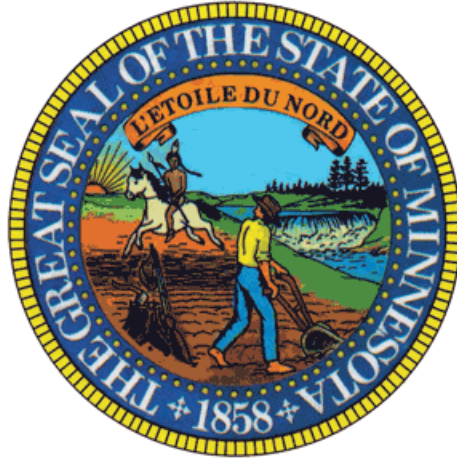


STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

Compliance Review of Fairview Health Services' Management Contracts with Accretive Health, Inc.

Volume 5 **Violations of Federal and State Debt Collection Laws**



LORI SWANSON
ATTORNEY GENERAL

April 2012

Review Conducted Pursuant to Minnesota Statutes Chapters 309, 501B, and 317A

VOLUME FIVE

VIOLATIONS OF FEDERAL AND STATE DEBT COLLECTION LAWS

Executive Summary	1
5.1 Accretive Is a Collection Agency	1
5.2 “Front End” Collections.....	2
5.3 Prior Balance and Point of Service Collections	3
5.4 Pre-Service Collections but no Post-Service Refunds	7
5.5 Bedside Collections	8
5.6 Suggested Scripts for “Point of Service” Collectors.....	9
5.7 “Back End” Collections and Medical Financial Solutions	10
5.8 “Dormant Collections”	11
5.9 Debt Collection Legal Violations	11
Conclusion	18

VOLUME FIVE

VIOLATIONS OF FEDERAL AND STATE DEBT COLLECTION LAWS

Executive Summary: Individual third-party collectors who contact Minnesota patients must be registered as collectors by the State of Minnesota. Accretive Health, Inc. employs unlicensed third-party collectors who misrepresent themselves as “financial counselors” to patients of Fairview Health Services. The unlicensed collectors, located in Kalamazoo, Michigan, are improperly given access to private medical information of Fairview patients, which they use to gain the trust of patients. The collectors use deceptive and unlawful collection tactics, which violate state and federal debt collection laws.

5.1 Accretive Is a Collection Agency. Accretive Health, Inc. (“Accretive”) and Fairview Health Services (“Fairview”) entered into a complex collection agreement, styled as a Revenue Cycle Operations Agreement (“RCA”), in March, 2010. *See* Vol. 1, Ex. 4. Fairview delegated substantial authority to Accretive to manage its debt collection activity.

Accretive became licensed with the Minnesota Department of Commerce as a debt collection agency on January 20, 2011, about eight months *after* the Fairview contract became effective and *after* Accretive began to collect debts for Fairview. Accretive listed “Medical Financial Solutions” as an assumed name. Accretive initially registered only one individual collector, Steve Walters, with the State of Minnesota as a collector even though Minnesota law requires all individual collectors to be registered with the State. The Minnesota Department of Commerce has examined Accretive’s collection call center in Kalamazoo, Michigan. While the examination is not complete, examiners indicate that up to 100 collectors are employed at the office, each of whom is assigned a rotational patient call list or queue. The collectors attempt to collect from patients that owe debts to approximately 60 hospitals located in at least a dozen states, including Minnesota. At times, Accretive has expanded and then narrowed the list of which collectors contact Fairview patients. Over time, dozens of collectors have contacted Fairview patients.

5.2 “Front End” Collections. Accretive divides the collection process into stages: “front end,” “middle,” and “back end.” (Ex. 1.) Each stage involves different employees performing different tasks. At the “front end” stage, Accretive collects money from patients at five different “front office” departments:

- Pre-Registration/Financial Clearance
- Emergency Department
- Hospital Admitting
- Financial Counseling
- Customer Service

(Ex. 2, p. 5.)

Six types of employees are engaged in “front office” collection activity at these departments. They are either directly employed by Accretive or are employed by Fairview, but managed by Accretive. The positions include the following:

- Registrar
- Financial Counselor
- Medicaid Eligibility Specialist
- Patient Access Supervisor
- Social Worker/Case Manager
- Clinical Area Administrative Directors

(*Id.* at 6.)

