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**Compliance Review of Fairview Health Services**

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**Charity Care and Collections Practices**



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**COMPLIANCE REVIEW**  
**CHARITY CARE AND COLLECTIONS PRACTICES**

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## **1. Medical Debt Seriously Impacts Patients.**

Medical debt can have a profound impact not only on the uninsured, but also on middle class patients and their families. One study reports that over nine million families spent more than 20 percent of their income on medical care in one year.<sup>1</sup> The middle class are susceptible to medical debt because they are "caught in the middle between affluence (and the ability to pay their medical bills) and poverty (and access to such government programs as Medicaid)."<sup>2</sup> An estimated one-half million middle class families filed for bankruptcy protection following an illness or injury in 1999.<sup>3</sup> Health care debt is the second leading cause of personal bankruptcy in America,<sup>4</sup> and nearly one-half of all bankruptcies involve a medical problem.<sup>5</sup>

Nearly 80 percent of families in bankruptcy had at least some health insurance coverage at the time of their bankruptcy filings.<sup>6</sup> Families with a medical illness or disability may nevertheless get behind on their bills due to high co-payments, coverage exclusions or policy limitations, or an inability to work caused by the illness or disability.<sup>7</sup> As a result, "medical costs and lost income are frequently lethal to the financial survival of previously secure members of the American middle class."<sup>8</sup> Over 50 percent of patients with medical debt in one study reported that the debt was at least partially the result of a medical condition that limited their ability to work and earn income.<sup>9</sup> In those cases, "The family gets hit with a double whammy. Debts that were just manageable on a full salary fall into arrears as interest and penalties mount while the family tries to survive on a suddenly lower disability paycheck."<sup>10</sup>

The U.S. Census Bureau estimates that 43.6 million Americans were without health insurance coverage during the entire year in 2002.<sup>11</sup> Among those whose families were between 100 and 125 percent of the federal poverty level in 2002, 27.9 percent lacked health insurance.<sup>12</sup> Among those in poverty, workers were less likely to have health insurance coverage than non-workers.<sup>13</sup> For an estimated 84 percent of uninsured Minnesotans, at least one person in the

family works either full or part time.<sup>14</sup> Yet, the patient may lack insurance coverage because the employer cannot afford the premiums or because the patient works part-time and is ineligible for health insurance.<sup>15</sup>

The uninsured are hard-hit by medical bills. Four out of 10 uninsured adults in one survey reported problems paying medical bills, and over 25 percent indicated that these problems had a major impact on themselves and their families.<sup>16</sup> In the same survey, four out of 10 uninsured adults indicated that they had been contacted by a collection agency about unpaid medical bills.<sup>17</sup> Medical providers are among the creditors most likely to refer debt to collection agencies.<sup>18</sup>

Patients subjected to aggressive medical debt collection practices are more likely to resort to financially unsound methods to pay off the debt, which can sink them even deeper into debt. In a study by the Federal Reserve Board, ten percent of homeowners with a home equity line of credit listed medical expenses as one of the uses of the borrowed funds.<sup>19</sup> If a patient becomes unable to make payments on the home equity loan, their home can be lost to foreclosure. Patients targeted with aggressive medical debt collection practices are also more likely to use credit cards to pay off their debt.<sup>20</sup> Many hospitals, including Fairview Health Services, routinely promote the use of credit cards to pay medical bills. *See, e.g.,* Ex. 1. These cards often have interest rates approaching 30 percent, meaning the patient pays a huge surcharge to finance the cost of their health care. In addition, when a hospital files a lawsuit and obtains a judgment against a patient, the patient's credit rating may be lowered. This can hamper the patient's ability to find an apartment or job, increase the interest rate the patient pays for mortgage loans, car loans, and credit cards, and even increase the premiums the patient pays for automobile and homeowners' insurance.<sup>21</sup> All of this further exacerbates the patient's strained finances.

Aggressive collection of medical debt also has health consequences. Over 50 percent of patients with medical debt reported in one study that they delayed getting necessary health care

treatment because of their unpaid medical bills.<sup>22</sup> These patients stated that they were uncomfortable seeking additional treatment because they owed money, that they were asked to pay cash up front, or that they were denied care because of the unpaid bills.<sup>23</sup> Patients who postpone medical care often resort to seeking more expensive and less effective care later on, such as in the emergency room.<sup>24</sup>

## **2. Charity Care and Debt Collection Standards For Nonprofit Health Care Organizations.**

Federal and state tax law and nonprofit law establish certain principles that nonprofit health care organizations should follow regarding their charity care and medical debt collection policies and practices.

