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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

RUSSELL SULLIVAN, STAFF DIRECTOR
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July 23, 2008

Via Electronic Transmission

Dr. John Mendelsohn
President
University of Texas M.D. Anderson Cancer Center
1515 Holcombe Boulevard
Houston, Texas 77030

Dear Dr. Mendelsohn:

For more than five years, first as Chairman of the U.S. Senate Committee on Finance and now as its Ranking Member, I have reviewed the practices of tax-exempt organizations, including tax-exempt hospitals. The Committee has exclusive jurisdiction in the Senate over federal tax policy, including the policy governing the billions of dollars donated to and controlled by tax-exempt organizations. In addition, the Committee has exclusive jurisdiction over Medicare and Medicaid. As Ranking Member, I am working to see that tax-exempt hospitals provide benefits to the public commensurate with benefits and subsidies they receive.

Tax-exempt hospitals, including M.D. Anderson Cancer Center, receive tax subsidies from federal, state, and local governments. In addition, tax-exempt hospitals receive an exemption from income, property and sales taxes, the ability to receive tax-deductible contributions, and the ability to raise capital through the issuance of tax-exempt bonds. M.D. Anderson falls under the umbrella of a government institution, the University of Texas; therefore it is not required to file a Form 990, *Return of Organization Exempt from Income Tax*, with the IRS.

M.D. Anderson is also a participant in the Medicare and Medicaid programs. Notably, it is one of only twelve hospitals in the nation that requested and received a special exemption from the Medicare Prospective Payment System ("PPS"). This exemption allows M.D. Anderson to be paid by Medicare for inpatient treatment on a reasonable cost basis, subject to certain limitations, rather than under the PPS system, which only pays acute care hospitals a prospectively determined fixed payment for each discharge. In addition to this more generous reimbursement policy, because of this special exception, Medicare also reimburses for allowable capital costs at M.D. Anderson on a reasonable cost basis.

M.D. Anderson is a designated comprehensive cancer center according to the National Institutes of Health, through the National Cancer Institute. According to the National Cancer Institute's website, this designation secures a broad array of federal and non-federal funding sources, such as grants and contracts focused on research, prevention and control, training and education; state awards; and private donations.

Given all of the federal benefits M.D. Anderson receives, I am troubled by the April 28, 2008, *Wall Street Journal* article "Cash Before Chemo: Hospitals Get Tough" which chronicled the challenges faced by one of M.D. Anderson's patients, Lisa Kelly. This patient also described her experience to the Finance Committee at a hearing on health reform held on June 10, 2008.

The Wall Street Journal story reported and Ms. Kelly testified on June 10, 2008, that she was initially diagnosed with leukemia by her personal physician in Lake Jackson who immediately referred her to M.D. Anderson because of its superior facilities. When she scheduled her first appointment, she was instructed to bring a cashier's check for \$45,000 with her to the appointment because M.D. Anderson would not honor her insurance policy. The article went on to illustrate some disturbing practices that reportedly occurred; including an instance where Ms. Kelly's chemotherapy IV would not be changed until her husband came back with proof of payment.

I have reviewed the Statement for the Record submitted by M.D. Anderson for the Senate Finance Committee's June 10, 2008, hearing. While I appreciate M.D. Anderson's commitment to research and training, the statement raises additional questions. In order to understand M.D. Anderson's operations and to understand whether Lisa Kelly's experience is an exception or the norm, I request responses to the questions below. For each response, please repeat the enumerated request and follow with the appropriate answer.

General

1. If M.D. Anderson is a legal entity separate from the University of Texas, please provide copies of its articles of incorporation and by-laws.
2. List all of the facilities associated with M.D. Anderson in the United States and abroad. Indicate the jurisdiction in which each facility is incorporated, if applicable.
3. Provide copies, if applicable, of M.D. Anderson's annual report and audited financial statements if not included in the annual report.
4. Provide a list of M.D. Anderson's outstanding tax-exempt bond issuances and indicate the purpose for which they were issued.

Financial Assistance

Information about M.D. Anderson's financial assistance program does not appear to be available on your website. Please answer the following questions related to M.D. Anderson's financial assistance policy or indicate that no such policy exists.