Every patient entering a Fairview hospital—whether for scheduled surgery, unscheduled inpatient admission, or emergency room treatment—will encounter one of these employees shortly after entering the hospital. (Ex. 3.) Every patient is screened with a process called “patient financial advocacy,” or “PFA,” a euphemism for determining how the patient pays for treatment that was already given (prior balances) or that is about to be given (point of service). The front-end employees must “screen” 100 percent of patients they encounter, filling in information that a prior PFA “screening” may have missed. (Ex. 2, pp. 15-17.) The first step is to view the patient’s electronic record and identify all patient demographic information, such as

name, address, telephone numbers, physicians, and other types of diagnoses. (*Id.*, p. 7.) The second step is to obtain information about third-party coverage, such as insurance, COBRA, Medicaid eligibility, automobile coverage, and the like. (Ex. 4, p. 7.) The third step is to determine whether the patient owes any prior balance amount from a previous service, as well as to determine the “current balance,” which is the co-pay, deductible, or other residual amount to be paid by the patient for the likely cost of the upcoming treatment. (*Id.*, pp. 7-10.) In the fourth step, the Fairview or Accretive employee must attempt to collect the prior balance and/or current balance amount from the patient, and fill out a screen identifying the amount of money collected from the patient or the type of payment schedule that has been completed. (*Id.*, p. 22.)

5.3 Prior Balance and Point of Service Collections. The “front end” employee must also determine if the patient has a “prior balance” (*id.*, p. 5) for services performed at an earlier time. (*Id.*, p. 11.) If so, the employee is instructed to follow three phases of negotiation with the patient. (*Id.*, p. 13.) The first step is to “educate” the patient about his responsibility to make the payment. (*Id.*, p. 15.) The second step is to request payment. (*Id.*, p. 17.) The third step is to enroll the patient in a payment plan, if the patient does not pay in full. (*Id.*) At the “education” phase, the Fairview employee is supposed to get the patient to confirm that a prior balance is due and to discover any options the patient might have to pay for the treatment. (*Id.*, p. 16.) The Fairview or Accretive employee is supposed to adopt an “informative” posture during this phase of negotiation. (*Id.*) In the second phase, the Fairview or Accretive employee is supposed to obtain payment and should adopt a “stern” posture in which this question should be presented: “How would you like to take care of that balance today?” The employee is told to ask questions that end with “today.” (*Id.*, p. 17.) The final stage is to look for a “solution,” which is basically to tell the patient:

“It is very important that you put a plan in place today to make progress towards settling your open balance and avoid having your account sent to collections and/or having these balances show up on your credit report.”

(*Id.*, p. 18.) Accretive describes the typical “residual balance” encounter to be as follows:

“Mr. [Patient], when reviewing your account, I noticed that you have \$432.29 in charges due from past visits to this hospital. We accept cash, check, or credit card to take care of these balances today. How would you like to pay for that today?”

(*Id.*, p. 17.)

If the patient indicates she is unable to make payment on that day, Accretive instructs the employee to determine the appropriate payment plan, in which the monthly payment must be at least 10 percent of the bill or \$50, whichever is higher, and with the payment plan not going beyond 10 months. (Ex. 5.) A typical script reads as follows:

“If you are able to pay 25 percent of your balance today, I can enroll you in a three month, interest free installment program. Is this something you can commit to paying?”

(Ex. 4, p. 18.) In determining the appropriate payment plan, the Fairview employee is to determine the credit score of the patient and verify if the patient has any open lines of credit.

(*Id.*, p. 18.)

The “front end” employees are then measured by an “employee scorecard.” (*Id.*, p. 24.) Accretive instructs its managers to set “aggressive stretch goals” for the Fairview employees to collect money. (*Id.*) This evaluation process applies to all “front end” employees at Fairview, including those that hold positions of patient trust in the hospital setting, like emergency room registration personnel, financial counselors, and the like.