### **2.1. Federal tax law principles.**

Under section 501(c)(3) of the Internal Revenue Code, an organization “organized and operated exclusively for...charitable...purposes” may be exempt from taxation. A donation to a 501(c)(3) organization is tax-deductible for the donor. The Internal Revenue Code does not define the term “charitable,” nor does a health care organization automatically qualify for exemption under section 501(c)(3) merely because it promotes health. IRS FSA 200110030 (Mar. 9, 2001). Rather, a health care organization must primarily benefit the community to qualify for federal income tax exemption under section 501(c)(3). *Id.* The Internal Revenue Service indicates that the provision of free or subsidized care to the indigent is relevant in determining whether a health care organization promotes health for the benefit of the community. *Id.* A health care organization does not qualify for tax-exempt status under 501(c)(3) merely by having policies to provide health care for the less fortunate. *Id.* Rather, according to the IRS, the organization “must demonstrate that its charity care policies actually yield significant health care services to the indigent to qualify for exemption.” *Id.*



## 2.2. State tax laws principles.

Entities which are exempt from federal taxation under section 501(c)(3) may also be eligible for state tax exemptions. Under Minnesota law, this may include exemption from income tax (Minn. Stat. § 290.05, subd. 2), sales and use tax (Minn. Stat. § 297A.70, subd. 7), and property taxes (Minn. Stat. § 272.02, subd. 7). Federal tax-exempt status does not automatically entitle an organization to state tax exemption. Rather, under state law, a nonprofit organization must prove that its activities are charitable in nature. *See, e.g., North Star Research Inst. v. County of Hennepin*, 236 N.W.2d 754, 755 (Minn. 1975). Relevant factors include whether the stated purpose of the undertaking is to be helpful to others without the immediate expectation of material reward and whether the recipients of the “charity” are required to pay for the assistance. *Id.* at 757.

It is not enough for a hospital to simply have a charity care policy; rather, the hospital must also advertise and promote the policy so that those in need of assistance are actually aided by it. *Riverside Med. Ctr. v. Dept. of Revenue*, 795 N.E.2d 361, 365-66 (Ill. Ct. App. 2003); IRS FSA 200110030 (Mar. 9, 2001). Certain activities by nonprofit health care organizations are *not* charitable. In *Chisago Health Servs. v. Comm’r of Revenue*, 462 N.W.2d 386 (Minn. 1990), the Minnesota Supreme Court denied a property tax exemption for an auxiliary clinic of a hospital. The hospital argued that the clinic delivered “charity” by allowing patients to receive care, billing them for it, and then writing off unpaid bills if it determined during its collection efforts that the patient was unable to pay. The court found that writing off bad debt was not a charitable activity, in that it “was no more than writing off uncollectible bills, a business practice not unlike that of other health care providers.” *Id.* at 391. The hospital also claimed to deliver “charity” by accepting discounted rates for Medicare and Medicaid patients. The court also rejected this argument, concluding that “there is little conceptual difference between these discounts and the business discounts negotiated by HMO’s and health insurers.” *Id.* *See also Riverside Med. Ctr.*, 795 N.E.2d at 366-67 (writing

off bad debt and discounts to Medicare patients are not charitable activities); *University of Wisconsin Med. Found., Inc. v. City of Madison*, 671 N.W.2d 292, 301 (Wis. Ct. App. 2003) (writing off bad debt not a charitable activity).

In determining whether a health care organization is engaged in a “charitable” activity, courts have considered organizations’ medical debt collections practices. In 2004, for example, the Illinois Department of Revenue revoked the charitable property tax exemption of Provena Covenant Medical Center based in part on its aggressive collection practices and the lawsuits it filed against its patients to collect medical debt.<sup>25</sup> Similarly, in *School Dist. of the City of Erie v. Hamot Med. Ctr.*, 602 A.2d 407 (Pa. Cmwlth. Ct. 1992), the court upheld a finding that a hospital was not a charity based in part on its “copious” executive salary packages and country club memberships and its aggressive medical debt collection practices. *Id.* at 411. The court observed that the hospital “has sued the very patients that it would now have this court deem objects of charity.” *Id.*

### **2.3. Nonprofit law principles.**

Under Minnesota law, the business and affairs of a nonprofit organization must be managed by a board of directors. Minn. Stat. § 317A.201 (2004). In carrying out their responsibilities under the Nonprofit Corporations Act, officers and directors have three basic fiduciary duties: (1) a duty of care; (2) a duty of loyalty; and (3) a duty of obedience. *See* Minn. Stat. §§ 317A.251, subd. 1, 317A.255 and 317A.361. The duty of care includes a duty to actively participate in the management of the organization. *See, e.g., Ray v. Homewood Hosp., Inc.*, 27 N.W.2d 409, 411 (Minn. 1947) (“directors have fiduciary duty to participate actively and fully in the management of corporate affairs”). The duty of obedience requires directors to ensure that the organization is adhering to all laws, as well as following its mission.

