believes that the actual average unit price is close to \$25, and therefore this unit price was used by DPH in computing its estimated laboratory revenue of \$2.4 million. DPH's

estimated revenue was also based on the fiscal year 1994 billing report which showed a total revenue of \$2.4 million.

The \$25 average unit price was determined by DPH using a simple average of the unit price of the ten most frequently ordered procedures (tests) shown in the fiscal year 1994 billing report. According to DPH, it did not average all the procedures because the less frequently ordered and higher priced procedures tend to skew the average unit price higher. DPH stressed this point by mentioning that the last ranked 181 procedures have an average unit price of \$59.76, were ordered 595 times, and totaled \$34,070.71.

Allowance for Uncollectible Accounts and Yearly Replacement Cost of Laboratory Furniture and Equipment. Another difference between OPA's analysis and CHC's computation was the higher cost and expenses computed by DPH. DPH computed its allowance for uncollectible accounts (bad debts) at 38 percent of the revenue (which was three percentage points higher than OPA's estimate of 35 percent) to account for Medicare, Medicaid, and others who do not pay the published fees. Also, DPH computed the estimated yearly replacement cost of laboratory furniture and equipment at \$150,000 (twice as much as OPA's estimate) to include airconditioning and other major facility repairs and improvements.

Total First Year Advantage

DPH also computed the total first year advantage of the privatization by adding its computed yearly benefit of \$191,074 and the one-time revenue on the sale of the laboratory furniture, equipment, supplies and materials totaling \$359,499, and by deducting the amounts owed by DPH to outside laboratories amounting to \$250,000, for a total first year advantage of \$300,573.

OPA's Figures in the Audit Report

DPH, in effect, questioned the reliability of the figures presented in this audit report by stating that OPA's findings contained only soft figures and may be argued either way. According to DPH, OPA's figures do not provide sufficient hard numbers in which a true cost analysis can be arrived at. The response added that neither CHC nor DOF have an acceptable accounting system in place in order to prepare a profit and loss analysis. However, DPH concluded that the operation of the laboratory under the government system was not a break-even venture due to an inadequate accounting system and computer support, among other system deficiencies.

OPA's Comments

The DPH Secretary's response consists mainly of opinions and arguments without accompanying supporting documents. During our exit conference on July 24, 1996, we specifically requested the DPH Secretary to provide OPA with all necessary documents which could support DPH's arguments against the matters discussed in the draft audit report. However, the DPH Secretary's letter response dated August 12, 1996 did not provide any supporting documents to substantiate DPH's comments to the draft audit report. Nevertheless, we analyzed the opinions presented in the response to determine whether the arguments have merit and have revised our report where appropriate.

Regarding DPH's comments to the findings presented in Part 1, OPA concludes that the comments were lacking either in merit or supporting documents. Accordingly, OPA maintains the position that (1) CHC's operation of the laboratory was profitable as our computation resulted in an annual net profit of \$260,019, (2) the privatization did not result in a first year advantage of \$300,573 but instead annual profit of \$260,019 was lost, and (3) OPA's figures were reliable as they were based on official DOF expenditure reports and DPH's own records.

Net Profit or Loss on CHC's Operation of the Laboratory

With regard to DPH's comments to our computation of CHC's profit from its operation of the laboratory, we do not see the need to revise our computation of the estimated annual profit of \$260,019 because DPH's comments lack either merit or support. Accordingly, we did not change our estimate of the \$2.8 million revenue, 35 percent allowance for uncollectibles, and \$75,000 estimate of the yearly replacement cost of laboratory furniture and equipment.

Estimate of Revenue. In computing the laboratory revenue, OPA determined the total of all billable laboratory tests made in fiscal year 1995 which was multiplied by the weighted average unit price² of all such tests. The same approach was used by DPH, except that it used the simple average unit price³ of only the ten most frequent tests. The resulting average unit price for DPH was less than OPA's figure by \$5 per test. This was the main reason why DPH's computation resulted in a net loss. However, DPH's preferred method to use the simple average of only

² Weighted average unit price was computed by dividing the total dollar value of all the recorded billable tests made during the first six months of fiscal year 1995 by the total billable tests during the same period. The first six months of fiscal year 1995 provided the most recent recorded data.

³ The simple average unit price was computed by summing up the individual unit prices based on CHC's billing report for fiscal year 1994, divided by the number of items summed.

the ten most frequent tests was not appropriate in estimating the total yearly revenue of the CHC laboratory.

On the computation of average unit price, DPH did not average all the procedures because the less frequently ordered and higher priced procedures purportedly tend to skew the average unit price higher. If such was the case, we believe we have addressed this by using the weighted average method, instead of the simple average method preferred by DPH. The weighted average method, as the term suggests, considers the weight of each item being averaged, in this instance the number of tests for each item. Such factor is not addressed by using simple average because this method considers each item equal in weight.

It was not appropriate that DPH averaged only the ten most frequent tests because the revenue being estimated was not just for the ten most frequent tests but for all billable tests done in fiscal year 1995. There were about 360 items in CHC's billing report, and to average only ten of them was inaccurate. Assuming, for further illustration, that the last ranked 181 procedures mentioned by DPH have extraordinarily high unit prices, excluding them in the weighted average unit price computation results in a \$28.46 unit price. This amount is still closer to OPA's \$30 unit price than to DPH's \$25.

Furthermore, in estimating the revenue, DPH used the fiscal year 1994 billing report in determining the average unit price. OPA's basis, the first six months of fiscal year 1995, was more appropriate because the revenue being estimated was that of fiscal year 1995. Besides, the basis of the revenue should be consistent with the basis of the expenditures which was also that of fiscal year 1995.

DPH believes that its estimate, which was close to the revenue shown in the fiscal year 1994 billing report, was more realistic. However, we would like to point out that CHC's billing report was not reliable, and therefore DPH should not use the billing report as a benchmark in its estimate. According to Deloitte & Touche, laboratory charges were frequently lost or never entered into the billing system. We are not certain how many of fiscal year 1994 billable tests were not included in the billing report. For instance, DPH claims that billable tests in fiscal year 1995 were less than fiscal year 1994; however, billable tests of 94,023 in fiscal year 1995 were actually more than the 84,634 billable tests shown in the fiscal year 1994 billing report.

Allowance for Doubtful Accounts and Yearly Replacement Cost of Laboratory Furniture and Equipment. OPA used a 35 percent allowance for uncollectible accounts in determining the net realizable revenue of the laboratory. DPH increased the allowance for uncollectible accounts by three percentage points to 38 percent; however, it did not establish how the larger percentage was arrived at. Such increase was explained by stating only that it was to account for

Medicare/Medicaid and others who do not pay the published or adjudicated fees. Accordingly, we maintained the allowance for uncollectible accounts at 35 percent. Besides, we believe that 35 percent is a conservative rate since CHC had taken a number of steps to lessen uncollectibles, such as stricter admission standards and the hiring of a collection agency. In addition, privatization should not be used as a means to eliminate a poor collection process, and it remains to be seen if CL-CNMI has a better collection record.

With regard to the yearly replacement cost of laboratory furniture and equipment, DPH did not provide supporting computations for its \$150,000 estimate. DPH merely stated that CHC laboratory services would require approximately \$150,000 today to expand and renovate its facilities. This figure, we believe, is a one-time expense and therefore should not be included in the estimate of yearly replacement cost. Aside from improvements in laboratory furniture and equipment, we believe there was no pressing need for a major laboratory renovation in case CHC continued to operate the laboratory. We noted that DPH also considered airconditioning repairs in its estimate. Such repairs should be excluded because DPH's contract with CL-CNMI requires that central airconditioning repairs be paid by CHC. Accordingly, we maintained our estimate of the yearly replacement cost of laboratory furniture and equipment at \$75,000.

