

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

May 2, 2012

Mary Tolan
Founder and CEO
Accretive Health, Inc.
401 N. Michigan Ave
Suite 2700
Chicago, IL 60611

Dear Ms. Tolan:

On April 24, 2012, the Minnesota Attorney General released a report that raises significant questions about whether Accretive Health's work as a debt collector for hospitals involves practices that undermine important patients' protections in the Emergency Medical Treatment and Active Labor Act, the Health Insurance Portability and Accountability Act, and the Fair Debt Collection Practices Act.¹ Your company has stated that the Minnesota Attorney General's report "grossly distort[s] and mischaracterize[s]" your work, and called one of the most serious allegations "flatly untrue." We appreciate your willingness to brief us on your practices and ask that you come to the May 4, 2012, briefing prepared to answer questions about your company's practices and the concerns we have outlined in this letter.²

The Minnesota Attorney General's report focused on Accretive's policies and procedures for debt collection – described as "revenue cycle management" by the company – at Fairview Health Services, a major health system in Minnesota. One of our most important questions is the extent to which these practices may be more widespread than this single health system.

Concerns About Violations of the Emergency Medical Treatment and Active Labor Act

The Emergency Medical Treatment and Active Labor Act (EMTALA) prohibits hospitals from delaying medical screening or treatment in order to inquire about an individual's method of

¹ State of Minnesota Office of the Minnesota Attorney General, *Compliance Review of Fairview Health Services' Management Contracts with Accretive Health, Inc.* (Apr. 2012)

² Accretive Health, *News Release: Statement from Accretive Health* (Apr. 29, 2012).

payment or insurance status.³ While hospitals may follow reasonable registration processes, including asking about an individual's insurance coverage, the law does not allow inquiries that delay screening or treatment or unduly discourage individuals from remaining for further evaluation.⁴

Among the troubling practices alleged in the Minnesota Attorney General's report are Accretive's aggressive efforts to collect co-payments, deductibles, residual charges, and prior balances in the emergency room, often before patients are allowed to receive treatment and at the bedsides of individuals receiving treatment. According to the Minnesota Attorney General's report, Accretive directs hospital personnel to address patients with unpaid bills entering the emergency room in a manner that "can lead a patient or her family to believe the patient will not receive treatment until a payment is made,"⁵ and the company "imposes quotas on hospital personnel to collect money before treatment is sometimes provided."⁶ An employee of Fairview Hospital reportedly described it as an environment in which "[p]atients are harassed mercilessly until their Community Care is approved, and one can easily speculate on the heartache, mental anguish, and worse that these kinds of practices cause."⁷

Medical professionals, hospital employees, and patient advocates reportedly raised concerns about these practices on numerous occasions, including when pre-service collection procedures targeted breast cancer patients, patients in the neonatal intensive care unit, spinal surgery patients, and emergency room patients.⁸ When physicians and patient advocates complained about potentially illegal delays in treatment, Accretive employees reportedly dismissed the statements as "country club" talk and "a bunch of bull."⁹

These allegations raise significant concerns about the legality of Accretive's practices under EMTALA.

Concerns About Violations of the HIPAA Privacy and Security Law

The Health Insurance Portability and Accountability Act Privacy and Security Law (HIPAA Privacy and Security Law)¹⁰ requires covered entities to protect patient's private health

³ 42 USC § 1395dd(h).

⁴ 42 C.F.R. § 489.24(d)(4)(iv)

⁵ State of Minnesota Office of the Minnesota Attorney General, *Compliance Review of Fairview Health Services' Management Contracts with Accretive Health, Inc., Volume II*, at 14 (Apr. 2012).

⁶ *Id.*, Volume II, at 1.

⁷ *Id.*, Volume II, at 4.

⁸ *Id.* Volume II.