While for-profit companies are driven by profits and answer to stockholders, nonprofit organizations, whether tax-exempt or not, should be driven by their missions. A nonprofit director

must be “faithful to the purposes and goals of the organization,” because “unlike business corporations, whose ultimate objective is to make money, nonprofit corporations are defined by their specific objectives: perpetuation of particular activities are central to the *raison d’être* of the organization.” *Manhattan Eye, Ear & Throat Hosp. v. Spitzer*, 715 N.Y.S.2d 575, 593 (N.Y. Sup. Ct. 1999). The directors and executives are the caretakers of the organization and its assets. *Id.* They have a “duty of obedience” to ensure that the mission of the charitable organization is fulfilled. *Id.* (it is “axiomatic that the board of directors is charged with the duty to ensure that the charitable mission is carried out”). *See also Summers v. Cherokee Children & Family Servs., Inc.*, 112 S.W.3d 486, 504 (Tenn. Ct. App. 2002) (“nonprofit directors and officers must be principally concerned about the effective performance of the nonprofit’s mission”) (internal quotations omitted); *In re United Healthcare Sys., Inc.*, No. 97-1159, 1997 WL 176574, at \*5 (D.N.J. Mar. 26, 1997) (“officers and directors of a non-profit organization are charged with the fiduciary obligation to act in furtherance of the organization’s charitable mission”).

The obligation of the board to ensure compliance with the organization’s mission is not just a fiduciary obligation. Organizations often promote their mission to raise money through tax-deductible donations. A charitable organization which promotes its mission with the intent that the public relies upon it, but then fails to live up to it, may have engaged in fraud or misrepresentation in violation of Minn. Stat. ch. 309.

### **3. Background of Fairview Health Services.**

Fairview Health Services (“Fairview”) is registered with the Minnesota Attorney General’s Office (“AGO”) as a charitable organization under Chapter 309 of the Minnesota Statutes. It is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code. Fairview operates seven hospitals in Minnesota and is the parent organization in the Fairview health system, which includes over 30 separate tax-exempt non-profit, taxable non-profit, and for-profit

corporations. Ex. 2. Fairview operates over 50 primary and specialty care clinics in Minnesota, as well as urgent care centers, nursing homes, counseling centers, pharmacies, and numerous other health care facilities. Ex. 3.

Fairview's mission includes the following:

Fairview's mission is to improve the health of the communities we serve. We commit our skills and resources to the benefit of the whole person by providing the finest in health care, while addressing the physical, emotional and spiritual needs of individuals and their families.

Ex. 4. In 2001, Fairview had 13 percent of all hospital patient admissions in Minnesota. Ex. 5.

#### **4. Fairview's "Charity Care" Policies and Practices.**

##### **4.1. The "byzantine" health care pricing system.**

Irene Wielawski, a former health care reporter for the *Los Angeles Times*, calls the health care pricing structure "byzantine."<sup>26</sup> This is because there is large gap between what HMOs, insurance companies, and the government pay for health care and what a customer without insurance coverage pays for the same treatment. Because HMOs, insurance companies, and the government have market clout, they extract steep discounts from the retail price of hospital and clinic bills.<sup>27</sup> As hospitals and clinics seek to generate more revenue, they raise their retail price for services, prompting insurers to demand even steeper discounts the next time both sides negotiate.<sup>28</sup> A Harvard law professor describes the problem as follows: "There is someone to negotiate on behalf of the insurance companies. There is someone to negotiate on behalf of the state....But there is no one to negotiate on behalf of people without insurance."<sup>29</sup> The result is that patients who pay cash for their health care may pay 50 percent or more than an insurance company pays for the same services.<sup>30</sup> Uwe Reinhardt, an economics professor at Princeton University, calls these pricing inequities "brutal and inhumane."<sup>31</sup>

Like other hospitals, Fairview negotiates substantial discounts with HMOs and insurance companies and charges more to patients who pay cash. Fairview told one patient that it discounts

its prices an average of 30 percent for HMOs as a result of "the number of patients the HMO brings to Fairview." Ex. 6.

In fact, Fairview's discounts appear to be substantially higher. For instance, when Charles James of Richfield was treated for a heart attack at Fairview Southdale Hospital in December, 2001, the hospital's charges came to \$84,997. Ex. 7. The administrator of his self-insured health plan negotiated a discount of \$40,798, or 47 percent of the bill. For another patient who had surgery at Fairview Ridges Hospital in 2002, Fairview's price for four days' room charges was \$5,912. Ex. 8. The insurance company negotiated a discount of \$4,481--or 75 percent of the price--and was charged only \$1,430. *Id.* For the same patient, Fairview's charges for anesthesia came to \$2,795. Ex. 9. The insurance company negotiated a discount of \$2,481--or 88 percent--and was charged only \$313.

Dr. Julius Edlavitch, a pediatrician, had orthopedic surgery at Fairview-University Medical Center in October, 2004. Ex. 10. He was hospitalized for two days. The total charges came to \$24,228. His insurance company negotiated a discount of \$17,788--or 73 percent--and was charged only \$6,196. Dr. Edlavitch notes that, "Only a sick and unfair health care system would charge 400 percent more to the uninsured than someone like me, a doctor who is fortunate enough to have insurance."

As a single mom with a part-time job at a nonprofit, Joyce Schumacher-Hansen was uninsured when she visited the Fairview Ridges emergency room for a splinter in her eye. Ex. 11. She was billed \$600 for a 15-minute visit. When her daughter visited the emergency room for tonsillitis a few months later, Joyce was billed \$900. Because she was barely making ends meet, Joyce asked Fairview if it would discount her hospital bill. Fairview told her it would discount the bill by ten percent, but only if she paid in full immediately, and that it was "not a lending agency."