Accretive takes pride in using collectors in the emergency room. The company has a presentation on its success, entitled “Accretive Secret Sauce,” and captioned: “Check out our ASS!” and “You’ve never seen ASS like ours.” (Ex. 6.) In the presentation, Accretive states that a “typical hospital” does not undertake “financial counseling” in the emergency room. In

contrast, Accretive claims that its “secret sauce” results in a 15% collection rate from patients in the emergency room. (*Id.*)

The Fairview “front end” collectors have had mixed results in the emergency room. Employees complained to the Attorney General about prizes given out at “chalk talks” for emergency room employees. Staff at the University of Minnesota Emergency Room apparently drafted and sent a complaint to the Attorney General stating that:

“We are told that if we don’t get money from patients in the Emergency Room, we will be fired.”

(Ex. 7.) In 2010, to escalate collections, Accretive prepared a “heat map” for various hospital departments, noting that the University of Minnesota Medical Center was particularly poor in collecting prior balances in the Emergency Room. (Ex. 8.) By September of 2010, Andrew Crook, the highest Accretive official in charge at Fairview, advised the President of Accretive Quality that:

“We’ve started firing people that aren’t getting with the program.”

(Ex. 9.) At about the same time, Accretive prepared a chart noting that the “Bottom 10” performers are being identified and that they will be placed on watch status within the first 45 days. (Ex. 10.)

Perhaps the most successful “front end” collection technique is to give the patient the impression that she may not receive adequate treatment unless payment is made. For instance, Accretive prepared the use of “stop lists” where the “front end” collectors visit patients who are scheduled for surgery. (Ex. 11.) Patients with prior balances who check in with the main registration desk are told they must first be seen by a “financial counselor,” who is, in fact, a collector who will demand payment of past balances by credit card or, if that is unsuccessful, a short term payment plan. (Ex. 12.) The Accretive guidelines state that, to be an “effective front

end operator,” the employee must put together a “pre-balance stop list” the night before patient appointments so that the patient can be stopped for payment before treatment is rendered. (*Id.*) Employees must track the length of time spent talking with each patient, the prior balance outstanding, and the amount collected. (Ex. 13.)

The “front end” initiative created some blowback in some parts of Fairview. In the first week of April, 2011, Fairview complained that two patients walked out of Southdale Hospital without being registered, two patients left Ridges Hospital without being registered, and three patients at Ridges would not cooperate with the registration process. (Ex. 14.) The week before, Accretive was advised that a major employer was considering a different network because of the demand that patients produce credit cards before treatment is rendered. (Ex. 15.) The complaints continued through November, when Accretive was advised that the wait times for surgeries was much higher (Ex. 16), and that a doctor at Ridges Hospital was upset about how his patients were managed. (Ex. 17.) The complaints varied by department, with collectors apparently reaching into the neonatal intensive care unit (NICU) to “counsel” parents on the money they owed. (Ex. 18.)

Looking for vulnerable patients, Accretive discovered that pregnant women in delivery were most concerned with getting treatment, and therefore were most vulnerable in getting a pre-balance paid:

“We need to get cracking on labor and delivery. There is a good chunk to be collected there, and we just haven’t had the time and manpower to get it done. We are getting close.”

(Ex. 19.)

In another e-mail, an Accretive employee was told to draw up a report each morning to “identify moms that admitted yesterday” into labor and delivery and collect money from them. (Ex. 13.) Several documents prepared by Accretive underscore the importance that Accretive

placed on having the Fairview employee participate in the collection activity. Fairview employees were required to attend daily “chalk talks” and “stand-ups” as part of the “front end” initiative. (Ex. 20.) At these “chalk talks,” the employees were told that:

“Every patient with a prior balance who visits the hospital must be approached about settling their account:

- Scheduled patients during pre-registration,
- Unscheduled patients during registration (Emergency Room),
- Customer service during inbound calls (account inquiries).”

(Ex. 21.)

Other presentations included the following imperative:

“Addressing the patient’s balance is an imperative part of your role.”

(Ex. 22.)

5.4 Pre-Service Collections but no Post-Service Refunds. In addition to prior balance collections, Accretive requires the “front end” personnel to determine the “pre-service” or “point of service” balance. This is the portion of an anticipated medical bill that is not covered by third-party insurance. (Ex. 4, p. 4.) The goal of Accretive is to collect this “point of service” balance prior to the service being rendered. This pre-service amount, sometimes called the “patient share,” is the total of the anticipated copayment, coinsurance, and the deductible of the patient’s insurance coverage. (*Id.*, p. 4.) Accretive tells the Fairview front end employee to enter the likely diagnosis and treatment codes into the Accretive “AHtoAccess” or “A2A” program, which will then determine the likely patient share that the employee is required to collect. (*Id.*, pp. 9-11.)

