

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

June 21, 2012

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

Dear Ms. Tolan:

We write to express our concern over your failure to comply with our request for documents and information related to the debt collection practices of Accretive Health at hospitals across the country. You have yet to provide a response to our May 2, 2012, letter asking for information on Accretive policies and practices. And after you canceled a May 4, 2012, meeting to discuss the allegations, you have ignored repeated efforts to reschedule this meeting.

On May 14, 2012, your representatives provided us with a publicly available 29 page letter, which Accretive had previously provided to Senator Al Franken in response to his letter of April 26, 2012. This letter was not an appropriate response to our request: it did not provide any of the internal documents we requested or a list of the hospital and health care facilities for which Accretive provides “revenue cycle management” services. Your response to Sen. Franken, the testimony of Accretive Senior Vice President Gregory Kazarian at the May 30, 2012, Senate Health, Education, Labor and Pensions Committee hearing, and new allegations by the Minnesota Attorney General’s office of numerous additional patient complaints against Accretive also raise important new questions and issues. We have highlighted some of these questions below.

#### **Questions about Patient Complaints**

In Accretive’s May 11 letter to Senator Franken, Accretive writes that “approximately one tenth of one percent of episodes of care resulted in a call by a patient who complained about

the collection of residual balances.”<sup>1</sup> The letter also states that there were “over 3 million episodes of care” during the 16-month period Accretive reviewed. This information implies that there were over 3,000 complaints about Accretive’s collection practices during that time frame. In addition, yesterday the Minnesota Attorney General released amended legal filings that contained new and previously unreported patient complaints, including a patient who was allegedly contacted 15 minutes before a surgery was to begin and told to pay \$1,500 or the surgery would not proceed,<sup>2</sup> a patient who was allegedly asked to pay \$800, which she ultimately did not owe, before she would be allowed to leave the hospital with her newborn baby,<sup>3</sup> and a patient who was allegedly pushed to retrieve his debit card and pay \$50 while he was on a morphine drip, with a tube down his throat draining his stomach, on an examination table in the emergency room.<sup>4</sup> This is why we reiterate our request for documents and information relating to patient complaints.

### **Questions about Accretive Policies on Patient Contact**

Accretive’s May 11 letter to Sen. Franken also highlights certain “Fairview policies” that “barred employees from contacting several categories of patients at any point during their time in the emergency room regarding payments: patients with heart conditions, patients with life threatening injuries or patients who received a high triage score.”<sup>5</sup> Fairview Health Services is the hospital chain for which Accretive provided services. The letter also notes that the Fairview policies placed limits on the timing and nature of Accretive’s contact with women in labor, new mothers, and parents of infants in the intensive care unit.<sup>6</sup> The fact that these were Fairview policies suggests that Accretive may not have or may not follow similar guidelines at some of its other customer health systems. Many of the newly released patient complaints released by the Minnesota Attorney General involve Accretive personnel allegedly aggressively requesting payment from Fairview patients in the emergency room, while patients were in intense discomfort, or in a manner in which they felt they would not receive care unless they provided immediate payment.<sup>7</sup> It is unclear if these alleged activities violated Accretive policies. To

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<sup>1</sup> Letter from Gregory Kazarian, Senior Vice President, Accretive Health, to Senator Al Franken (May 11, 2012), at 11.

<sup>2</sup> Plaintiff’s Memorandum of Law in Support of Motion to Amend and Supplement Its First Amended Complaint. 12 (June 19, 2012), *State of Minnesota v. Accretive Health, Inc.*, D. Minn. (No. 12-Cv-00145).

<sup>3</sup> *Id.* at 16-17.

<sup>4</sup> *Id.* at 9.

<sup>5</sup> Letter from Gregory Kazarian, Senior Vice President, Accretive Health, to Senator Al Franken (May 11, 2012), at 18.

<sup>6</sup> *Id.* at 18, 20-21.

<sup>7</sup> Plaintiff’s Memorandum of Law in Support of Motion to Amend and Supplement Its First Amended Complaint. 3-19 (June 19, 2012), *State of Minnesota v. Accretive Health, Inc.*, D. Minn. (No. 12-Cv-00145).

provide additional insight into these questions, we reiterate our request for copies of specific Accretive policies relating to patient privacy and revenue collection.