Joyce wonders: "what kind of health care system would charge more to a single mom without insurance than it does to big HMOs and insurance companies?"

To compound matters for the uninsured, the health care billing system is extraordinarily complex and often riddled with errors. This is true even for those with insurance. HMOs and insurance companies have elaborate computer programs and staff to detect these errors, but individual patients do not. When *Consumer Reports* surveyed 11,000 patients who had reviewed their itemized hospital bills, five percent reported major errors.<sup>32</sup> *Consumer Reports* describes the case of Richard Clarke, a former hospital chief financial officer, whose mother handed him a box of medical bills to review when his father died.<sup>33</sup> Clarke, who spent one year sorting through the bills, found about \$2,000 in errors. He reports that, "even I couldn't tell what, if anything, she owed," and that "dealing with it firsthand showed me how screwed up the billing system is."<sup>34</sup>

Fairview patients report similar difficulties. Rita Pajak, a 53 year old woman with multiple sclerosis, worked as a medical secretary at Fairview-University Medical Center for thirteen years. Ex. 12. In 2001, she had same-day surgery at Fairview-University Medical Center to repair a fractured arm. She thought the \$20,000 that Fairview billed her insurance company sounded high, so she requested an itemized statement. On it, she detected multiple billing errors, including charges for a surgical kit for an ankle, a surgical kit for a knee, and even two penile prostheses.

Isaac Wengerd is 29 years old and has a college degree. Ex. 13. His wife Lisa was a piano teacher. She died three years ago of non-hodgkin's lymphoma. When Lisa had a bone marrow transplant at Fairview-University Medical Center, Fairview kept incorrectly coding procedures, causing the Wengerd's insurer to deny coverage. As a result, the Wengerd's kept receiving bills from Fairview, some as high as \$20,000, telling them to make payment immediately with a check or credit card. Isaac, who hid the bills from Lisa so she wouldn't worry, spent 15 to 20 hours each week trying to correct Fairview's billing errors. He eventually gave up, and his family had to step

in to help. He notes that, "All of the time I had to spend addressing Fairview's billing errors is time I could have and should have spent with my wife before she died."

As described in the affidavits attached to this report, the inequities and cost of hospital and clinic bills hit the underinsured, the uninsured, and those with modest economic means particularly hard. Indeed, the sheer complexity of the health care billing system can be daunting for the uninsured or partially insured, who are essentially on their own when it comes to understanding and resolving their medical bills. The tilted playing field makes it all the more difficult for patients to fight aggressive debt collectors when they improperly garnish bank accounts or attempt to collect money that is not owed.

**4.2. The Fairview board has not participated in the development of Fairview's charity care policies.**

"Charity care" is a hospital's delivery of services for which payment was never expected and for which the patient is not pursued for collection.<sup>35</sup> Charity care differs from the writing off of bad debt, which simply reflects charges for which a hospital expected to collect but did not get paid.<sup>36</sup> One law professor described the distinction as follows: "It is not charity care to bill somebody and beat them over the head, and then, when you squeeze the last ounce of blood and can't collect, say, 'Oh, that is charity care.'"<sup>37</sup>

In light of the inequities in the hospital pricing system, and the adverse impact medical debt has on the physical and economic health of those without full health insurance coverage, it is important that the board of a nonprofit health care organization focus on its charity care policies. As noted above, the board of directors of a nonprofit organization has both a "duty of obedience" to establish the mission of the organization and ensure that it is fulfilled and a "duty of care" to actively participate in the management of the organization. *Homewood Hosp.*, 27 N.W.2d at 411. As a result, the board of directors should establish and closely monitor a hospital's charity care policies and practices.

In September, 2000 two committees of Fairview's board met at the Minneapolis Club. Ex. 14. The minutes reflect that, "The dialogue centered on the need to involve the Board...in a process that would define the priorities for community benefit expenditures more explicitly and possibly limit the expenditure for community benefit within acceptable limits." *Id.* Fairview has also noted that its "Community Benefit activities are conducted by entity departments without reference to community needs assessment" and that Fairview had a "lack of focus on poor and high-risk populations." Ex. 15.

Despite this criticism, Fairview provided no evidence that its board of directors ever met to review the organization's charity care practices from 1998 to 2004. Ex. 16. During this period of time, the board spent considerable effort trying to justify its executive compensation packages for the IRS. Hundreds of pages reflect the retention of consultants, attorneys, and accountants, who justified the compensation packages paid to Fairview executives. In contrast, Fairview produced not a page, not a sentence, not a word that appears to meaningfully discuss its charity care policies until the AGO Compliance Review was undertaken.