Total First Year Advantage

In determining the first year advantage of the privatization, it was incorrect to include the one-time revenue on the sale of the laboratory furniture, equipment, supplies, and materials totaling \$359,499 without deducting the corresponding cost of these items. The laboratory furniture and equipment were sold below cost, and this item had already been reported in Part 2 of this audit report. The laboratory supplies and materials, as mentioned in the laboratory services agreement between DPH and CL-CNMI, were sold at DPH's purchase cost for these items. This would not have an effect on the total financial benefit because DPH was simply reimbursed for its purchase cost. Likewise, the amounts owed by DPH to outside laboratories amounting to \$250,000 should not be deducted in determining the total financial benefit because those amounts remain as a CHC's obligation regardless of the privatization.

OPA's Figures in the Audit Report

DPH claims that OPA's findings contained only "soft figures" and did not provide sufficient hard numbers in which a true cost analysis can be arrived at. This comment was made without providing reasonable evidence that the figures reported by OPA were not factual or were clearly erroneous. The issues raised by DPH were either lacking in merit or in supporting documents. Furthermore,

DPH did not prepare a profit/loss analysis before privatizing the laboratory, which prompted OPA to use available information to determine whether CHC's laboratory operations resulted in a profit or loss. OPA's profit/loss analysis is reliable because it is based on official documents obtained from DOF, as well as records maintained by DPH itself. Although certain estimates were made, we believe that the result was reliable based on available documents. This shows that a profit/loss analysis can be prepared although DPH claims that an acceptable accounting system was not in place to prepare such analysis. DPH failed to disclose or recognize revenue until OPA made the computation. Regardless of whether OPA's figures are more correct is not nearly as important as the fact that Government officials should be furnished all relevant information, not just information favoring and information slanted toward privatization.

In addition, DPH's claim of an inadequate accounting system and computer support, and other system deficiencies, should not be a factor in determining whether or not the laboratory was a losing venture. We believe that privatization should not be an automatic option in addressing system or operational deficiencies. Privatization may eliminate these problems by passing them on to the private sector; however, the CNMI Government should first study all available options before divesting a government operation, activity or function. In this effort, a profit/loss analysis is needed to determine whether the divestiture will result in an overall financial advantage to the government. For instance, in issuing OMB Circular A-76, the U.S. Office of Management and Budget (OMB) recognized the necessity of preparing a comparative cost analysis before contracting-out government activities. This circular requires agencies to perform cost comparisons and mandates that an existing in-house activity shall not be converted to a private contract on the basis of economy unless the projected cost advantage to the government is at least 10 percent of the in-house personnel-related cost for the performance period. The ten percent margin is added to give consideration to the loss of productivity, the temporary decrease in efficiency and effectiveness, the cost of any personnel retained, temporary operation of facilities at reduced capacity and other unpredictable risks that result anytime a conversion is made. The circular also requires detailed records and documentation to support all elements of the cost study.

Additionally, in a case involving a decision to privatize the food service operations at Fort Knox, the U.S. Court of Appeals upheld governing statutes by deciding that the Secretary of Defense may not contract out services to a private company as a matter of discretion, nor may the decision rest on whether the Secretary deems the contract or the in-house service to cost less; instead, governing statutes require a measurable, objective comparison of costs. (Diebold v. United States, 947 F.2d 787, 789-97 (6th Cir. 1991)).

Part 2 - Sale of CHC Laboratory Equipment

The letter response indicated agreement with the recommendation to sell assets at their fair market value; however, the response stated that (1) DPH cannot agree that there was a material difference between the fair market value and the net book value of the laboratory equipment, (2) the laboratory equipment had significantly decreased in value, and therefore it was prudent not to provide a salvage value for this equipment, (3) the "package deal" arrangement on the sale of the laboratory equipment resulted in a better deal for DPH than would selling the equipment on a piece-by-piece basis, and (4) DPH does not agree that the laboratory equipment should have been leased because CHC would gain no benefit in retaining title to old and obsolete equipment. Following are the details of DPH's comments to Part 2 of the audit report.

Valuation of the Laboratory Equipment

CHC took the position that the net book value of the laboratory equipment is essentially the same as the fair market value. Furthermore, DPH stated that it cannot agree that there was a material difference between the fair market value and the so-called net book value determined for this equipment. The letter response provided a definition of "fair market value" and "net book value."

Salvage Value

DPH stated that it was prudent not to provide a salvage value for the laboratory equipment because (1) this equipment was already obsolete and unrepairable, and (2) the value of the equipment had significantly decreased due to relatively higher age of the items compared to items in other hospitals. Furthermore, DPH claims that if a private company were depreciating the same assets, they would most likely utilize an accelerated depreciation method. DPH added that this would have the effect of reducing the estimated useful life of the equipment to a more realistic three-to-five years.

Package Deal Arrangement

DPH believes that selling the equipment on a piece-by-piece basis would not have yielded any more than the "one-price-for-all" approach taken. DPH added that CL-CNMI would not have purchased some of the equipment had a "package deal" not been arranged for the contract.

Alternative Option to Lease the Equipment

DPH does not agree that the laboratory equipment should have been leased. According to DPH, CHC would assume older equipment at the end of the lease

and would gain no benefit in retaining title to obsolete equipment. DPH added that it cannot be assumed that CL-CNMI would lease equipment where it had no control of the service contracts.

OPA's Comments

Regarding DPH's comments to the findings presented in Part 2, OPA concludes that the response generally lacks supporting documents to back up DPH's comments. Accordingly, OPA does not see a need to revise the audit findings based on DPH's comments. However, for discussion purposes, we will comment on the points raised by DPH.

Valuation of the Laboratory Equipment

DPH provided a definition of "fair market value" and "net book value"; however, the letter response did not adequately explain why the net book value of the laboratory equipment is essentially the same as the fair market value. DPH relied on its claim that some of the equipment was obsolete or unrepairable in justifying the transfer of the majority of laboratory equipment at no cost to CL-CNMI. We do not agree with DPH's point because, as mentioned in the audit report, some of the items transferred at no cost to CL-CNMI were still being used by CL-CNMI.

Some of the items in the letter response do not directly relate to the findings in the audit report. We stated in our findings that equipment was transferred to CL-CNMI at net book value which may have no relationship to actual useful life or market value (included was equipment which was transferred at no cost because it was fully-depreciated for accounting purposes). The finding points out only that the valuation method was not proper for determining the actual market value of the items, and does not specifically indicate that DPH would have received more for selling the equipment.

Salvage Value

The letter response did not provide adequate support to show that all the laboratory equipment had "zero" salvage value. DPH stated that several vendors or suppliers were contacted and they commented that the equipment would be worth nothing; however, evidence to show that the equipment was actually worth nothing was not provided to us. Likewise, there was no adequate evidence to show that the zero-valued equipment was worth nothing due to the relatively higher age of the items compared to equipment in other hospitals.

Regarding the use of the accelerated depreciation method, DPH should not confuse the depreciation methods used for accounting or tax purposes with the

methods used to determine the actual fair market value of assets. Depreciation for tax or accounting purposes follow certain rules and principles which may have little or no relationship to actual useful life or actual fair market value of assets.