5. If your hospital has a written financial assistance policy, provide a copy or, if not, explain why no such policy is in place. If there is such a policy, please provide each previous iteration of the policy and indicate when it was last updated.
6. Please indicate whether the policy provides for free or discounted care to any patients and provide a description of the criteria for eligibility, including income or asset thresholds.
7. Does M.D. Anderson budget amounts for free or discounted care under this policy? If yes, answer the following.
 - a. Please provide data on the extent to which M.D. Anderson's actual expenses for such care for each of the last five years exceeded, met or did not exceed the budgeted amount.
 - b. Was the organization unable to provide free or discounted care during any of the last five years to patients who might otherwise be eligible under the policy because of such budget constraints? If so, please indicate which year(s) patients were not able to receive free or discounted care, and provide a detailed breakdown of the amounts involved and the number of patients affected.
8. Does M.D. Anderson prominently display the financial assistance policy and otherwise promote the policy?
 - a. If yes, describe where this policy is displayed.
 - b. What other programs and activities, if any, does M.D. Anderson conduct to promote the policy and where and how often are these programs and activities conducted?
9. Are admissions or billing staff required to explain the financial assistance policy to patients who would qualify for financial assistance? If yes, discuss whether such explanations are provided during initial consultations, upon admission, when first billed or at another time.
10. Does M.D. Anderson train staff on the financial assistance policy? If yes, please describe what this training entails, which staff receives this training and how often this training occurs.

Uncompensated Care & Charity Care

Per the Statement for the Record, in FY07, M.D. Anderson's uncompensated cost for indigent care and Medicaid programs was approximately \$66 million and the uncompensated care for patients covered by Medicare and other governmental agencies was approximately \$89 million.

11. Please provide a detailed breakdown of the uncompensated care provided by M.D. Anderson in each of the previous five years and also provide a breakdown of how much of M.D. Anderson's uncompensated care costs are attributed to bad debt, variations from Medicare or Medicaid reimbursements as compared to cost of providing care, or free or discounted care.

12. Describe M.D. Anderson's methodology for determining or calculating costs when determining variations from Medicare or Medicaid reimbursements from costs.
13. What are M.D. Anderson's total reimbursements from Medicaid for each of the last three years and what are the costs associated with such reimbursements?
14. What are the M.D. Anderson's total reimbursements from Medicare for each of the last three years?
 - a. What is the amount of Medicare allowable costs related to the total Medicare revenue for each of the last three years?
 - b. Explain the extent to which any shortfall between Medicare reimbursements and Medicare allowable costs is deemed "charity care" as implied in the Statement for the Record.
15. Does M.D. Anderson participate in any other means-tested government health programs? If yes, list each program and their respective reimbursements and costs for each of the last three years.
16. Provide Schedule S-10 of the Medicare cost report for the past three years, if completed.
17. The "UT M.D. Anderson Cancer Center Compact for FY 08- FY 09" indicates an amount for "Uncompensated Health Care According to the State Definition" of \$220 million for FY06. Please explain how this amount is calculated including whether this amount is based on costs or charges, what is included in this amount and what is excluded in this amount.

Insurance Coverage

In your Statement for the Record to the Committee, you comment on Ms. Kelly's insurance coverage. To better understand what she would pay if she had better insurance, please provide the following information.

18. Please list the top five insurance companies (by gross charges) with which M.D. Anderson has contracts. Please include the following:
 - a. The average discount from chargemaster rates provided to them.
 - b. An estimate of the average premiums patients must pay to participate in these plans, if known.
19. Describe how M.D. Anderson chooses which insurance companies with which it will contract.
20. Explain how your hospital calculates charges for patients without insurance, limited insurance or with insurance plans in which M.D. Anderson does not participate.
 - a. Indicate the criteria for determining discounts, if any, for such patients.

- b. Explain how, if at all, your hospital assists patients in seeking reimbursements from insurance companies with which you do not have a contract.

Billing & Collections

Please answer the following questions regarding your billing and collections policies.