With no direction set by the board or executives, Fairview claims that it did have an ad hoc charity care policy "to address problems on a patient-by-patient basis." *Id.* A 2002 internal audit conducted by Fairview tried to portray its collection efforts as "charity care," stating that Fairview "relies on Customer Service Representative's to determine acceptable payment arrangements for patients with outstanding account balances," that "guidelines for determining appropriate payment arrangements are outdated and are made on an individual account basis by the Customer Service Representative," and that the "absence of a defined process creates inconsistencies and delays in how accounts are resolved and ultimately collected." Ex. 17. Fairview's written charity care policies have been limited. In October, 2004, for example, Fairview distributed a memo to staff responsible for collecting on patient accounts stating that charity care should be offered when "the

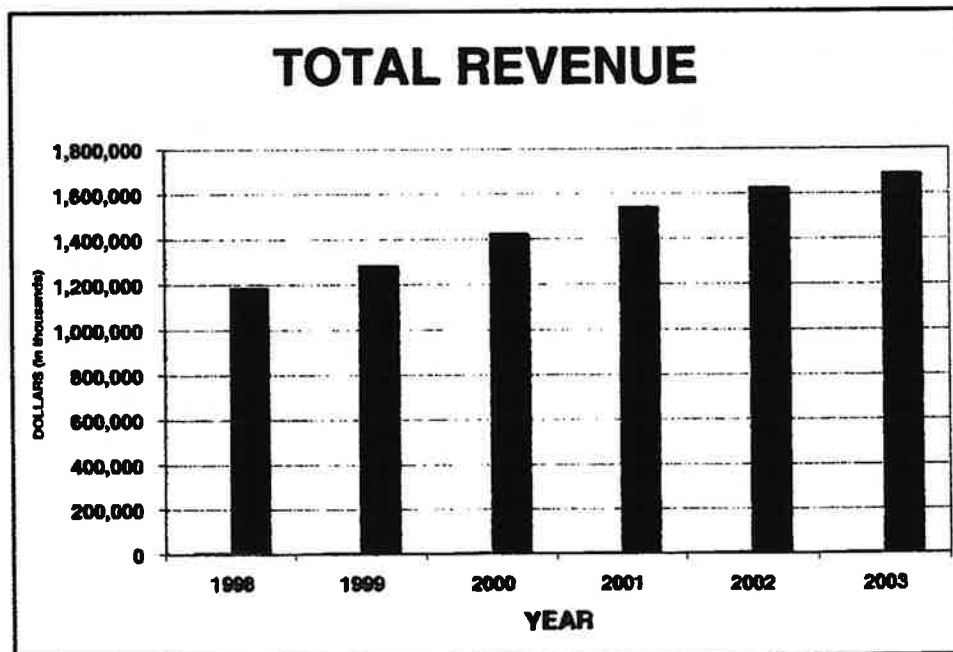


guarantor has circumstances that make it impossible to make acceptable payment arrangements.”

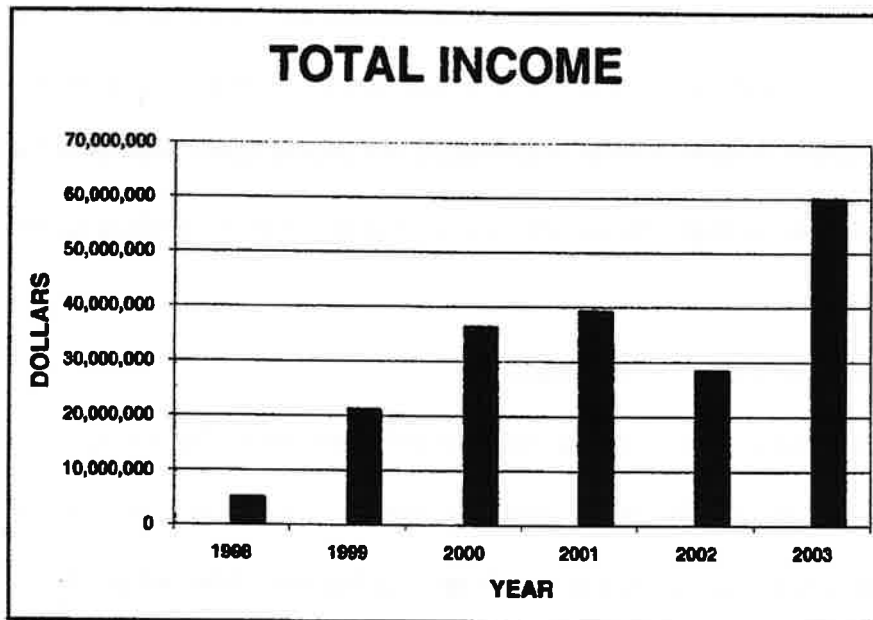
Ex. 18. As noted earlier, it is well-settled that the writing off of collection debt does not constitute charity care. Despite this, it appears that Fairview’s limited policies were intended for staff responsible for collecting on patient accounts (i.e., where collection attempts have failed and bad debt will be written off), as opposed to staff responsible for patient admissions. *Id.* For instance, one of the form letters Fairview has used to mail “charity care” applications to patients states that a charity care application is being sent to determine if the patient needs assistance “on your unpaid medical bills” and cautions that “community care is a one-time process and not an ongoing provider for medical coverage.” Ex. 19.