Package Deal Arrangement

We believe that the approach used by DPH to value the laboratory equipment was actually a piece-by-piece basis because each item was individually valued using a straight-line depreciation method. Nevertheless, we would like to point out that valuation of assets, be it a package or piece-by-piece, should be done during the feasibility study stage of privatization, and not after a private company (contractor) had been selected as was the case with the CHC laboratory. Proper planning dictates that before actual divestiture, the government should determine the actual worth of the assets to ensure that the return from selling the assets will be commensurate with the value of the assets being sold. Valuing the assets before selection of a contractor, or even including the sale of the assets in the evaluation of proposals, would give the government a good opportunity to get a better price for the assets.

Alternative Option to Lease the Equipment

OPA's point in mentioning the option to lease the laboratory equipment was the fact that in case DPH decides to terminate or not renew CL-CNMI's contract, DPH has no choice but to find another contractor or have it under government operation again. In case another contractor is not available, DPH would not be able to provide laboratory services unless it buys back the equipment previously sold to CL-CNMI or buy new equipment. DPH would have to negotiate with CL-CNMI to acquire its assets but there is no assurance that the government would get the same deal as the one given to CL-CNMI when it acquired CHC's laboratory equipment, in which most of them were transferred by DPH at no cost.

Part 3 - Effect of the Privatization on the Cost of Laboratory Services

In the letter response, DPH (1) did not specifically address the finding that CL-CNMI is a private monopoly; instead DPH emphasized that it gave higher priority to provide quality service, (2) provided various situations where competition can exist and cost of services can be contained, and (3) stated that it would have been inappropriate and unlawful for DPH to include provisions in the contract to monitor CL-CNMI's fees, or to approve CL-CNMI's fee schedules. The details of DPH's comments to Part 3 of the audit report are presented as follows:

Creating a Private Monopoly

On the issue of monopoly, DPH stated that (1) FHP and Saipan Health Clinic have labs and can provide competition, and (2) the delivery system in the CNMI is similar to that of a small hospital in the farm belt of the U.S. where it is the only facility within a 200-mile radius. DPH believes that quality of service is more important than the issue of whether or not the laboratory is a public or private monopoly. To illustrate this, DPH enumerated certain problems when the laboratory was still under the government, such as excessive cost of tests referred off-island. Also, DPH mentioned the situation of the laboratory under CL-CNMI in which Clinical Labs of Hawaii is used for about 30 percent of laboratory tests.

Situations for Competition and Cost Containment

DPH provided the following situations where competition can exist and cost of services can be contained:

- CHC consciously elected not to do certain procedures in its own laboratory, which presented opportunities for others to enter into the laboratory services market in the CNMI by either locating on-island or by providing service from off-island locations such as Guam and Hawaii.
- The insurance companies will always strive to keep costs down. Thus, Clinical Labs of Hawaii (CL-CNMI's affiliate) will probably negotiate contracts with the insurance companies that define the price and level of service.
- The reimbursement statute of Medicare, in many cases, determines the price list as does competition.
- In the United States, the health care industry is moving toward more Health Maintenance Organizations (HMOs) to contain costs.

Monitoring and Control of CL-CNMI's Fees

DPH does not agree that it would have been appropriate to include cost controls in the contract between DPH and CL-CNMI. According to the letter response, if such controls were required to be included in the contract, DPH may have later been subject to a lawsuit arising from its improper exercise of the state's police powers resulting in violation of CL-CNMI's constitutional rights. It contended that CL-CNMI has the general right to make business decisions free from government interference and restraint, including the right to determine the prices it needs to charge in order to continue in operation and make a

reasonable profit. DPH cited a court case which emphasized this principle. Furthermore, DPH stated that the court case made clear that the ability of the government to regulate the prices of a private enterprise is derived through the police power of the Legislature. DPH added that it is this police power which enables the Legislature to establish economic policy and control industry as needed within the state.

DPH acknowledged that, at some time in the future, it may be necessary to specifically control the prices charged by CL-CNMI for laboratory services; however, the decision to control prices will be that of the Legislature, or upon delegation of its power, an executive branch agency authorized to act on behalf of the Legislature. DPH claimed that it did not have the power to establish price controls at the time the laboratory services contract was executed.

OPA's Comments

Regarding DPH's comments to the findings presented in Part 3, OPA concludes that DPH (1) did not specifically address the transfer of a government monopoly to a private monopoly, (2) did not provide adequate evidence that competition on laboratory services has existed in the CNMI, and (3) provided legal analysis showing that the CNMI Government cannot control prices of existing private companies unless approved by the Legislature under its police powers, and inappropriately applied that analysis to this instance involving a contract between the CNMI Government and a private company wherein the parties are generally free to contract as they wish. Accordingly, OPA does not see the need to revise the audit findings based upon DPH's comments. However, we revised recommendation no. 3 to require DPH to at least monitor the prices charged by CL-CNMI since the contract has already been signed. Following is a discussion of OPA comments stated above:

Creating a Private Monopoly

DPH did not specifically address the finding that the privatization of the CHC laboratory transferred a government monopoly to a private monopoly, except for stating that FHP and Saipan Health Clinic can provide competition and that CNMP's delivery system is similar to a small hospital in the U.S. farm belt where it is the only facility within a 200-mile radius. As mentioned in the audit report, there are at least two private clinics on Saipan that provide laboratory services, but available testings on site are limited to only a small number of tests compared with the CHC laboratory. There is also one Health Maintenance Organization on Saipan but services, including laboratory services, are provided only to its members. In fact, the solicitation of proposals from contractors for the operation of the CHC laboratory listed FHP and Saipan Health Clinic as among the clients of the CHC laboratory.

DPH stated that CNMI's delivery system is similar to a small hospital in the U.S. farm belt where it is the only facility within a 200-mile radius. A 200-mile radius is a circle 400 miles wide (diameter). From the personal experience of OPA staff members from the U.S. farm belt, there are no such places. This is another example of DPH's over/under statements when its purpose is served. Nevertheless, since CHC is the only hospital in the CNMI, we believe that DPH should be concerned with the rates charged by CL-CNMI, especially the accommodation of indigent patients. DPH missed the point of our finding by focusing instead on the delivery of quality service. We do not question DPH's concern for quality service; however, DPH should understand the difference when a monopoly is transferred to a private company. Private companies, unlike government agencies, are motivated by profit and operations are conducted in such a way that the company earns a profit. As mentioned in the audit report, prior to the privatization, the cost of certain losses, such as for services to indigents, was absorbed by the CNMI government, and consequently by a broad base of taxpayers. With the onset of privatization, such losses can only be absorbed by increasing the fees charged to paying patients, or by cutting the services to indigents. Recent events have shown that there were instances when CL-CNMI turned away patients because those persons could not afford to pay the cost of services charged by CL-CNMI.

Regarding the quality of service, DPH mentioned that the laboratory under CL-CNMI uses Clinical Labs of Hawaii for about 30 percent of its tests. This shows that the previous practice of sending a significant number of tests to off-island laboratories has not yet stopped. Under the privatized laboratory, such off-island referrals have even increased from 15 percent in fiscal year 1995, as shown in CHC's record of billable tests, to about 30 percent at present. If the cost of services can be reduced by increasing off-island referrals, then perhaps there was no need to privatize the laboratory as CHC had been sending tests to off-island laboratories before privatization.