The “patient share” determinations made for future services are not always accurate. For example, Marcia Newton is the mother of a son, Maxx, who needed ear tube surgery in late November, 2011. (Ex. 23.) When she brought Maxx to the hospital, the registration staff told

her that she had to make a “prepayment” for the services. She was told the surgery would cost \$9,615, and that her “patient share” was \$876. Fortunately, Ms. Newton was able to pay the “prepayment,” and Maxx had the surgery. Thereafter, Ms. Newton received the explanation of benefits from Blue Cross Blue Shield, her insurer, which stated that the bill was \$4,267, and that her portion was only \$200. She contacted Fairview to complain about the false pretence under which the “prepayment” was obtained. (*Id.*) She also asked for her money back. She had trouble getting Fairview to refund the money.

As it turns out, Fairview does not appear to pay timely refunds to patients. Instead, Fairview appears to have taken a “don’t ask, don’t tell” approach. At least one script prepared by Accretive instructs the Fairview employee that, if she observes a credit balance for a patient, not to ask the patient about it. (Ex. 24.)

For the AHtoAccess program to work, “front end” staffers must know the patient’s diagnosis or likely diagnostic code. They often don’t. In March of 2011, an Accretive employee stated the obvious, complaining that neither the staff nor the AHtoAccess program has a clue as to the treatment to be rendered. (Ex. 25.) Not only does the AHtoAccess program not work when this happens, but Fairview does not appear to properly refund patient overpayments. In February of 2012, the Fairview Board of Directors directed the staff to get current on refunding the overpayments. One Fairview employee noted that patient refunds were improperly held, some going back over 3,000 days, or about 8 years. (Ex. 26.)

5.5 Bedside Collections. Accretive sends Fairview employees to the bedside of patients to collect money. One of the “chalk talks” indicates that, under the “Accretive Health Model,” workers in the Emergency Room are supposed to “collect at bedside post patient

assessment.” (Ex. 27.) Another Accretive chart instructed Fairview employees that “front initiatives” should emphasize “bedside financial counseling for patient liability.” (Ex. 28.)

In many places, a hospital is deemed to be a sanctuary, going so far as to protect patients from being served with legal process while in the hospital. In other places, the laws presume that legal documents signed in a hospital setting are questionable because of the vulnerability of the patient. Accretive, on the other hand, has no problem sending collectors to patients’ bedsides. (Ex. 29.)

5.6 Suggested Scripts for “Point of Service” Collectors. The introductory script recommended by Accretive states as follows:

“Hello Mrs. Smith, my name is _____ and I am the Registration (Admitting) Associate here at [Fairview]. Your insurance plan shows you have a co-pay of \$_____. We accept cash, check, debit, and credit. How would you like to pay for that today?” (“LISTEN FOR A RESPONSE...”)

(Ex. 30.) Employees are told that if the patient can’t pay the full amount, they should request a deposit and repeat the different forms of payment described above. If the patient still can’t pay the full amount, she is to be provided a self-addressed, stamped envelope and told to mail payment within five days. Accretive instructs that this conversation should occur at pre-registration, which is seven days before treatment is rendered. (*Id.*)

If, on either of these occasions, the patient indicates that he has no insurance, the employee is permitted to offer a “cash flat rate” or discount. The suggested script is as follows:

“Mrs. Smith, my name is _____ and I’m the Financial Counselor (Admitting Rep) at [Fairview]. As a courtesy, we can offer you a discounted rate of \$_____ for today’s services. We accept cash, check, debit or credit card. How would you like to pay for that?” (“LISTEN FOR A RESPONSE...”)

(*Id.*) If the patient requests that a bill be sent out, the hospital employee is told to advise the patient that the discounted rate is only available that day. (*Id.*)

If the patient is already in a hospital bed, the employee is told to do a bedside visit. The employee is to state the following:

“Mrs. Smith, my name is _____ and I’m the Financial Counselor (Admitting Rep) at [Fairview]. According to your insurance company you have a deductible of \$500 and a 10% co-insurance. Based on a 3-day stay, your **estimated** amount due is \$770. How would you like to pay for that today? We accept cash, check, debit or credit card.” (“LISTEN FOR A RESPONSE...”)

