

Sen. Franken's Opening Statement at the Health Privacy Field Hearing

This field hearing of the Senate Health, Education, Labor, and Pensions Committee will be called to order. This hearing will focus on whether our federal laws are doing enough to protect people when they are most vulnerable—when they are sick and in need of medical care.

Being in the hospital—even under the best of circumstances—is a stressful experience. When you or someone you love are in urgent need of care, nothing else matters. I think everyone has had the experience of powerlessness and vulnerability when you're in pain and you don't know what's wrong, or when your child or spouse is hurt. And at that moment, the last thing on your mind is your wallet.

That's why I found Attorney General Lori Swanson's report about Accretive's alleged activities at Fairview extremely disturbing. I would find it absolutely abhorrent if any patients had seen badgered by debt collectors in the emergency room, or if any patients had been given the impression that they wouldn't be seen until they pre-paid for their care. That type of activity is not acceptable anywhere — and it certainly is not okay here in Minnesota.

I've read that patients in extreme pain were asked for payment for health care services in Fairview's emergency room before they even knew what was wrong with them. And I've heard that parents of premature infants were approached about their bills while they were in the neonatal intensive care unit. I've even heard that off-site debt collectors had access to detailed protected health information about patients, including their mental health conditions and other diagnoses—which may be in violation of federal privacy laws.

And I'm worried. I'm worried that if patients know they'll be asked for pre-payment for services, they'll stop going to the emergency room when they're sick—which isn't just dangerous for them, it could result in diseases being spread and entire communities getting sick. And I'm worried that if patients hear that their protected health information isn't going to be kept private, they won't share important information with their doctor—such as what medications they're taking — and that could lead to even worse health problems and higher costs if doctors don't have the information they need.

I'm worried that activities like the ones that have been alleged here could really bring down the quality of health care that Minnesotans receive when they go to the hospital.

And that would be a real tragedy. Our state has always been a national leader in providing high-quality health care, and Fairview Health Services is a prime example. I've visited Fairview many times, and I've spoken at length with their doctors and nurses. I'm convinced that they are among the best health care providers anywhere, and I think we'll hear from people today who will bear that out. But I also know that there's another part of the equation dealing with the administrative side of things, and so I look forward to working with Fairview — and all of Minnesota's health care leaders — to make sure that patients are fully protected.

It's possible that the laws that protect consumers from debt collection, and those that protect our privacy, don't go far enough. And although we're still getting all the facts about the activities that may have taken place, I look forward to hearing from our experts about whether we need to strengthen the laws that protect us when we are at our most vulnerable.

However, before we can move forward in strengthening our patient protections, we need to understand what took place. And that's why I've called this hearing and asked our witnesses to testify today—because I want to hear all sides of this story. I'm not here to sit as a judge or a jury. I'm not here to resolve the dispute between Accretive and the Attorney General; that will be left to the court system. But I do want to find out what happened, to the best of my ability, how patients were affected, and whether existing laws are doing enough to protect Minnesotans when they go to the hospital.

Take the Health Insurance Portability and Accountability Act – or HIPPA – for example. That law is intended to protect both the privacy and the security of patients' sensitive health information. In this case, though, nobody disputes that data for more than 20,000 patients were compromised, and it appears that debt collectors had access to more protected health information than they needed to perform their jobs. So that raises questions for lawmakers: Does HIPPA need to be strengthened? Does it require clarification? Is it being enforced adequately?

Take the Fair Debt Collection Practices Act as another example. That statute puts in place important protections for consumers. It governs when and how debt collectors may approach a person about a payment. But there's a dispute in this case as to whether that law even applies to Accretive's alleged activities. Again, it will be for a court to resolve that dispute. But, again, there are questions for lawmakers here. For example, are federal statutes sufficiently broad in their coverage to protect Minnesotans from abusive debt collection practices?

And, finally, there's the Emergency Medical Treatment and Active Labor Act of 1986 — or "EMTALA" as it's known — which was put in place to prevent the practice of "patient dumping," where hospitals would turn patients away from the emergency room if they were unable to pay for their care. The idea here was that anyone who desperately needs help should get it, regardless of their ability to pay.

And I think this is important to remember—the underlying goal of this law is to provide emergency care to everyone who needs it. I know that hospitals across the country are being squeezed right now — reimbursements are low, costs are rising every year, and budgets are tight for everyone. And hospitals — particularly hospitals here in Minnesota, which provide such high-value care—deserve to be paid for the services they provide. But especially in this time of economic hardship, we have to make sure that those with the least voice are heard, and that patients aren't the unintended victims of our budget shortfalls. And that's what we'll be hearing about today — whether patients are being protected, and what we can do to better protect them.