Situations for Competition and Cost Containment

DPH provided situations where competition could exist and cost of services could be contained; however, there was no evidence provided to us that the situations cited by DPH are existing and have, in fact, contributed to competition and cost containment in the area of laboratory services in the CNMI.

Monitoring and Control of CL-CNMI's Fees

Although DPH stated in the letter response that it did not have the power to establish price controls when the laboratory services contract was executed, this information was not provided to the House Committee on Health, Education, and Welfare during the oversight hearing conducted early this year. We believe

that if DPH believed it lacked authority to control the rates charged by CL-CNMI, it should have sought legislative delegation of authority, or at least have informed the Legislature of any Constitutional restriction instead of simply going ahead with the privatization of the laboratory without protecting the public against price increases.

In addition, we inquired from officials and a consultant of the Governor's office about the CNMI Government's plans for privatization and were told that a committee was established to consider what should be privatized. Also, we were told that DPH undertook privatization without asking for the committee's consideration and advice. Furthermore, although DPH has expressed the opinion that it cannot control prices of the CL-CNMI laboratory without legislation, DPH never consulted with or notified the Legislature that such action was necessary.

While there appears to be no legislation, policies, or procedures regarding who should make the decisions to privatize, it appears to us that privatization of the CHC laboratory is a more important step than, for instance, contracting out services such as gardening. Accordingly, all concerned parties including the Governor, the privatization committee, and the Legislature should have been, but were not, fully and accurately informed about all aspects.

Nevertheless, the parties to a contract are normally free to set whatever terms and conditions they agree upon. The cases cited in DPH's response deal with situations where the government seeks to control prices for an existing business operation. The privatization of CHC's laboratory is an entirely different situation where the government is participating in *establishing* a new business. Certainly it is appropriate for a government which is transferring an ongoing business operation to a private company to negotiate and agree upon the terms and conditions under which such transfer will be made, including price controls for the public's protection. In fact, the CNMI has existing contracts which contain price controls.

DPH also stated that it would have been inappropriate and unlawful for DPH to include provisions in the contract to monitor CL-CNMI fees. However, CL-CNMI does have a contract with the Government to provide "affordable" rates. Accordingly, DPH as one of the contracting parties should at least require the contractor (CL-CNMI) to provide DPH the rates being charged to patients at all times and to notify DPH whenever there is an increase in these rates. Such information will be useful to DPH for the solicitation and evaluation of proposals when CL-CNMI's current contract expires.

As for DPH's claim that it lacked authority to control prices, such authority might be derived from its statutory duty to maintain and improve health

conditions (1 CMC § 2603(a)). "Broad delegations involving the regulation of economic activity generally are permissible." U.S. v. Williams, 691 F.Supp.36, 48 (M.D. Tenn. 1988).

Control Over Privatization in the CNMI should be Established

The question arises as to where the authority to privatize is vested. Here in the CNMI, some may argue that there is broad statutory authority to enter into contracts, thereby privatizing government operations; however, there appears to be no legislation, policies, or procedures regarding who should make decisions to privatize. Information available to us shows that other jurisdictions have addressed the issue in specific terms. For instance, Guam prohibits privatization without legislative approval. Under the general provisions of the Guam Code, the Legislature has specifically provided:

No office, department, agency, institution, board, bureau, commission, council, authority, committee of territorial government, branch, or the Guam Visitors Bureau, of the government of Guam may privatize any function, or transfer any real property of the government of Guam, without the approval of the Legislature. Any plan or action taken by an office, department, instrumentality, agency, institution, board, bureau, commission, council, authority, committee of territorial government, branch, or the Guam Visitors Bureau purporting to privatize a any function or transfer any real property of the government of Guam shall be transmitted to the Legislature which, by statute, may amend, approve, or disapprove the plan or the action taken. Any plan or action taken shall have no effect until legislative approval is obtained. (1 Guam Code Ann. § 1800 (1995 Update) (Emphasis added)).

In contrast, we did not find any CNMI policies, procedures, or regulations setting forth requirements to be met before contracting-out (privatizing) government operations. Information available to us shows that the U.S. Federal Government has established specific requirements to be met before privatization can be undertaken. For instance, in the U.S. Federal Government, the Office of Management and Budget (OMB) has issued Circular A-76 setting forth a mandatory process for executive agencies to follow when they contract-out to commercial activities. The circular specifically mandates that an existing in-house activity shall not be converted to a private contract on the basis of economy unless the projected cost advantage to the government is at least 10 percent of Government personnel cost.

In addition, the U.S. Congress has specifically mandated that the Department of Defense follow Circular A-76 in its contracting-out process. In 10 U.S.C. §2461, the Defense Department was directed to give notice to Congress and make certain reports prior to conversion from in-house production to contract. This provision specifically requires a detailed summary of the cost comparison study which shows that the government will save money by contracting-out.

We believe that legislation establishing authority to decide on privatization of government operations would help ensure that certain objectives of privatization are attained and related matters are addressed, including cost savings and the real effect of privatization on the financial position of the government, valuation of assets to be sold, control over the cost of services, and efficiency in providing services, among other issues.

In our opinion, establishing specific requirements helps ensure that relevant information about the privatization is provided to decision makers *before* undertaking any privatization of government operations. Such requirement can help avoid privatization that proves unwise and costly. Such relevant information includes a cost comparison analysis or profit/loss analysis which shows that contracting-out a government operation will save money either through cost savings or avoidance of losses.

We are providing this information for the Legislature, the Executive branch, and autonomous agencies with a strong suggestion that some control over privatization in the CNMI be established.

STATUS OF AUDIT RECOMMENDATIONS

All three recommendations are open; accordingly, we need additional information to resolve or close these recommendations. The status of recommendations and the additional information required to resolve or close them are shown in Appendix C of the audit report.

OFFICE OF THE PUBLIC AUDITOR
COMPARATIVE ANNUAL PROFIT AND LOSS - CHC LABORATORY
DIRECT OPERATION BY THE CNMI GOV'T. vs. PRIVATIZATION

APPENDIX A

Particulars	Amount	Notes
DIRECT OPERATION BY THE CNMI GOV'T.		
Estimated Annual Revenue		
Number of Billable Tests Per Year	94,023	(1)
Average Unit Price Per Test	\$30	(2)
Estimated Gross Revenue	\$2,820,690	
Less: Allowance for Uncollectible Accounts	987,241	(3)
Estimated Net Revenue	\$1,833,449	
Less: Identifiable Expenses		(4)
Salaries and Fringe Benefits	\$641,437	(5),(6)
Recruitment and repatriation	53,053	(5)
Employee Housing	44,400	(7)
Professional Services	261,055	(5)
Supplies - Operations	227,051	(5)
Medical - General Supplies	42,173	(5)
Administrative Expenses	27,924	(5)
Total Direct Expenses	\$1,297,093	
Indirect (Allocated) Expenses		
Communications	\$240,787	(8)
Fuel and Lubrications	152,758	(8)
Supplies- office	76,894	(8)
Personnel Training	17,462	(8)
Hospital Expenses Subject to Allocation	\$487,901	
Allocation Rate	x 3 %	
	14,637	(9)
Estimated Net Profit Before Nonrecurring Expenses	\$521,719	
Estimated Yearly Replacement Cost of Laboratory Furniture and Equipment	75,000	(10)
Estimated Net Profit	\$446,719	
PRIVATIZATION		
Annual Revenue from the Lease of the Lab. Space	\$143,500	
Annual Revenue from the Lease of Gov't. Housing	43,200	\$186,700
NET ADVANTAGE OF DIRECT OPERATION		\$260,019