#### 4.3. Fairview’s charity care costs.

Fairview’s revenue grew each year between 1998 and 2003. Ex. 20. In 1998, Fairview had revenue of \$1.18 billion. *Id.* By 2003, Fairview’s revenue had increased to \$1.68 billion. *Id.* The following chart depicts the growth in Fairview’s revenue between 1998 and 2003:

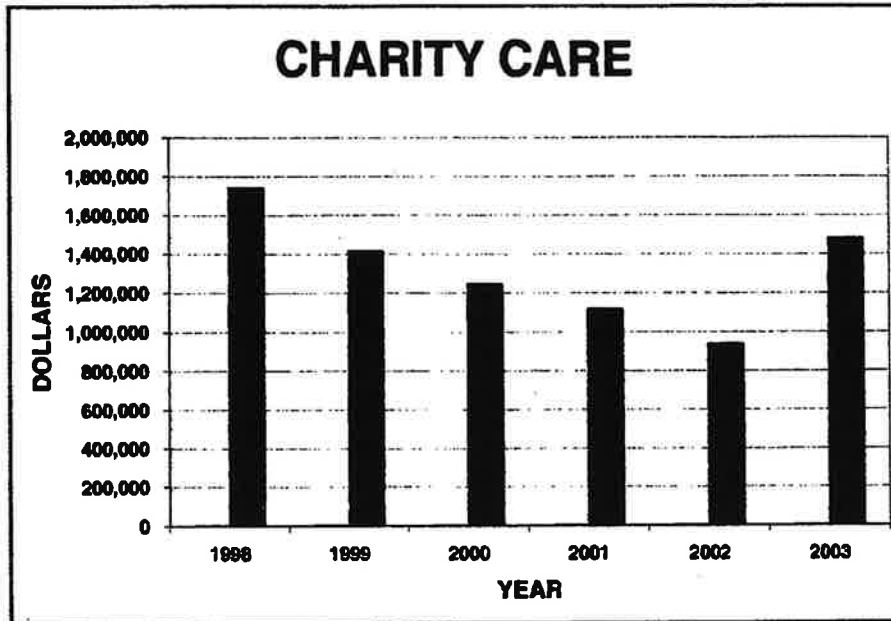


With the exception of 2002 (when it was \$28 million), Fairview's net income has also grown each year between 1998 and 2003. *Id.* In 1998, Fairview had net income of slightly more than \$5 million. *Id.* By contrast, in 2003, Fairview had net income of slightly more than \$60 million. *Id.* The following chart depicts the growth in Fairview's net income since 1998:



By contrast, Fairview's self-reported charity care costs fell each year from 1998-2002.

Ex. 21. For each year between 1998 and 2003, Fairview's costs of providing charity care have been about 1/10th of one percent or less of its annual revenue. In 1998, Fairview reported its cost of providing charity care as \$1.74 million dollars. *Id.* In 2002, Fairview reported its cost of providing charity care as \$937,000. *Id.* In 2003, after the AGO began this Compliance Review, Fairview increased its reported charity care costs to \$1.48 million. *Id.* This is more than its annual 1999-2002 reported contribution, but less than its reported 1998 contribution. The following chart depicts Fairview's charity care costs from 1998-2003:



Fairview states that it makes other types of expenditures to benefit the community. For instance, in its annual reports, Fairview claims that the discounted prices paid by Medicare and Medicaid, the Medicaid surcharge tax, and the MinnesotaCare tax constitute charity care. This claim is contrary to the finding of the court in *Chisago Health Servs.*, 462 N.W.2d at 391 (discussed in section 2.2), where it was held that such discounts do not constitute charity care. In 2002, these three categories comprised over 80 percent of Fairview's self-reported expenditures in the area of "charity care and community benefits." *Id.* Fairview also states that it writes off uncollectible patient bills each year as "bad debt," thereby benefiting its patients. As discussed in section 2.2, however, the writing off of bad debt is not considered by the courts to be an intrinsic charitable activity. *Chisago Health Servs.*, 462 N.W.2d at 391 ("The fact that [the clinic] discounts its market fees in accepting Medicare and Medicaid payments does not, by itself, constitute the extension of charity to the patients involved.")

#### **4.4. Patients report that Fairview did not offer them charity care.**

A nonprofit health care organization should have charity care policies and should promote the availability of its charity care programs to its patients. *Riverside Med. Ctr.*, 795 N.E.2d at 366;

IRS FSA 200110030 (Mar. 9, 2001). As one industry consultant advises his hospital clients: "I don't mean posting a sign....I mean a person saying, 'It's clear you don't have insurance--you may qualify for charity care.'"<sup>38</sup>

Attached to this report are the affidavits of approximately 40 Fairview patients who provide a cross-section of patients affected by Fairview's charity care and debt collection practices. The affidavits show that Fairview sues impoverished patients, garnishes their modest bank accounts, turns debt collectors loose on them, and fails to offer them charity care. The affidavits make clear that Fairview has failed to adequately promote or implement its limited charity care policies. The affidavits also make clear that the Fairview board and executives have not fulfilled their fiduciary responsibility of ensuring that the organization acts in a manner consistent with its nonprofit mission. The indifference Fairview displays to these patients is particularly troubling when juxtaposed against the golf trips, ski trips, country club memberships, luxury cars, lavish compensation, and other perks extended to Fairview executives.