(*Id.*, emphasis in original.) If the patient responds negatively, the employee is to say the following:

“We really DO need to collect your co-pay/co-insurance/deductible today. Which method you prefer to pay by? Cash, check, debit or credit card?” (“LISTEN FOR A RESPONSE...”)

(*Id.*) If the patient still states that they don’t have money, the employee is supposed to say:

“Perhaps the person who will come to pick you up can bring the payment.”

(*Id.*) If that doesn’t work, the employee is supposed to state:

“Do you have a family member you can borrow from?”

(*Id.*)

5.7 “Back End” Collections and Medical Financial Solutions. There are two phases of the “back end” collection stage: so-called “Pre-Collect” and “Dormant Collect.” The “pre-collect” phase begins about two days after the patient has been billed. (Ex. 31, p. 4.) During the first 90 days after treatment has been rendered, the “pre-collect” operation is undertaken by Accretive employees in Kalamazoo, Michigan, using the name “Medical Financial Solutions,” or MFS. As noted above, up to 100 collectors work out of Accretive’s MFS office in Kalamazoo, rotating calls to patients at over 60 hospital locations around the country. As discussed in Volume 4, some collectors have access to health information about Fairview patients through Fairview’s PASS system (Ex. 32), while others have access through WinCollect (Ex. 33). For the first three months, a letter is sent out by MFS, where the collector

implies he is a financial counselor and not a debt collector. The collector tries to create the impression that he wants to counsel the patient so as to avoid being referred to a debt collector. (Ex. 34.) MFS's letter to patients instructs the patients to deal with MFS or their "account may be turned over to a collection agency." (*Id.*) The letters do not tell patients that MFS is *itself* a collection agency. An MFS manager has stated that, "I could see how it would intentionally make us seem like we aren't one" [a collection agency] and has called the language "deceptive." (Ex. 35.)

At the time of the filing of the State of Minnesota's lawsuit against Accretive, only one individual collector was registered by Accretive with the State of Minnesota. Under Minnesota law, a collector is defined as follows:

"Collector" is a person acting under the authority of a collection agency under subd. 3, and on its behalf in the business of collection for others an account, bill or other indebtedness except as otherwise provided in this chapter."

Minn. Stat. § 332.31, subd. 6. Each individual collector is required to be registered. Minn. Stat. § 332.33, subd. 1.

5.8 "Dormant Collections." The final stage for "back end" collections are the so-called "dormant collections." A "dormant collection" is an account that has received three letters from Medical Financial Solutions. A letter is then sent out from Accretive, which now identifies itself as a collection agency. (Ex. 36.) The collector then makes a variety of calls and sends letters to the patient in an attempt to collect the money.

5.9 Debt Collection Legal Violations. A violation of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, is a violation of the Minnesota Debt Collections Act. Minn. Stat. § 332.37(12).

- a. **Accretive may have engaged in “conduct which is designed to harass, oppress, or abuse” the patient in violation of the FDCPA and Minnesota law.**

The FDCPA prohibits conduct designed to harass, oppress, or abuse. 15 U.S.C. § 1692d. Attached as Exhibit 37 are a series of e-mails between collectors at the Kalamazoo office. One of the Accretive “financial counselors” sent out an e-mail to other collectors asking for tips on getting money out of patients. He states that:

“I have never had any luck with being a hard ass or winning arguments, but I know that at least a few of you do. How do you do it? Shortcuts, work arounds, and (legal) cheats?”

(*Id.*)

In response, another collector described his strategy as follows:

“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. However, on the rare case that I do get someone who is nice and actually listens to what I am saying, I will bend over backwards for them and be so nice, mainly out of gratitude for them actually having common decency.”

(*Id.*)

Later in the day, when told that a lawyer had left a message on behalf of a particular patient, the Accretive collector wrote:

“Thanks. I went through the hospital notes and this is what pisses me off the most. The patient is pissed because Medicaid didn’t cover this and told the hospital that she never is going to pay this. There are some attorneys who aren’t skilled enough for an actual practice that work for these stupid fricken non-profit organizations who help the poor in Detroit. Now we have to waste our time to deal with this low-life patient and some dumbass attorney all because this patient didn’t show up to the DHS office to renew her benefits. Ugh. I’ll make sure they get a call though...”