Notes:

- (1) Actual no. of billable tests done in fiscal year 1995 based on statistics prepared by the laboratory (best available data).
- (2) Weighted average unit price based on the first six months of fiscal year 1995 (latest available data).
- (3) This is 35% of the estimated revenue. CHC's largest uncollectibles come from the Gov't. Group Health Insurance (GHI) and our prior audit of the GHI showed that 35% of CHC's billings to the GHI are owed by subscribers (GHI owes the other 65%). Uncollectible accounts were provided only for the 35% because the other 65% involve an intra-gov't. account. To be conservative, we provided 100% uncollectible accounts on the GHI subscribers' account. We believe that 35% is a reasonable rate on other uncollectibles.
- (4) Includes avoidable costs and expenses. Utilities, cleaning, security, and other administrative costs were excluded because they remained as CHC expenses even after the privatization of the laboratory.
- (5) Based on the DOF 132-P report for the laboratory for fiscal year 1995.
- (6) Includes 5% increment from fiscal year 1995 personnel cost (FTEs were filled-out at the end of fiscal year 1995).
- (7) Based on existing housing contracts for five two-bedroom units occupied by employees prior to privatization.
- (8) Based on DOF 134-P report for CHC. Includes expenses that have tendency to decrease as a result of the privatization.
- (9) The 3% was based on the ratio of actual personnel cost for fiscal year 1995 (rounded off figure).
- (10) This was based on the yearly straight-line depreciation of furniture and equipment prior to the privatization. The acquisition cost of laboratory equipment, and the amount of furniture and other equipment that was determined by Deloitte & Touche, was depreciated over six years and four years, respectively.



COMMONWEALTH HEALTH CENTER

OFFICE OF THE SECRETARY

GOVERNMENT OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF PUBLIC HEALTH-ENVIRONMENTAL SERVICES

August 12, 1996

Mr. Leo L. LaMotte
Public Auditor
Commonwealth of the Northern
Mariana Islands (CNMI)
2nd Floor, J.E. Tenorio Building
Gualo Rai, Saipan, MP 96950

Dear Mr. LaMotte:

The Commonwealth Health Center (CHC) has prepared its response to the draft report dated June 24, 1996 regarding Cost Savings and Other Financial Aspects of the Privatization of the Laboratory Operations of CHC. Included herein are management's responses to the audit findings, recommendations and audit objectives.

PROFITABILITY OF THE CHC LABORATORY

The audit objective for this topic was to determine whether the privatization of the CHC Laboratory resulted in a real financial benefit to the CNMI Government (Public Auditor's report page ii). The findings, in this regard, stated in the June 24th report are that "...direct operation of the laboratory by CHC was more profitable than contracting it to a private company, resulting in an estimated foregone income of about \$260,000 per year, or \$1.3 million over the five year contract period..."

CHC Response:

After reviewing the findings and calculations we have developed our comments and relate them parenthetically in our Exhibit A to your Appendix A in the following sections.

Gross Revenue (1)

The Gross Revenue indicated in your report is overstated (See our analysis in Exhibit A at the end of our response). In particular, we believe the average unit price per test of \$30 used in the analysis is overstated. Also, CHC's cash basis revenue plus the government subsidy amounted to approximately \$23 million in each of the fiscal years 1994 and 1995. If the Laboratory generated \$2.8 million in revenue, it would account for approximately 12 percent of the total revenue at CHC. We believe this percentage is high in relation to total

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CHC revenue. In addition, the CPT-4 code listing shows a revenue figure of \$2.4 million for fiscal year 1994 which we believe is more realistic. We also believe fiscal year 1995 was even less due to a smaller number of billable procedures.

Analysis of CPT-4 Codes (1)

Also in this regard, caution should be exercised when making comparisons of CPT-4 codes. The CPT-4 code is the basic procedural code used to identify a procedure and a price for that procedure. The codes are published annually and sent to providers upon request. The 1996 CPT-4 code book contains 270 changes that affect the way a procedure is performed, its price and whether or not it replaces an earlier procedure. Lab procedures were included in these changes. For example, CPT-4 code 80019 was changed to clarify that this panel of lab tests is used to report the 19 different tests defined under the code. The fee charged for this panel may also be revised upward because of the more precise definition.

We prepared an analysis of lab procedures and prices in Exhibit B. Our analysis shows entirely different results than the price comparisons cited in the report (page 9). We generated a copy of fiscal year 1994 (because it is the most recent complete twelve months) CPT code listing that shows the number of procedures and the average unit price for each CPT-4 code performed or sent out by the CHC laboratory department. The first six (6) months of fiscal year 1995 were also generated and produced similar results.

In Exhibit B, we show the ten (10) most frequently ordered procedures. These procedures account for 43.6 percent of all procedures ordered, and \$937,341.07 or 38.7 percent of the total revenue for the year. CHC's average unit price for the ten (10) most frequently ordered procedures was \$24.73. At the other end of the list, the bottom ranked 181 procedures have an average unit price of \$59.76 and were ordered for a total of 595 times. The total revenue recorded for these procedures was \$34,040.71. Close analysis reveals that the less frequently ordered, and higher priced procedures tend to skew the average unit price higher. By removing the less frequent and higher priced procedures, the actual average unit price comes closer to the \$24.73 mentioned earlier. For purposes of our analysis, we used an average unit price of \$25 as noted in Exhibit A.

Inpatient Occupancy and Under-utilization (1), (2)

During fiscal years 1994 and 1995 CHC's occupancy rates for inpatient care were approximately 61 percent in each year. This occupancy level will not support the fixed costs at CHC. Accordingly, the burden shifts to outpatient services to produce enough revenue to make up the difference and cover costs. Unfortunately, the highest level of uncollectibles and unbilled services at CHC comes from outpatient services including Public Health. We also increased the assumed 35 percent uncollectibles figure in your Appendix A by 3 percent to 38 percent to account for Medicare, Medicaid and others who do not pay the published or adjudicated fees.

Other Costs Not Recorded (3)

Although during fiscal year 1995 there were just over 94,000 billable lab tests, there were also over 66,000 unbilled lab tests or unbilled primarily accounts for tests performed on non-patient specimens for which no charge is assessed or collected (ex: Q.C. tests, Proficiency tests and repeats). Some of the costs for these tests are paid by Public Health grant programs and do not appear on the CHC financial reports generated by the Department of Finance. Thus, we are unable to estimate the net revenue or net cost associated with these tests.

The cost of regulation and oversight borne by other CHC departments is not included in the CHC Laboratory costs. These costs typically include: utilization review, quality management, medical staff review, Medicare and Medicaid licensure, and infection control. Although there are no real cost savings in this area, these continuing costs that are not recorded in the financial reports could be significant. We cannot provide an amount because CHC does not have a cost allocation system which would provide standard costs to be allocated from other CHC service areas to the Laboratory.

The Appendix A concludes that many of the above mentioned costs will amount to a 3 percent allocation. These are continuing costs, and probably should not be included in Appendix A. However, since we are not clear on the intent here, we agreed and included them in our Exhibit A.

The contract lease price includes the cost of utilities, housekeeping and cleaning, garbage disposal, and security services. At the outset, when John Quinn of Deloitte and Touche was in the process of valuing the price per square foot of CHC space, he came up with a base lease price of \$2.37 per square foot. This price was based on comparable lease prices for hospitals in Guam, and to a limited extent, Hawaii. In addition to this base lease price, the following charges were added per square foot: maintenance, emergency generator, water, incinerator - \$0.67; housekeeping and security - \$0.93 per square foot; cafeteria - \$0.41; and utilities - \$0.19. Thus, an additional \$2.20 per square foot was added to the base lease price of \$2.37 per square foot, to come up with the final lease price of \$4.57 per square foot.

