

# United States Senate

WASHINGTON, DC 20510

November 07, 2011

David King  
CEO  
Laboratory Corporation of America  
358 South Main Street  
Burlington, N.C. 27215

Dear Mr. King:

As the Ranking Member of the Senate Judiciary Committee and Chairman of the Senate Finance Committee, we take seriously our responsibility to protect the interests of our nation's Medicare and Medicaid beneficiaries and the federal health care programs from waste, fraud, and abuse.

We are writing because of reports that Laboratory Corporation of America (LabCorp) and others may be engaged in a practice commonly referred to as "pull-through." "Pull-through" involves the alleged offering by LabCorp for discounted or below cost pricing to managed care organizations (MCOs), such as health insurance companies, in exchange for those MCO's directing their in-network physicians to refer or arrange for the referral of other laboratory testing business, including testing for Medicare beneficiaries, to LabCorp. Congress passed the Federal Anti-Kickback law to protect patients and the Federal health care programs from potential influence of financial arrangements on health care decisions.

The Department of Health and Human Services Office of Inspector General has previously issued advisory opinions expressing concerns about the "pull-through" practice, noting that discount arrangements such as those at issue here are "particularly suspect."<sup>1</sup> In fact, LabCorp is currently in the middle of a lawsuit in the Southern District of New York regarding this very issue.<sup>2</sup>

In order to better understand this practice, please provide the following documents by December 1, 2011:

1. Copies of LabCorp's lab services agreement with its five largest MCO clients, including all attachments and exhibits.

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<sup>1</sup> OIG Advisory Opinions, available at <http://oig.hhs.gov/fraud/docs/advisoryopinions/2004/ao0416.pdf>, [http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99\\_13.htm](http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99_13.htm), and [http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99\\_2.htm](http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99_2.htm).

<sup>2</sup> "LabCorp COO Threatened Staff Who Didn't Assist Kickback Scheme, Suit Claims," *supra*, note 1.

2. Copies of all correspondence between LabCorp and each of those five largest MCO's relating to the negotiation of those contracts generally, and with respect to negotiation of the pricing arrangements for those contracts specifically.
3. All presentations to the Board of Directors regarding the contracts and correspondence described in request 2.
4. All presentations to the Board of Directors that refer to or describe "pull-through" practices.
5. All presentations at sales meetings that refer to or describe "pull-through" practices.
6. All reports that track "pull-through" business, by payer, client or otherwise.
7. Correspondence with physicians regarding their utilization of laboratories other than LabCorp.
8. Financial data showing lab revenue from each of the following payor groups and total revenue in each of the last five years. Also, show the revenues as a share of the total.<sup>3</sup>  
Specifically:
  - a. Medicare revenue as a share of total revenue.
  - b. Medicaid revenue as a share of total revenue.
  - c. Commercial payor revenue as a share of total revenue.
  - d. "All other" revenue as a share of total revenue.
9. Financial data showing the revenues in 8a-d as a share of total profits in each of the last five years.
10. Data showing lab volume from each of the following payor groups and total lab volume in each of the last five years. Also, show the volumes as a share of the total.<sup>4</sup>  
Specifically:
  - a. Medicare lab volume as a share total lab volume.
  - b. Medicaid lab volume as a share of total lab volume.
  - c. Commercial lab volume as a share of total lab volume.
  - d. "All other" lab volume as a share of total lab volume.
11. Financial analysis or reports generated in connection with the United Healthcare account, including analyses used in connection with any bids for that account.
12. Pricing schedules comparing the price per test for the ten most commonly ordered lab tests, showing the price per test charged to each of the five largest MCO clients, and the Medicare payment per test.
13. All documents you have previously submitted regarding "pull-through" practices in response to subpoenas or similar document requests received from the Attorney General of the State of California, to the extent not already provided in the requests above.

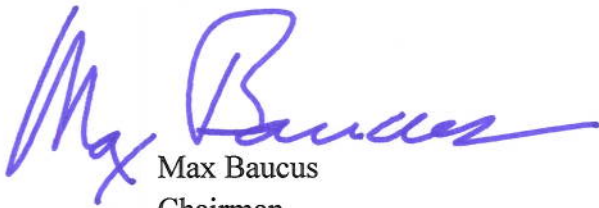
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<sup>3</sup> The shares should total 100 percent.

<sup>4</sup> The shares should total 100 percent.

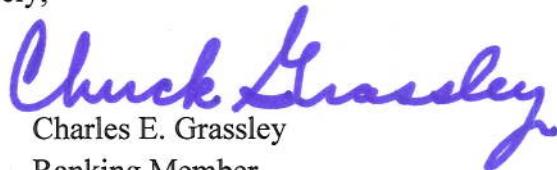
In cooperating with the Committees' review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committees.

We look forward to hearing from you by no later than December 1, 2011. All documents responsive to this request should be produced electronically, on a disc, in searchable PDF format. If you have questions regarding this request, please contact Erika Smith with the Judiciary Committee at (202) 224-5225 and Christopher Law with the Finance Committee at (202) 224-4515.

A handwritten signature in blue ink, appearing to read "Max Baucus", with a stylized, flowing script.

Max Baucus  
Chairman  
Committee on Finance

Sincerely,

A handwritten signature in blue ink, appearing to read "Chuck Grassley", with a stylized, flowing script.

Charles E. Grassley  
Ranking Member  
Committee on the Judiciary