⁹ *Id.*

¹⁰ 42 USC § 1320D-2 and 42 USC §17931

information. Individual employees of health providers and business associates with a need to access health information are generally required to have access only to a “limited data set” or “the minimum necessary” to perform their duties and use appropriate safeguards to limit unauthorized access.¹¹

According to the Minnesota Attorney General’s report, “Accretive has violated HIPAA in the use of patient health data for purposes of collection activity. These acts have resulted in multiple violations of patient privacy rights under federal and state law.”¹²

The Minnesota Attorney General’s report states that Accretive’s collection agents have direct access to internal hospital patient records, which provide them with extensive information on patient’s medical history, current diagnoses, and ongoing treatments.¹³ Collection agents reportedly discussed whether a patient’s cancer was “terminal or simply disabling” as they strategized about collecting an unpaid balance, and they “used protected health information to collect debts... [and] build credibility with patients.”¹⁴

The Minnesota Attorney General reported an Accretive employee’s unencrypted laptop computer contained 15.4 gigabytes of patient health data from 23,000 patients.¹⁵ The computer included sensitive data on more than 14,000 patients at a hospital for which this employee did not work, giving the employee an even less plausible right to access, let alone possess, this type of protected information. This calls into question whether Accretive is complying with the security or breach notification requirements under the HIPAA Privacy and Security Law.

The breadth and sensitivity of the patient health information to which Accretive employees allegedly had access, and the way this information was reportedly used, raise serious HIPAA Privacy and Security Law compliance questions.

Concerns About Violations of the Fair Debt Collection Practices Act

The Fair Debt Collection Practices Act (FDCPA) prohibits conduct designed to harass, oppress, abuse, or mislead in connection with the collection of a debt.¹⁶ According to the

¹¹ 42 USC §17935(b)

¹² State of Minnesota Office of the Minnesota Attorney General, *Compliance Review of Fairview Health Services’ Management Contracts with Accretive Health, Inc., Volume IV, at 1* (Apr. 2012)

¹³ *Id.*, Volume IV, at 11.

¹⁴ *Id.* Volume IV, at 15.

¹⁵ State of Minnesota Office of the Minnesota Attorney General, *Compliance Review of Fairview Health Services’ Management Contracts with Accretive Health, Inc., Volume IV, at 12-13* (Apr. 2012).

¹⁶ 15 U.S.C. § 1692d-f.

Minnesota Attorney General's report, Accretive's unlicensed collectors "use deceptive and unlawful collection tactics" in the performance of their duties.¹⁷ The practices outlined in the report include using "private medical information to deceptively gain patients' trust and bolster their collections performance," "giv[ing] the patient the impression that she may not receive adequate treatment unless payment is made," and "[l]ooking for vulnerable patients" including "pregnant women in delivery [who] were most concerned with getting treatment, and therefore were most" likely to pay ahead of time.¹⁸

Internal company emails cited by the Minnesota Attorney General suggest that some of Accretive's employees regularly engage in abusive and harassing practices. As one wrote:

I make the deadbeats feel like s..., talk nicely to women who sound education/have money, and am firm with dumb f.... If they say something stupid, I make sure they know they've said something stupid. Eventually the people who can pay will grow tired of us continually calling and just pay to get us off their backs. I don't mention that Henry Ford is a teaching hospital because a majority of these people are plebeians who couldn't give a flying f... one way or another so long as they have Medicaid. I really take the approach of being stern and calling people out for being stupid because if they keep hearing it, they eventually may realize their stupidity and possibly feel just a hint of guilt for being such a schmuck.¹⁹

The Minnesota Attorney General's report presents numerous other examples of Accretive's potential violations of the FDCPA. These include improperly contacting third parties regarding patient debt, failing to disclose employees' identities as debt collectors, and continuing collection efforts despite debts being unverified.²⁰ The Minnesota Attorney General's report also states that Accretive illegally threatened to report debtors to collection agencies and failed to cease collection efforts when individuals disputed their bills, in violation of signed consent agreements.²¹

Each of these allegations raises significant questions about Accretive's compliance with the Fair Debt Collection Practices Act.

¹⁷ State of Minnesota Office of the Minnesota Attorney General, *Compliance Review of Fairview Health Services' Management Contracts with Accretive Health, Inc., Volume V, at 1* (Apr. 2012).