SALE OF THE CHC LABORATORY EQUIPMENT

The audit objective, here, was to determine whether the laboratory equipment was sold at fair market value. Your report raises two issues that are associated with the objective. The first, is that the selling price of the laboratory equipment was nearly the same as the net book value established by Deloitte & Touche. Secondly, much of the equipment was transferred at "zero" net book value instead of useful life or fair market value.

CHC Response:

We believe there is a misunderstanding of what net book value and fair market value mean in this transaction. CHC takes the position that they are essentially the same when used here. However, a proper definition of "Fair Market Value" can be stated as follows:

...the amount at which the property would change hands between a willing buyer and a willing seller when the former is not under compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of the relevant facts...

Similarly, a definition of "Net Book Value" for an asset can be stated as follows:

...The asset's historical cost reduced by any allowances for unrealized losses or depreciation and amortization...

We noted several problems when attempting to value the fixed assets in the CHC Laboratory. They include:

Original cost and purchase information were missing and had to be assumed by Deloitte & Touche LLP in their estimates.

Several vendors or suppliers were contacted and they commented that the equipment in question would be worth nothing on the open market.

Improvements in technology have made some identified equipment obsolete. Much of this equipment would be purchased cheaper today and produce more than the replaced item. As a result, it could possibly cost CHC to dispose of its lab equipment if a buyer could not be found.

The average age of the equipment at the CHC laboratory department is over five years. This is approximately 1.5 years higher than lab departments in five (5) Hawaii hospitals.

In most labs the equipment carries an increasing risk of failure and inaccuracy as it ages. Maintenance, calibration and repair costs for some of CHC's lab equipment have outstripped the original purchase price of the equipment.

The last two items above are clearly associated with significant decreases in value of the equipment at CHC. For example, a Xerox photocopy machine was transferred to CL at "zero value" has since broken down, and been characterized by Xerox as obsolete and unrepairable. Accordingly, we believe that by considering these factors, it was prudent not to use a salvage value for the depreciation of the lab equipment. In addition, if a private company were depreciating the same assets, they would most likely utilize an accelerated depreciation method. This would have the effect of reducing the estimated useful life of the lab equipment to a more realistic three (3) to five (5) years.

It should not be assumed that Clinical Labs-Hawaii would pay a higher price for the equipment. In the report (page 6) it was stated that Clinical Labs-Hawaii is using some of the fully depreciated equipment. We believe they would not have purchased some of the equipment had a "package deal" not been arranged in the contract. Further, we believe that selling the equipment on a piece-by-piece basis would not have yielded any more than the "one-price for all" approach taken.

We do not agree with the recommendation that the lab equipment should have been leased. CHC would assume yet older equipment at the end of the lease and would gain no benefit to retaining title to the equipment during the lease since most of the equipment is obsolete. Also, it cannot be assumed that Clinical Labs would lease equipment that it had no control of regarding service contracts, nor interest in reagent rental obligation between CHC and a vendor.

Although we do agree with the recommended approach to sell assets at their fair market value, we cannot agree that there is a material difference between the fair market value of the lab equipment and the so-called net book value determined for this transaction.

In addition, in our Exhibit A you will find that we increased the estimated yearly replacement costs to include air conditioning and other major facility repairs and improvements that have been delayed due to budget constraints. We also noted that your Appendix A does not include a one-time gain of \$165,421 (Page 1, our note 6) for the sale of the lab equipment, furniture and fixtures. Similarly, it does not include a one-time gain, or cost recovery, of \$194,078 (also Page 1 and our note 6) for the sale of supplies, reagents and materials.

EFFECT OF PRIVATIZATION ON THE COST OF LABORATORY SERVICES

The audit objective associated with this topic was to determine if the privatization will increase the cost of laboratory services in the CNMI. The report further stated in (page ii) that the general goals should ensure that privatization does not cause an increase in the cost of services.

CHC Response:

Three (3) issues are addressed in this response. They are:

- . Creating a private monopoly and its impact, if any
- . Promoting competition
- . Creating a regulatory mechanism to protect against price increases

Creating A Private Monopoly

CLH is not a monopoly of the CNMI. FHP and Saipan Health Clinic have labs and can compete with Clinical Labs- Hawaii. The delivery system in the CNMI is not unlike that of a small (county) hospital in the farm belt of the U.S. where they are the only facility within a 200 miles radius.

Prior to the December 11, 1995 privatization of laboratory services the CHC Laboratory operated as a government monopoly in the CNMI. However, whether it is a private or government monopoly should not be the issue. Rather, as a government run entity was it efficient and providing the best possible service to the general public? The fact is, CHC's pre-privatization laboratory operations were:

Operating with outdated equipment that was no longer state-of-the-art and incapable of performing many of the tests requested. Accordingly, the number of tests sent to outside and off-island lab services was excessive and costly. CHC remains today with an outstanding debt of approximately \$250,000 to lab services companies in Hawaii, including Diagnostic Laboratory Services of Hawaii (DLS).

Constrained by budget cuts and delays in capital improvements for facilities. Requests for new equipment and facility improvements have routinely been denied during the past three (3) to four (4) years because of other CNMI Government priorities and shrinking revenues. CHC lab services would require approximately \$150,000 today to expand and renovate its facilities to meet the volume and needs of the people of the CNMI.

Experiencing staffing problems. The CHC Laboratory (as with all CHC departments) frequently cannot fill key technical and professional positions with local hires. As a result, the positions remain vacant for extended periods of time while CHC resorts to expensive off-island recruiting of experienced staff, or in the Lab's case, also sends more tests outside for processing. Turnover and contract hires have created problems in staff continuity and consistency in operations.

Lacking automated information systems support. The CHC Laboratory, like many other departments, needs an automated system for accounting and clinical procedures support. Of course, with the privatization, CHC has avoided the need to purchase a computerized lab billing and procedure/statistics support system. Based on their previous systems requirements work at CHC, Deloitte & Touche LLP estimates this savings to be approximately \$150,000. However, it was not included in the calculations because a system for CHC has yet to be purchased.

We believe that quality of service is more important than any issue, whether or not we categorize the Laboratory department at CHC as a public or private monopoly. Delivery of quality service can be effectively realized in a monopoly or in a free market environment.

Clinical Labs of the CNMI uses Clinical Labs of Hawaii as a reference lab; those tests not performed onsite at Clinical Labs of the CNMI (approximately 30% of orders) are then referred off island to CLH. It is incorrect to say that most of the testing is sent to Hawaii. Tests are referred because it may be more economical to do so and it allows for best possible service to be offered.

Cost/Benefit Analysis

Laboratory services departments in a hospital such as CHC cannot be all things to all people. There must be a cost/benefit derived from purchasing equipment and performing certain procedures. At CHC, in the past, we purchased equipment and made the choices on whether to send-out or process in-house through a rigorous analysis of the needs and the costs involved. Some procedures do not have sufficient volume to warrant in-house processing. Others require specific skills and equipment that may not be cost-effective for CHC to employ in-house.

Accordingly, we consciously elected to not do certain procedures at CHC. This, of course, presented opportunities for others to enter the lab services market in the CNMI by either locating on-island, or by providing service from off-island locations such as Guam and Hawaii.