- 21. Is M.D. Anderson's "upfront payment policy" a written policy? If yes, provide a copy of the policy as it is in effect today plus each iteration of this policy over the previous three years.
- 22. When was the policy first implemented?
- 23. How many patients of M.D. Anderson were required to provide upfront payments since the policy was implemented and what was the amount of the upfront payment in each case?
 - a. Provide the number of uninsured and underinsured patients who have been subject to this policy this year and in each of the preceding three years.
 - b. Describe whether the need for immediate treatment is a factor in considering whether an upfront payment is collected before beginning treatment.
- 24. Does the policy provide for waivers from the requirement of an upfront payment? If yes, answer the following.
 - a. What are the criteria for such a waiver?
 - b. How many patients were granted such waivers since the policy was implemented and how much money was waived in each case?
 - c. Who decides whether a waiver will be granted?
- 25. What is M.D. Anderson's policy regarding billings and collections staff entering a patient's room while the patient is undergoing examination? Please provide a list of the instances in which this has occurred in the previous three years.
- 26. What is M.D. Anderson's policy or procedure for billing and collection staff for informing patients of other tax-exempt organizations that can assist patients manage their medical debt?
- 27. What is M.D. Anderson debt collection policy? Please provide a copy of the policy as it is in effect today and all previous iterations of the policy.
 - a. What is the policy on the collection practices to be followed for patients who are known to qualify for financial assistance?
 - b. What criteria are used to determine whether to refer a patient account for collection?
 - c. Does your hospital contract with third party collection agencies? If so, provide copies of your contracts with third party collection agencies over the previous three years.
 - d. What is M.D. Anderson's policy for negotiating bills with patients prior to referring the patients to a collection agency?

- e. How many lawsuits has M.D. Anderson, or its hired collection agencies, filed against patients for the preceding five calendar years. For each lawsuit, please provide information on the reason for the lawsuit, the amount demanded, the disposition of the lawsuit and the amount recovered, if any.
28. Please provide the total amount and percentage breakdown of the accounts referred to hired collection agencies that were closed due to receipt of payment in each of the previous three years.

Compensation & Transactions with Interested Persons

29. Provide a list of all officers, directors, trustees and key employees and the top five highest compensated employees other than officers, directors, trustees and key employees.
- a. List the total compensation reported on Forms W-2 for each individual for the past three years.
 - b. Provide the total amount of expense reimbursements provided for each individual for the past three years and indicate how much, if any, of such reimbursements were included in Forms W-2 for each person for each year.
 - c. For any single reimbursement in excess of \$2,500 provide a detailed explanation of the nature and reason for such reimbursements.
30. Does M.D. Anderson have a written conflict of interest policy? If yes, provide a copy and answer the following.
- a. If the policy does not address loans or business relationships, explain what policies, if any, M.D. Anderson has covering these?
 - b. What procedures does your hospital use to monitor and enforce the policy?
31. Does M.D. Anderson have a written policy governing the contracts, joint ventures or other financial arrangements with officers, directors, trustees, key employees or other physicians? If yes, please provide a copy of the policy.

Federal Sponsored Research Expenditures

According to the "UT M.D. Anderson Cancer Center Compact for FY 08 – FY 09," M.D. Anderson's Federal Sponsored Research Expenditures for 2006 were more than \$182 million. This represents almost 10 percent of the M.D. Anderson's FY06 operating budget of \$1.925 billion.

32. How does M.D. Anderson make the findings from its research generally available to the public?
33. What portion of research funds are used to pay salaries or other compensation of medical staff, including physicians or researchers?
34. Did M.D. Anderson use research funds to invest in, contribute assets to, or participate in a joint venture or other similar arrangements involving (1) officers, directors, trustees, or management officials of M.D. Anderson; (2) physicians who are employed

by or have staff privileges at M.D. Anderson or any of its affiliates; or (3) research scientists M.D. Anderson employs or retains as independent contractors? If so, please provide information on the identity of each such individual, the amount of research funds used to invest in, contribute assets to or participate in a joint venture or other similar arrangements, and any gains or losses to date.

35. Indicate at which facilities M.D. Anderson conducts research. If funds are used to conduct research overseas, indicate how the funds are used and how foreign institutions benefit from such research.
36. List all patents and other intellectual property rights M.D. Anderson owns.
 - a. Indicate whether the property rights devolved from M.D. Anderson's own work or were contributed
 - b. For those contributed, indicate by whom and when.

