

**FEDERAL ELECTION COMMISSION**  
**FIRST GENERAL COUNSEL'S REPORT**

**MUR 7846**

DATE FILED: October 28, 2020

DATE OF NOTIFICATION: November 4, 2020

LAST RESPONSE RECEIVED: November 24, 2020

DATE ACTIVATED: March 4, 2021

EXPIRATION OF SOL: September 18, 2025

## ELECTION CYCLE: 2020

**COMPLAINANT:** Campaign Legal Center

## **RESPONDENTS:**

Amedisys, Inc. (MUR 7846)  
Senate Leadership Fund and Caleb Crosby in his  
official capacity as Treasurer (MUR  
7846)

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1 **RELEVANT STATUTES  
2 AND REGULATIONS:**

3 52 U.S.C. § 30119(a)  
4 11 C.F.R. § 115.1  
5 11 C.F.R. § 115.2

6 **INTERNAL REPORTS CHECKED:** Disclosure Reports

7 **FEDERAL AGENCIES CHECKED:** None

8 **I. INTRODUCTION**

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10 The Complaints in these matters allege that business corporations

11 violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by making  
12 contributions to political committees as federal contractors.

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15 The other contributor, Amedisys, Inc., denies that it  
16 violated the prohibition on federal contractor contributions. Further, the recipient political  
17 committee deny that they knowingly solicited a contribution from a federal contractor.

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24 Given the small size of Amedisys, Inc.’s federal  
25 contract, we recommend that the Commission exercise its prosecutorial discretion and dismiss the  
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1 Complaint in MUR 7846 as to Amedisys and the recipient committee SLF.<sup>2</sup>

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4 **II. FACTUAL BACKGROUND**

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<sup>2</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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7        The Complaint in MUR 7846 alleges that Amedisys, Inc., a public home healthcare  
8 company with locations across the country, held three federal contracts covering the period  
9 April 20, 2020, through September 30, 2020, at a total value of \$3,897.<sup>19</sup> It alleges that during the  
10 timeframe of these federal contracts, Amedisys, Inc., made a prohibited contribution to SLF on  
11 September 18, 2020, in the amount of \$25,000.<sup>20</sup>

12        In response to the MUR 7846 Complaint, Amedisys, Inc., asserts that the specific corporate  
13 entity that made the contribution to SLF was not Amedisys, Inc., but rather one of its subsidiaries,  
14 Amedisys Holding LLC.<sup>21</sup> Amedisys, Inc., further states that Amedisys Holding LLC “does not  
15 contract with any Amedisys customers, either in the federal government or elsewhere, and is not  
16 seeking any such contracts.”<sup>22</sup> Amedisys, Inc., asserts that its business structure is similar to the

<sup>19</sup>        MUR 7846 Compl. at 2 (Oct. 28, 2020).

<sup>20</sup>        *Id.*

<sup>21</sup>        MUR 7846 Response of Amedisys, Inc. (“Amedisys Resp.”) at 1 (Nov. 30, 2020). *See also* Dun & Bradstreet, Inc. (2021), Amedisys Holding LLC (Corporate Linkage).

<sup>22</sup>        SLF Amended 2020 October Quarterly Report at 36 (Nov. 16, 2020).

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1 business structure outlined in MUR 6726 (Chevron Corp.), noting that Amedisys, Inc., and  
 2 Amedisys Holding LLC are separate business entities, Amedisys Holding LLC does not sell any  
 3 goods or services, and the overall Amedisys, Inc., business enterprise vastly exceeds the \$3,897 in  
 4 federal contracts involving Amedisys, Inc., as disclosed on the USA Spending.gov database.<sup>23</sup> .