Fairview claims to the AGO that, "It is the standard practice of our business office to offer Community Care to any Minnesota Care patient receiving services at our hospital...." Ex. 22.

This was not the experience of Gail Nelson, who lives alone in Iron, Minnesota. Ex. 23. Gail is disabled and has one arm, so her job opportunities are limited. She is on county assistance, food stamps, and energy assistance. She also has cervical cancer for which she received chemotherapy and radiation treatment at Fairview-University Medical Center and Fairview Range Regional Health Services. While she is covered by MinnesotaCare, a state health program for those with modest economic means, the program imposes a \$5,000 annual cap on outpatient services and a \$10,000 annual cap on hospital services. As a result, Fairview billed Gail over \$75,000 for her cancer treatment. In the summer of 2004, Fairview's debt collection agency, J.C. Christensen (JCC), started to hound Gail, who kept telling the debt collector she could not afford the bills and

would have to file bankruptcy. JCC threatened to sue Gail and denied that she had the right to file bankruptcy. JCC's steady harassment reduced Gail to tears. Fairview never told Gail about any type of charity care or financial assistance. As a result, in October, Gail appealed to the Attorney General for help because, "Short of killing myself, I don't know what else to do. I cannot take this woman's [JCC's] abuse any longer." In December, Fairview succeeded in driving Gail into bankruptcy.

Nor was it the experience of Cherianne Dubay, who also was on MinnesotaCare, with its \$10,000 annual cap on hospital bills. Ex. 24. Her only income is intermittent payments she receives from babysitting her grandchildren. In 2003, Cherianne had an angiogram at Fairview-University Medical Center. During the procedure, one of her arteries collapsed, and she was admitted to intensive care. While hospitalized, Fairview gave her contaminated blood. Fairview's medical errors resulted in a more lengthy hospital stay for Cherianne. It never offered her any charity care or financial assistance during her hospital stay. After she was released, Fairview billed Cherianne \$150,000. It also garnished \$159 of the \$189 she had in her bank account. When she called the office of Fairview's attorney, Richard Seierstad, his office mocked her and told her that her money had been taken and that she would never get it back. When Cherianne called the district court, she was informed that no case had been filed. Cherianne now has \$5 in her bank account.

Similarly, it was not the experience of Carolyn Campbell, a grandmother who lives in Mazeppa, Minnesota, is also on MinnesotaCare. Ex. 25. She is forced to use credit cards to make ends meet. Carolyn had surgery at Fairview-University Medical Center in 2001 to remove an ovarian tumor. She told the hospital of her financial difficulties and even asked to be released on the day of her surgery because she knew she could not afford steep hospital charges. In 2002, and again in 2004, Seierstad served Carolyn with the same summons and complaint for the same hospital charges not covered by MinnesotaCare. Each time that Fairview, its collection agency, or

its collection attorney contacted Carolyn, she told them of her limited finances. She was never offered charity care or financial assistance. After intervention by the AGO, Fairview claims that Carolyn's "account was missed and was cycled through our normal collection process."

Krystyna and Peter von Hohenberg and their three sons live paycheck-to-paycheck on Peter's taxable gross salary of \$1,063 every two weeks. Ex. 26. They have no savings. In 2002, one of their sons was hospitalized at Fairview Ridges Hospital after breaking his leg on a playground, and the next year another son was taken to the emergency room for a severe asthma attack. When they took their youngest son to Fairview Ridges' emergency room for severe abdominal pain and vomiting last year, the doctors wanted to admit him for observation, but the family told the hospital they could not afford it. On each of their hospital visits, Peter and Krystyna told the hospital of their strained finances and asked for limited treatment to minimize their hospital bills. Fairview did not notify them of any financial assistance programs during any of their visits. Instead, last July, Fairview began to garnish 25 percent of Peter's wages, which the family needed to sustain themselves. Only after the AGO intervened did Fairview relent and refund the money it had garnished (but not the garnishment fees).

In 2004, Melissa Atkinson's family lost their health insurance when her husband lost his job at a concrete company. Ex. 27. Melissa has a rare eye disease that causes blindness, and the only specialist in this part of the country is at Fairview-University Medical Center. When Fairview learned that the family was uninsured, an employee of its business office told Melissa at least four times that if an upcoming appointment was not an emergency, she should not come in because people "in her situation" could not pay. Melissa states that Fairview's "attitude and actions conveyed a strong and clear message to me that, if a patient does not have insurance, Fairview does not want to see them."

Not only has Fairview failed to offer charity care to these patients, it has also allowed its debt collectors to violate numerous laws in attempting to collect debt from them, such as using false representations to collect a debt in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692e(10) (i.e., falsely telling Gail Nelson she could not discharge her debt in bankruptcy) or engaging in conduct intended to harass and oppress in violation of 15 U.S.C. § 1692d (i.e., telling Angela Hanson to donate plasma).