The OPA's findings contained only soft figures and may be argued either way. They do not provide sufficient hard numbers in which a true cost analysis can be arrived at.

While it may be true that the government gave up a potentially profitable activity within the hospital, OPA cannot categorically say that it is more profitable to maintain the laboratory than to privatize it and still manage to provide the quality of service expected of an efficient laboratory unit for the following reasons:

- The hospital nor the Department of Finance, which has the legal responsibility for billing and collections have an acceptable accounting system in place in order to prepare a profit and loss analysis.

- The entire government service was never driven by a profit motive and therefore there is no incentive to develop and establish an accounting system to accommodate a profit/loss recording system.

- The current operation of the laboratory, under the government system, is not even a break even venture due to the following:

- Inadequate accounting system (Fund accounting);
- Inadequate computer support to capture and account for all billable cost for services;
- No assurance of payment for all services provided as a result of the law which states that "no one may be denied services based on his ability to pay", as well as assurance that services will be paid at cost by all third-party payors.

- Traditionally, the laboratory operation should be profitable; however, under the current system where the hospital services continue to be under a line department and the Department of Finance continues to have the legal responsibility over the billing and collections, and as long as all collections continue to go into the general fund for redistribution, the laboratory would never be at a break-even or a profitable venture for the hospital.

Regulation and Certification

Establishing and providing clinical laboratory services is also regulated by U.S. federal (Medicare) rules and private health care industry organizations that set standards and operating guidelines. CHC and Clinical Labs-Hawaii are both included in these statutory and industry regulating mechanisms. As a result, when CHC operated the laboratory department, it was subject to restrictions on the types of procedures that were allowed to be processed in-house. As you noted in the report (page 8) Tinian and Rota clinics are limited in their certification. Limited certification, as is still the case for the lab under Clinical Labs - Hawaii, is restricted by certification and requires

that certain tests be processed off-island, possibly these restrictions mean tests are not done as cost-effectively as they could be otherwise.

CHC management believes the quality of care is the most important factor and that it has higher priority than organization structure or political status. Monopolies in the Micronesia region are commonplace and can be beneficial and efficient. We regard the privatization as a positive move for CHC's delivery of care.

Promoting Competition (5), (7)

By assisting Clinical Labs-Hawaii with their entry into the market, CHC can play a key role in increasing competition among labs, pharmacies and other traditional institutional functions in the health care systems in the CNMI, Micronesia and Guam. Our analysis also proves that it can be done at a net benefit to the CNMI Government. Our Exhibit A shows that the net annual benefit to the CNMI Government is estimated to be \$200,832. By including the one-time advantages, the first year will produce overall benefits of over \$300,000 and five (5) year benefits of over \$1.1 million.

Market Forces

Market forces are important in the consideration of privatization of lab services. If Clinical Labs-Hawaii raises their prices which they have not yet done, insurance companies can pass the costs on to employers and consumers or reduce the amount of coverage for services. The insurance companies will always strive to keep costs down. As a result, the provider (Clinical Labs-Hawaii) will probably negotiate contracts with the insurance companies that define the price and level of service. Also consider the reimbursement statutes of Medicare which in many cases drives price list as does competition. There are other options. This same scenario can be seen throughout the United States as the health care industry moves to more Health Maintenance Organizations (HMO's) and capitated contracts to contain costs. In addition, CHC can send tests to Guam or Hawaii if we believe it to be less expensive. There is no exclusive or mandatory use clause in the contract.

Regulating Price Increases

In the health care industry, regulating price increases can be done effectively without establishing a commission or other regulatory body that adds cost to the delivery of care. Health care in the United States is already highly regulated and has built in controls for cost containment. Many insurers have adopted DRG's, community weighted averages, RBRVS value scales and other mechanisms to standardize and contain costs. Some of these U.S. standards and regulations in place also apply to CHC and the CNMI and the lab services used by CHC and Clinical Labs-Hawaii. We believe it is not necessary and would be unproductive and costly to create a regulatory agency.

On page 9 of the draft audit report, OPA states that CL-CNMI will be free to raise prices because no cost controls were included in the contract signed between CL-CNMI and DPH. More specifically, OP states:

The contract signed by DPH and CL-CNMI did not provide for any control of the rates of laboratory tests that would be charged by CL-CNMI. The contract only required CL-CNMI to maintain its fees at an "affordable" level, but did not define what is "affordable."

In addition, the contract did not include provisions to monitor the fees, such as periodic reports on laboratory rates or consultation with and approval by DPH of proposed increases in fees that will be charged to patients. Since there are no major competing providers of laboratory services in the CNMI, DPH should have established a regulatory scheme to control the cost of laboratory services after privatization.

DPH does not agree that it would have been appropriate to include costs controls in the contract executed between CL-CNMI and DPH. In fact, if DPH had required such cost controls to be included in the contract, DPH may have later been subject to a lawsuit arising from its improper exercise of the state police powers resulting in a violation CL-CNMI's Constitutional rights.

As a private business, CL-CNMI has the general right to make business decisions free from government interference and restraint. This includes the right to determine the prices it needs to charge for its services in order to continue in operation and make a reasonable profit. This principle is emphasized in the case of Dr. G. H. Tichenor Antiseptic Co. v. Schwegmann Brothers Giant Super Markets, 231 LA 51, 90 So.2d 343 (1956), in which the court stated, "[i]t also cannot be seriously disputed that the right of an individual to engage in a lawful business and to fix the price at which he disposes of his own property is guaranteed by the due process clauses of the State and Federal Constitutions." 90 So.2d at 348. See also Nebbia v. People of the State of New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934) ("Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference.") The Schwegmann Brothers court went on to explain that this private right would only be outweighed in those instances where the Legislature determined that it was in the public interest to regulate the private business. Specifically, the court reasoned:

This inherent right yields only in instances where its untrammelled exercise clashes with the general public interest and in such cases the Legislature may exert its police power in the interest of the general welfare. But the power to regulate private business by coercive price fixing is a legislature function which may be invoked only under special circumstances, that is, when the measure is seen to have a reasonable relation to the public welfare and is neither arbitrary nor discriminatory. Nebbia v. People of the State of New York, 291 U.S. 502, 54 S.Ct. 505, 78 L.Ed. 940 (1934). (Emphasis added)

Id.

As is made clear by the Schwegmann Brothers court, the ability of the government to regulate the prices of a private enterprise is derived through the police power of the Legislature. It is this police power which enables the Legislature to establish economic policy and control industry as needed within the state. As the court in Max Factor & Co. v. Kunsman, 5 Cal. 2d 446, 55 P.2d 177,183 (1936) explained:

Under its police power, the state, in a proper case, has the power, acting in the interests of the general welfare, to regulate property and contract rights, and this includes, of course, the power to regulate the right of free bargaining. . . The fact that a statute limits the rights of the owner of property, lowers its value, or limits its use, or limits the right of free bargaining in other ways, does not, of itself, determine the validity of the enactment. There are innumerable illustrations of statutes, passed under the police power, which interfere with the right of free bargaining which have been upheld on the theory the regulation is in the public interest. There are limits to this power, of course, but within those limits the Legislature is supreme. These limits cannot be fixed by precedent. As the state progresses, the police power, within reason, develops to meet the changing conditions. (Emphasis added)

Finally, in the cornerstone case of Nebbia v. People of the State of New York, at 54 S.Ct. 516, the United States Supreme Court clearly enunciated the manner in which the Legislature may exercise its police power to regulate a private industry:

So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce the policy by legislation adapted to its purpose. . . Times without number we have said that the Legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom of the law, it may not be annulled unless palpably in excess of legislative power. . . If the lawmaking body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the Legislature to be fair to those engaged in the industry and to the consuming public.