5 In its response to the Complaint, SLF states that it was informed by counsel for Amedisys  
 6 Holding that the contributing entity is “Amedisys Holding LLC” and that Amedisys Holding LLC  
 7 does not hold any federal contracts.<sup>24</sup> SLF initially disclosed the contribution from “Amedisys” on  
 8 its 2020 October Quarterly Report filed on October 20, 2020.<sup>25</sup> SLF subsequently amended its  
 9 2020 October Monthly Report on November 16, 2020, replacing “Amedisys” with “Amedisys  
 10 Holding LLC” as the contributor.<sup>26</sup>

11 **III. LEGAL ANALYSIS**

12 **A. Federal Contractor Contributions**

14 A “contribution” is defined as “any gift . . . of money or anything of value made by any  
 15 person for the purpose of influencing any election for Federal office.”<sup>27</sup> Under the Act, a federal  
 16 contractor may not make contributions to political committees.<sup>28</sup> Specifically, the Act prohibits  
 17 “any person . . . [w]ho enters into any contract with the United States . . . for the rendition of  
 18 personal services or furnishing any material, supplies, or equipment to the United States or any

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<sup>23</sup> Amedisys Resp. at 2. In MUR 6726, where Chevron Corporation made a contribution and Chevron U.S.A., its subsidiary, was a federal contractor, the Commission found no reason to believe where the parent and subsidiary were separately incorporated, most of the companies’ directors and officers did not overlap, and the contributor had sufficient funds not derived from the revenue of subsidiaries with federal contracts. *See* Certification MUR 6726 (Chevron Corp.) (Feb. 25, 2014); Factual and Legal Analysis at 6-7, MUR 6726.

<sup>24</sup> MUR 7846 Response of SLF (“SLF Resp.”) at 1 (Nov. 30, 2020).

<sup>25</sup> SLF 2020 October Quarterly Report at 36 (Oct. 20, 2020).

<sup>26</sup> SLF Amended 2020 October Quarterly Report at 36 (Nov. 16, 2020).

<sup>27</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>28</sup> 52 U.S.C. § 30119(a); 11 C.F.R. § 115.2.

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1 department or agency thereof" from making a contribution "if payment for the performance of such  
2 contract . . . is to be made in whole or in part from funds appropriated by the Congress."<sup>29</sup> These  
3 prohibitions begin to run at the beginning of negotiations or when proposal requests are sent out,  
4 whichever occurs first, and end upon the completion of performance of the contract or the  
5 termination of negotiations, whichever occurs last.<sup>30</sup> And these prohibitions apply to a federal  
6 contractor who makes contributions to any political party, political committee, federal candidate, or  
7 "any person for any political purpose or use."<sup>31</sup>

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<sup>29</sup> 52 U.S.C. § 30119(a)(1); *see also* 11 C.F.R. part 115.

<sup>30</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.1(b).

<sup>31</sup> 52 U.S.C. § 30119(a)(1); 11 C.F.R. § 115.2.

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1                   the MUR 7846 Complaint, Amedisys, Inc., claims that the contribution was made not  
 2 by it as reported by the recipient committee, but by a related entity. Specifically, Amedisys, Inc.,  
 3 says it is the parent company, and asserts that the actual contributor was one of its subsidiaries that  
 4 was not a federal contractor.

5                   With respect to a parent company that has an ownership interest in a federal-contractor  
 6 subsidiary, the Commission has recognized that such parent company may make a contribution  
 7 without violating section 30119 if it is a “separate and distinct legal entity” from its federal-  
 8 contractor subsidiary and “has sufficient revenue derived from sources other than its contractor  
 9 subsidiary to make a contribution.”<sup>46</sup> If, however, the subsidiary is merely an agent,  
 10 instrumentality, or alter ego of the parent company, then the parent company is prohibited from  
 11 making a contribution.<sup>47</sup> In determining whether a parent company is “separate and distinct” from  
 12 its subsidiary, the Commission has not articulated a test setting forth factors that a company must  
 13 satisfy but has made the determination based on the specific facts and circumstances of each  
 14 matter.<sup>48</sup>

15                   Although Amedisys, Inc., claims that its subsidiary Amedisys Holding LLC made the  
 16 contribution, it does not explain how the subsidiary is separate or distinct from the parent  
 17 corporation. Public information indicates that both entities share the same address and have the

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<sup>46</sup>                   Factual and Legal Analysis at 6, MUR 6726 (Chevron) (citing MUR 6403 (Alaskans Standing Together, *et al.*). *See also* Advisory Op. 2005-01 (Mississippi Band of Choctaw Indians); Advisory Op. 1998-11 (Patriot Holdings LLC) (superseded on other grounds).