(Ex. 38.)

b. Accretive contacted third parties stating that the consumer owes a debt, in violation of the FDCPA and Minnesota law.

Accretive has not always followed the law when contacting patients about debts.

Accretive states that the following message should be left on a patient’s answering machine:

“Hello, this is a time sensitive message from Medical Financial Solutions, a debt collector, attempting to collect a debt. Please call us back at your earliest convenience....”

(Ex. 39.) In *Risinger v. Accretive Health*, No. 11-cv-03744-PAM-FLN (D. Minn. 2011), plaintiff *Susan* Risinger received messages from Accretive collectors on her voicemail system, stating that *Laura* Risinger has an unpaid medical debt. Laura does not reside with Susan, and the lawsuit alleged an improper communication in violation of the FDCPA, 15 U.S.C. §§ 1692b(1)-(3), 1692c(a)(1), 1692d, and 1692e(11). Accretive’s messages to Susan Risinger disclosing Laura Risinger’s debt also appear to be an impermissible communication with a third party in violation of 15 U.S.C. § 1692c(b). Other lawsuits in Minnesota federal district court that allege voicemail violations are *Sinigaglio v. Accretive Health*, 11-cv-02102-DSD-FLN (D. Minn. 2011), *Bell v. Accretive Health*, 11-cv-02112-JNE-JJK (D. Minn. 2011), and *Hartley v. Accretive Health*, 11-cv-01528-JRT-LIB (D. Minn. 2011). These suits allege that Accretive failed to make the proper disclosures to consumers under 15 U.S.C. §§ 1692d(6), 1692e, and 1692e(11).

c. Accretive may not threaten to take any action that cannot legally be taken or that is not intended to be taken.

The FDCPA prohibits a collector from threatening an action it cannot lawfully take. 15 U.S.C. § 1692(e)(5). The FDCPA also prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of a debt. 15 U.S.C. § 1692e. Accretive scripts appear to instruct employees to tell patients that if the patient does not resolve the bill, the company may send the debt to a collection agency, where the patient's credit score can be affected. A sample script states as follows:

“I hope you understand that once the account is with a collection agency, that can affect your credit score as well.”

(Ex. 40.) In fact, Fairview entered into a court-ordered agreement with the Minnesota Attorney General not to refer patient debts to credit reporting agencies. (Ex. 41, ¶ 27.) It is therefore misleading for it to threaten to do so, because that act cannot legally be taken.

d. Accretive fails to properly identify itself as a Minnesota-licensed collection agency or to make the required federal disclosures.

Minnesota law requires a collection agency to identify itself as such. Under Minnesota Statutes section 332.37(21), when initially contacting a Minnesota debtor by mail, a collection agency must state the following:

“This collection agency is licensed by the Minnesota Department of Commerce.”

Many letters sent out by Medical Financial Solutions do not identify MFS as a collection agency. (Ex. 34.)

In addition, the FDCPA requires a debt collector to disclose in its initial communication, whether written or oral, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the debt collector must disclose in subsequent communications that the communication is from a debt collector. 15 U.S.C.

§ 1692e(11). Accretive routinely fails to identify itself as a debt collector in its collection letters. Indeed, during the first three months of collection on an account, MFS sends letters to the consumer in which MFS deliberately gives the false impression that it is a financial counselor and not a debt collector.

e. Accretive's aggressive collections approach may constitute a threat to withhold medical treatment in violation of Minnesota Statutes sections 332.37(14) and 325D.44(12).

Under Minnesota law, a debt collector cannot imply that medical treatment will be withheld in an emergency situation. Minn. Stat. §§ 332.37(14) and 325D.44(12). As noted in Volume 2, prior to enactment of the federal Emergency Medical Treatment and Active Labor Act ("EMTALA"), hospital emergency rooms engaged in a practice known as "patient dumping." Patients without insurance coverage or the means to pay for treatment were simply told by hospital staff to leave the premises. After several well-publicized scandals, Congress enacted EMTALA, which requires that patients who need emergency treatment be provided such treatment in the emergency room.