See also, Highland Farms Dairy, Inc. v. Agnew, 300 U.S. 608, 57 S.Ct. 549, 551 (1937).

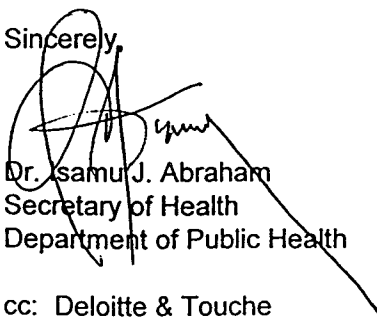
Applying these principles to the privatization of the CHC laboratory, it is clear that if some time in the future, the Legislature determines that the operations of the CL-CNMI laboratory are not in the public interest, because the prices charged for laboratory services are too high and thereby preclude a significant number of CNMI residents from accessing laboratory services, the Legislature may, pursuant to its police powers, enact a statute or create a regulatory body to control the prices charged by CL-CNMI. On the date that the contract was

executed by CL-CNMI and DPH, there had been no finding by the Legislature that it was in the public interest to control the prices charged by CL-CNMI. Without such a finding, there would have been no reasonable basis for DPH to attempt to restrict CL-CNMI's due process right to freely enter into contracts for services provided to its customers.

Furthermore, if DPH, an executive branch department, had exercised the Legislative police power of price control without an appropriate delegation of power from the Legislature, it would have acted in contravention of the separation of powers doctrine. See 16A Am. Jur. 2d Constitutional Law §375 - §377 and §437 (1994). Currently, DPH has only been delegated the power to administer all government-owned health care facilities. 1 CMC §2603. This is a very general delegation of power which is insufficient to enable DPH to regulate the prices charged by CL-CNMI. In addition, CL-CNMI is not a government-owned health care facility, so it is unlikely that DPH could exercise authority over CL-CNMI pursuant to this statutory provision.

As discussed above, Medicaid regulations and price controls established by private insurance companies will restrict the prices charged by CL-CNMI. Nonetheless, DPH acknowledges that at some time in the future, it may be necessary to specifically control the prices charged by CL-CNMI for laboratory services. However, the decision to control prices will be that of the Legislature, or upon proper delegation of power, an executive branch entity authorized to act on behalf of the Legislature. DPH did not have the power to establish price controls at the time the laboratory services contract was executed. It would have therefore been inappropriate and unlawful for DPH to include provisions in the contract to monitor CL-CNMI's fees, or to approve CL-CNMI's fee schedules. When there has been no finding by the Legislature that CL-CNMI's operations are detrimental to the public interest thereby creating a need for regulation, CL-CNMI's Constitutional right to operate its business, enter into contracts with its customers, and establish the prices it will charge for the services it provides must remain untrammelled.

Sincerely,



Dr. Samuel J. Abraham
Secretary of Health
Department of Public Health

cc: Deloitte & Touche

CHC REVENUE & EXPENSE COMPARISON		EXHIBIT A	
DIRECT OPERATION VS PRIVATIZATION			
Estimated Annual Revenue			
Number of Billable Tests		94,023	
Average Unit Price Per Test		25	(1)
Estimated Gross Revenue		<u>2,350,575</u>	
Less: Allowance for Uncollectible Accounts & Contractuals		893,219	(2)
Estimated Net Revenue		<u>1,457,357</u>	
Less: Identifiable Expenses			
Total Direct Expenses	1,297,093		
Total Indirect Expenses	14,637	<u>1,311,730</u>	(3)
Estimated Net Profit Before Non-Recurring Items		145,627	
Estimated Yearly Replacement Cost of Laboratory niture and Equipment		<u>150,000</u>	(4)
Estimated Excess/(Deficit) Revenue Over Expenses		<u>(4,374)</u>	
PRIVATIZATION			
Annual Revenue From Leases		(186,700)	
NET ANNUAL ADVANTAGE OF PRIVATIZATION		<u>191,074</u>	(5)
Plus: Cost Recovery Items:			
Supplies, Reagents Etc.		194,078	(6)
Sale of Furn., Fixtures & Equipment		165,421	(6)
Less: Amounts Owed to Outside Lab Services		(250,000)	(6)
TOTAL FIRST YEAR ADVANTAGE OF PRIVATIZATION		<u>300,573</u>	(7)

CHC TOP TEN PROCEDURE ANALYSIS										Exhibit B
For Fiscal Year Ended September 30, 1994										
Description	Rank	T-4		Revenue	No. of Procedures	CHC Avg. Unit Price	CLH FEE	CHC FEE	Pct of All Procs.	
Urinalysis	1	81	000	85,243.44	6,689	12.74	8.82	12.00	7.9%	
Chem 7	2	80	007	364,588.24	5,881	61.99	35.28	45.00	7.0%	
CBC Hemogram	3	85	027	74,316.00	5,605	13.26	24.99	12.00	6.6%	
CBC & Platelet	4	85	023	51,507.00	3,246	15.87	16.17	15.00	3.8%	
Urine	5	87	088	61,420.00	2,857	21.50	26.46	20.00	3.4%	
Glycose	6	82	947	54,282.00	2,844	19.09	14.70	15.00	3.4%	
Pap Smear	7	88	150	47,474.60	2,608	18.20	17.85	17.00	3.1%	
Eosinophil Count	8	85	025	65,285.55	2,537	25.73	20.90	15.00	3.0%	
Sensitivity-Routine	9	87	184	58,975.00	2,313	25.50	27.93	25.00	2.7%	
Vaginal	10	87	070	74,249.24	2,225	33.37	35.28	31.00	2.6%	
Total				937,341.07	36,805	24.73	22.84	20.70	43.6%	
				38.7%	43.6%					
All Procedures				2,421,694.64	84,489					
Factor				CHC	CLH					
High Fee Amount				45.00	35.28					
Low Fee Amount				12.00	8.82					
Avg Fee Amount				20.70	22.84					
CHC FEES Greater				3						
CLH FEES Greater					7					
CHC Unit Price >				5						
Range of Greater CHC Unit Price over CLH				0.35	26.71					

APPENDIX C

STATUS OF RECOMMENDATIONS

Recommendations	Status	Additional Information Required
1. Prepare a profit and loss analysis to determine if the privatization will result in an overall financial benefit to the CNMI Government. The analysis should determine if the returns from selling an operation or activity will exceed the returns from government ownership.	Open	Before privatizing any operations of CHC, the DPH Secretary should prepare a profit/loss analysis comparing the returns from government ownership with those from privatizing the operation. The analysis should justify the need to privatize such operation of CHC and be made available to interested parties such as the Legislature.
2. Establish the fair market value of assets to be sold by determining the actual worth of the items instead of using book values.	Open	During the planning stage of privatizing any operation of CHC, the DPH Secretary should prepare a valuation that shows the fair market value of any assets to be sold. Such valuation should be based on the actual value of the assets.
3. Establish regulatory mechanisms to control the cost of services being privatized if a private monopoly or near-monopoly environment is being created.	Open	The DPH Secretary should provide us documents showing that it is monitoring the rates charged by CL-CNMI, such as a schedule of current rates and notification of price increases, if any.