<sup>47</sup>                   Advisory Op. 1998-11 (Patriot Holdings LLC) at 5.

<sup>48</sup>                   See Factual and Legal Analysis at 6, MUR 6726 (Chevron Corp.) (parent corporation was separate and distinct from contracting subsidiary where entities were separately incorporated and under direction and control of separate management); Advisory Op. 1998-11 (holding company was separate and distinct from its contractor subsidiaries where holding company did not pay salary or expenses of its subsidiaries and would not be held liable if its subsidiaries breached contracts with federal government); Advisory Op. 2005-01 (Indian tribe and its subsidiary corporation were separate and distinct from each other where subsidiary was separately incorporated, owned separate property, maintained separate management, and did not intermingle contractor funds with other tribal funds); Advisory Op. 1999-32 (Tohono O’odham Nation) (Indian tribe and its subordinate entity were separate and distinct from each other where the subordinate had its own bank account, employees, personnel policies, employee benefits and legal counsel).

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1 same President and Chief Executive Officer, Paul Kusserow.<sup>49</sup> Indeed, according to the available  
 2 information it appears that Amedisys Holding has only one employee, and its earnings and overall  
 3 financial status are unclear given Amedisys, Inc.'s assertion that "Amedisys Holding LLC does not  
 4 sell any goods or services."<sup>50</sup> Amedisys, Inc., states only that the "overall Amedisys business  
 5 enterprise vastly exceeds" the \$3,897 in government contracts as reflected in the USAspending.gov  
 6 database.<sup>51</sup> In sum, the available information is insufficient to determine that the two entities were  
 7 not separate and distinct for purposes of the Act's prohibition on contributions by federal  
 8 contractors.

9         Although an investigation could likely determine whether the Amedisys, Inc., entities were  
 10 "separate and distinct," we nevertheless recommend that the Commission exercise its prosecutorial  
 11 discretion and dismiss this allegation. The available information shows that Amedisys, Inc., held  
 12 less than \$4,000 in federal government contracts, amounts comparable to contractor respondents in  
 13 MUR 6403, discussed above in the context of the Marathon contributions. In that matter, the  
 14 Commission cited the unique circumstances, including that the government contracts were  
 15 relatively small (two of the three companies had lease agreements at a rate of \$9,000 and \$400 a  
 16 year, respectively) and this warranted the exercise of prosecutorial discretion to dismiss the  
 17 allegations as to them.<sup>52</sup> Given Amedisys, Inc.'s small-sized government contract, we recommend  
 18 that the Commission exercise its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821  
 19 (1985), and dismiss the Complaint as to Amedisys, Inc.

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<sup>49</sup> See Dun & Bradstreet, Inc. (2021), Amedisys Holding LLC (Company Profile).

<sup>50</sup> *Id.*; Amedisys Resp. at 2.

<sup>51</sup> Amedisys Resp. at 2.

<sup>52</sup> Factual and Legal Analysis at 7, 9-11, MUR 6403 (Alaskans Standing Together, *et al.*).

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3       With respect to the Complaint in MUR 7846, SLF       denies that it knowingly solicited  
4 contributions from Amedisys.<sup>59</sup> Given our recommendation to dismiss the Complaint with respect  
5 to the contributor, we recommend that the Commission dismiss that Complaint as to Senate  
6 Leadership Fund and Caleb Crosby in his official capacity as treasurer.

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<sup>59</sup>       MUR 7846 SLF Resp. at 1.

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10 **V. RECOMMENDATIONS**

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4 6. Dismiss the Complaint in MUR 7846 as to Amedisys, Inc.;  
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6 7. Dismiss the Complaint in MUR 7846 as to Senate Leadership Fund and Caleb Crosby  
7 in his official capacity as treasurer;  
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12 9. Approve the attached Factual and Legal Analyses;  
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16 11. Approve the appropriate letters.  
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18 Lisa J. Stevenson  
19 Acting General Counsel  
20

21 Charles Kitcher  
22 Associate General Counsel for Enforcement  
23

24 August 18, 2021  
25

26 Date

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