¹⁸ *Id.*, Volume V, at 6.

¹⁹ *Id.* Volume V, at 12.

²⁰ *Id.* Volume V, at 14-16

²¹ *Id.*

Concerns about Accurate Pricing and Patient Cost Disclosure

Allegations of Accretive's aggressive debt collection efforts are particularly troubling given the company's reported failure to pay timely refunds when patients overpay bills and the company's alleged problems with accurate billing. The Minnesota Attorney General's report found that Accretive employees often do not know the proper diagnostic codes that are necessary to charge an appropriate estimated balance and that "neither the staff nor [Accretive's computer] program has a clue as to the treatment to be rendered."²²

When these errors are made, Accretive does not appear to take appropriate steps to refund patients money they are owed. An Accretive script for hospital employees instructs that if the employee observes that the client is owed a credit, they should "not ... ask the patient about it."²³ The Minnesota Attorney General also uncovered evidence that "patient refunds were improperly held, some going back ... about 8 years."²⁴

In one incident, a mother who brought her child to the hospital for a scheduled surgery to install tubes in the child's ear was reportedly told that the surgery would cost \$9,000 and that she was required to pay \$876 before the surgery could take place. The woman paid the charge in order to get her child treated, but when she learned that the actual cost of the surgery was \$4,200 and that her share was \$200, she was unable to get reimbursed for her \$676 overpayment.²⁵

These reports of failures to accurately bill patients and refund patients who are owed money outlined in the Minnesota Attorney General's report raise further questions about the appropriateness of Accretive's aggressive debt collection practices.

Questions About Accretive Policies and Practices

We are concerned by the allegations of Accretive's practices in Minnesota and seek to better understand the extent to which these activities may represent common practice at your company and throughout the industry. We therefore ask that you come to the briefing prepared to answer questions about your policies and procedures. In addition, we ask that you provide the following documents no later than May 14, 2012:

- 1) A list of the hospitals and health care facilities for which Accretive provides "revenue cycle management" services similar to those provided to Fairview Health Services in

²² *Id.*, Volume V, at 8.

²³ *Id.*, Volume V, at 8.

²⁴ *Id.*, Volume V, at 8.

²⁵ *Id.*, Volume II, at 20.

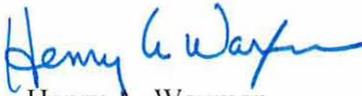
Minnesota, as discussed in the Minnesota Attorney General's report, and the time periods for which you have provided services.

- 2) An explanation of Accretive's guidance to employees working in hospital settings and reported practices regarding:
 - a. Registration activities, pre-service collection activities, insurance related questioning, or any other revenue collected-activity used by Accretive and imposed prior to medical treatment;
 - b. The collection, review, transmission, and use for revenue-related purposes of patient's protected health information;
 - c. Debt collection practices in hospital facilities or otherwise associated with medical treatment.
- 3) Copies of all company policies and procedures relating to compliance with EMTALA, HIPAA, the Fair Debt Collection Act, and other relevant laws, and any emails or other documents containing discussions of compliance issues with these laws.
- 4) Documents relating to complaints by medical professionals or patients regarding debt collection practices by Accretive and potential violations of EMTALA, HIPAA, and the Fair Debt Collection Act.
- 5) Copies of all Accretive policies and procedures relating to proper estimation of price and cost of health care services, amounts that are to be collected from patients prior to medical treatment, and repayment for patients who have overpaid copays or other treatment-related costs.
- 6) Any company documents discussing whether Accretive's practices at Fairview Health Services represent standard industry practice or any information on the use of practices similar to those used by Accretive at other hospitals by other revenue collection companies.

Please contact Matt Siegler with the Democratic Committee staff if you have any questions about these requests.

Ms. Mary Tolan
May 2, 2012
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Sincerely,



Henry A. Waxman
Ranking Member



Diana DeGette
Ranking Member
Subcommittee on Oversight and
Investigations



G.K. Butterfield
Ranking Member
Subcommittee on Commerce,
Manufacturing, and Trade