It appears that some patients with prior balances may be deterred by Accretive's collection practices. Exhibits 15-18 are e-mail transmissions which suggest that some patients "walked off" due to the arduous front end registration/collection process. Another exchange of e-mails in December, 2011 refers to an uninsured father who made a "scene" at the University of Minnesota Medical Center Emergency Room after an Accretive collector warned that, if the son received more lengthy treatment, the bill would be higher. (Ex. 42.) The risk manager at Fairview warned that the action by the collector may have violated EMTALA, and instructed the collectors to back off until medical screenings had been conducted. (Ex. 43.)

- f. Accretive refused to stop collection efforts when patients requested documentation of a bill and refused to confirm payment when patients stated that they had already paid the bill.**

Fairview and the Attorney General signed a consent agreement in Ramsey County District Court. (Ex. 41.) The Attorney General Agreement requires Fairview to cease collection attempts on a debt if the patient: (1) asks for documentation of the debt; or (2) claims the debt has been paid. Under the terms of the order, the hospital, before resuming collection efforts, must verify that the patient owes the money. (*Id.*) Because of this order, Fairview advised Accretive that it should suspend collection activity on patients who disputed the amount of the debt until Fairview could ratify the existence and amount of the debt. In May of 2011, Fairview conducted an audit and determined that Accretive was violating the terms of the order. (Ex. 44.) In addition, federal and state law require that collection efforts cease until verification is provided, 15 U.S.C. § 1692g, and that collectors not pursue people for money they do not owe. 15 U.S.C. §§ 1692e(2) and 1692f(1); Minn. Stat. § 332.37(12).

The scripts and FAQs distributed by Accretive indicate that collectors may not contact the hospital if the patient disputes the bill:

- “Q. If an rp [responsible person] is disputing the bill and we put it in dispute status, do they still need to contact the hospital and dispute it in order to get any sort of resolution?
- A. Disputes need to be forwarded to a Team Lead for review. Putting an account in dispute status doesn’t actually do anything because there is nobody that checks accounts in dispute. As much information for the dispute as possible should be notated and if the rp can provide any documentation they should be advised to do so.”

(Ex. 45.)

g. Accretive may have violated State law when it told collectors to keep mum about credit balances due to patients. Minn. Stat. § 332.37(17).

Accretive appears to have instructed employees not to inquire if the patient has a credit balance with the hospital. (Ex. 24.) As discussed earlier in this volume, Accretive and Fairview appear not to have implemented a process to issue refunds. (*See* Section 5.4.) Such a practice may violate both the Minnesota debt collection laws, Minnesota Statutes section 332.37(17), as well as the consumer protection laws.

h. Accretive improperly gained access to patient medical records to gain trust with patients and boost its collection efforts.

As explained in Volume 4, HIPAA, as amended by HITECH, requires Accretive to only disclose the bare minimum amount of private medical information to its employees that is necessary for them to perform their designated job functions. *See, e.g.*, 45 C.F.R. §§ 164.502(b), .514(d). Debt collectors in Accretive's MFS office in Kalamazoo, Michigan, however, are given access to vast quantities of private medical information about Fairview patients. Some collectors can log directly into Fairview's PASS system without restriction, while others gain access to Fairview patients' private medical information through the WinCollect software. Accretive collectors do not need this information to perform collection activities. They use such private medical information to deceptively gain patients' trust and bolster their collections performance. These practices violate HIPAA, as amended by HITECH. *See* 42 U.S.C. § 17935(b); 45 C.F.R. § 164.514(d). Moreover, the illegal use of private medical information to deceptively gain the trust of patient-debtors also violates federal and state laws. *See* 15 U.S.C. § 1692e(10) (prohibiting the use of deceptive means to collect debt); 15 U.S.C. § 1692f (prohibiting unfair or unconscionable means to collect debt); Minnesota's Debt Collections Act, Minn. Stat. § 332.37(12) (prohibiting violation of FDCPA to collect debt).

Conclusion. Accretive's debt-collection activity is rife with violations of Minnesota and federal laws. Accretive has hidden its true identity from patients, aggressively and illegally attempted to collect debts from patients, improperly used patient health information to collect debts, and failed to follow basic laws regarding the registration and conduct of its collectors.

AG: #2992041-v1