### **Questions about Applicability of Debt Collection Laws to Accretive “Pre-Collect” Activities**

Accretive’s April 30, 2012, Memorandum of Law, which was filed with a motion to dismiss a complaint filed by the Minnesota Attorney General, makes a distinction between its debt collection and “pre-collect activities,” described in the Minnesota Attorney General’s complaint and compliance report. Accretive wrote:

Simply put, when Accretive Health is acting as a licensed “debt collector” ... it is subject to applicable debt collection laws. When it is engaged in some other business, such as billing or “pre-collect” collection as part of providing its revenue cycle management services, it is not.<sup>8</sup>

Your letter to Senator Franken and Mr. Kazarian’s recent testimony make clear that Accretive believes its “pre-collect activities” benefit both patients and hospitals. Mr. Kazarian also stated, “employees were instructed never to insist that patients pay residual or prior balances or suggest that payment was a condition of care.”<sup>9</sup> While this information about Accretive’s pre-collect policies is helpful, we have questions about Accretive’s apparent view that these policies are simply voluntary and are not subject to the debt-collection laws, as articulated in its April 30 Memorandum of Law. We ask that you clarify the frequency with which you engage in pre-treatment collection activities and bedside collection activities and more fully explain your policies on what, if any, debt collection and consumer protection laws and regulations apply when you engage in such activity.

### **Questions about Patient Billing and Repayment of Refunds**

In the May 30 hearing, Mr. Kazarian stated that Accretive uses “sophisticated software to estimate the patient’s share of the cost of care” before asking patients to make a payment and that Accretive helped Fairview speed up “the payment of refunds to patients and reduced the number of refunds owed by approximately sixty percent.”<sup>10</sup> According to the Minnesota Attorney General, however, numerous patients were overbilled by hundreds of dollars each and were often

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<sup>8</sup> Defendant’s Memorandum of Law in Support of its Motion to Dismiss Plaintiff’s First Amended Complaint, 29-31 (Apr. 30, 2012), *State of Minnesota v. Accretive Health, Inc.*, D. Minn. (No. 12-Cv-00145).

<sup>9</sup> Senate Committee on Health, Education, Labor and Pensions, Testimony of Gregory Kazarian, Senior Vice President, Accretive Health, *Hearing on Ensuring Patients Access to Care and Privacy*, 112<sup>th</sup> Cong. (May 30, 2012).

<sup>10</sup> *Id.*

unable to receive timely refunds.<sup>11</sup> This raises the concern that Accretive's revenue cycle management systems may not provide patients with accurate pricing information or timely refunds and may not result in accurate or appropriate billing to public and private payers.

### **Questions about Compliance with Patient Privacy Laws**

Finally, your response to Senator Franken, your public statements, and your court filings do not adequately address other troubling practices highlighted in the Minnesota Attorney General's report. To highlight one important example, your May 11 letter and Mr. Kazarian's testimony did not explain why an Accretive employee had access to the protected health information of patients at a hospital for which he did not work.<sup>12</sup> It remains unclear why this employee had access to this information and why Accretive did not appear to take adequate steps to protect this patient health information.

We remain concerned by the allegations of Accretive's practices in Minnesota and continue to seek a better understanding of the extent to which these activities may represent common practice at your company and throughout the industry. We therefore ask that you promptly provide the following documents:

- 1) A list of the hospitals and health care facilities connected with your company for which Accretive provides services and a description of the nature of the services provided.
- 2) 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.
- 3) 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.
- 4) 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.

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<sup>11</sup> Plaintiff's Memorandum of Law in Support of Motion to Amend and Supplement Its First Amended Complaint. 16-19 (June 19, 2012), *State of Minnesota v. Accretive Health, Inc.*, D. Minn. (No. 12-Cv-00145).

<sup>12</sup> *Id.*, Volume IV, at 9.

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- 5) 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.

Sincerely,



Henry A. Waxman  
Ranking Member



Diana DeGette  
Ranking Member  
Subcommittee on Oversight and  
Investigations