Philanthropy & Fundraising

M.D. Anderson's website also indicates an extensive fundraising activity. The "UT M.D. Anderson Cancer Center Compact for FY 08 – FY 09" references a "Philanthropic Initiative" to raise \$400 million (\$700 million today) over six years. In addition, the Statement for the Record indicates that philanthropy accounted for only 2.6% of the M.D. Anderson's FY07 operating resources. Given an FY07 operating budget revenues in excess of \$2 billion, this would equal over \$55 million in revenues from "philanthropy."

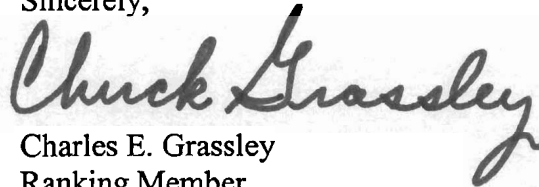
37. Please provide background information on the \$400 (or \$700) million "Philanthropic Initiative" including when it was implemented, what is its mission, to what extent the initiative has met its goals and who manages the initiative.
38. If any portion of the 2.6% reported in the Statement for the Record is from private foundations, provide the source and purpose of such grants.
39. M.D. Anderson's website states that "Gifts to the Annual Fund support a broad range of M.D. Anderson programs including research, equipment purchases, continuing education for faculty, public education through outreach, and patient care."
 - a. Indicate what portion of Annual Fund revenues were dedicated to patient care and how such funds were used for patient care.
 - b. Does your hospital solicit donations for charity care or other financial assistance programs or for providing care for the uninsured or underinsured?
40. M.D. Anderson's website describes an endowment as a "gift in perpetuity to support programs or create fellowships, professorships and chairs" and states that "M.D. Anderson seeks to build a major endowment program that will provide sustained funding for our most promising research projects and leverage for obtaining federal dollars. Endowments can provide broad support for our new institutes or other initiatives or be tailored for more specific programs within certain disciplines."
 - c. Explain why M.D. Anderson does not solicit endowment funds for charity care or other financial assistance programs.

- d. Does UTIMCO manage M.D. Anderson's endowment funds as part of the Long Term Fund or as Separately Invested Funds?
- e. Provide the total value of all assets in M.D. Anderson's endowment funds.
- f. What portion of M.D. Anderson's operating expenses, if any, are covered by endowment funds?
- g. Does M.D. Anderson receive an allocation from any of UT's general endowment funds? If so, how much has M.D. Anderson received during each of the last five years?

Thank you for your cooperation and assistance in this matter. As you know, in cooperating with the Committee's review, no documents, records, data, or information related to these matters shall be destroyed, modified, removed or otherwise made inaccessible to the committee.

Please provide the requested information and documents no later than September 30, 2008. Written responses and all documents responsive to this request should be sent electronically in PDF format to the committee. Any questions or concerns should be directed to Mike Park or Theresa Pattara at (202) 224-4515.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Max Baucus
Chairman, Committee on Finance

GENERAL INSTRUCTIONS

1. In complying with this document request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. In addition, produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party.
2. No documents, records, data or information requested by the Committee shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.
3. If the document request cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.
4. In complying with this document request, respond to each enumerated request by repeating the enumerated request and identifying the responsive document(s).
5. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
6. Each document produced shall be produced in a form that renders the document susceptible of copying.
7. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
8. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, or control.
9. This request is continuing in nature. Any document, record, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
10. All documents shall be Bates stamped sequentially and produced sequentially.

GENERAL DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to the following: memoranda, reports, statistical or analytical reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (E-mail), contracts, cables, notations of any type of conversation, telephone call,

meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disc, or videotape. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “records” is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
3. The terms “relate,” “related,” “relating,” or “regarding” as to any given subject means anything that discusses, concerns, reflects, constitutes, contains, embodies, identifies, deals with, or is any manner whatsoever pertinent to that subject, including but not limited to documents concerning the preparation of other documents.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The

masculine includes the feminine and neuter genders to bring within the scope of this document request any information that might otherwise be construed to be outside its scope.

The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, written, electronic, by document or otherwise, and whether face to face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise. Documents that typically reflect a "communication" include handwritten notes, telephone memoranda slips, daily appointment books and diaries, bills, checks, correspondence and memoranda, and includes all drafts of such documents.