**5. Fairview’s Debt Collection Policies and Practices.**

**5.1. The Fairview board has not established the organization’s debt collection policies, nor has Fairview adequately monitored its debt collection activity.**

Fairview does not have a comprehensive policy outlining its requirements for debt collection activity. Rather, its “policies” are contained in a few short memos describing such things as the different types of bankruptcy or telling its debt collectors not to make collection calls at Christmas.

Ex. 28.

The collection of medical debt has huge consequences for the health of Fairview’s patients, and the board of directors should set the tone and direction for the organization in this area. Yet, Fairview provided no indication that its board of directors ever met between 1998 and 2004 to discuss the organization’s debt collection policies or practices. By not establishing the organization’s policies and by allowing the cavalier treatment of its patients, Fairview’s board of directors has not acted in a manner consistent with the fiduciary duties of care and obedience.

Fairview has no internal controls over its debt collection activities. In September, 2002 Fairview decided to audit its central business office. Ex. 17. One of the objectives was to “identify controls over the collection agency process including the monitoring of the collection agency’s performance.” *Id.* at p. 2. It does not appear, however, that Fairview actually audited the collection agency process. *Id.*

Fairview's lack of internal controls is underscored by the inconsistent and conflicting information Fairview gave the AGO as part of the Compliance Review. For instance, Fairview first advised the AGO that it has used only one debt collection agency. Ex. 29. Upon further questioning, however, Fairview revealed that it used at least 11 debt collection agencies since 1998. Ex. 30. It has also used a number of law firms to collect debt on its behalf. Fairview similarly advised the AGO that it never sues a patient for unpaid bills without the permission of a director or manager in its central business office. Ex. 29. Upon further questioning, however, Fairview revealed that it had given its debt collection attorney a blanket authorization to sue patients in Fairview's name. Ex. 31.

Fairview paid its debt collection agencies \$14,547,746 between 1998 and 2004 to collect debt on its behalf. Ex. 30. In 2004 alone, Fairview paid its debt collection agencies \$2,166,218. *Id.* Fairview has paid debt collectors the following amounts since 1998:

Collection Agency	Amount
Allied Interstate, Inc. ....	\$5,032,300
J.C. Christensen & Associates, Inc.....	\$4,598,463
Risk Management Alternatives .....	\$2,306,523
Diversified Adjustment Service, Inc. ....	\$474,994
IC Systems.....	\$302,122
Associated Bureaus .....	\$236,640
American Accounts and Advisors, Inc.....	\$215,922
Payco/OSI.....	\$91,745
Phoenix .....	\$66,640
National Recoveries .....	\$33,839
Bonded Account Service .....	\$7,763
Other.....	\$1,180,788

Since January, 2003, Fairview has had an exclusive contract with J.C. Christensen & Associates, Inc. ("JCC") to collect debt on its behalf. Ex. 32. Fairview paid JCC \$1,700,956 in 2004 and \$1,514,012 in 2003. Ex. 30. Fairview pays JCC a commission of 17.5 percent of the



money it collects on accounts referred for collection and a 25 percent commission for accounts placed in litigation. Ex. 32 at p. 2. JCC is also eligible for a contingency bonus of 1.5 percent if it achieves a gross recovery rate of at least 17 percent after six months of working a placement. *Id.* at p. 3. These commissions give JCC an incentive to collect debt at all costs, even in the face of patients' pleas that they do not owe the money, are impoverished, need to arrange reasonable payment plans, or that their insurance companies should be billed.

Fairview has authorized JCC to retain attorney Richard Seierstad to sue its patients in Fairview's name. *Id.* at p. 4. JCC's contract with Fairview states that it will obtain prior approval from Fairview before suing a Fairview patient. *Id.* at pps. 2, 4. Fairview, however, does not follow such a practice. Instead, Fairview has given Seierstad a blanket authorization to sue its patients in Fairview's name for unpaid medical bills. Ex. 31. Fairview states that this was done for "better operational efficiency." *Id.* While this may be "operationally efficient" for Fairview, it has been particularly cruel to Fairview's patients. Although Fairview states that it has referred 77,000 accounts (a patient may have more than one "account") to Seierstad for legal action since 2001, Ex. 31, Fairview has no idea how much JCC has paid Seierstad to sue Fairview's patients or even if there is a contract between JCC and Seierstad establishing how Seierstad is paid or establishing any controls over the lawsuits and garnishments he files against Fairview patients. Ex. 33.

Fairview does not know how many lawsuits are filed in its name against its patients. Ex. 34. At the request of the AGO, Fairview obtained a report from Seierstad showing that he served 4,527 summonses and complaints by mail on Fairview patients between June 2003 and December 2004. *Id.* During this same time period, Seierstad attempted to personally serve 1,713 Fairview patients with lawsuits. *Id.* (There may be some overlap between the two figures.) By contrast, Fairview admits that it has no record of patients who received charity care in 1998, 1999, 2000, 2001, or 2003. In 2004, after the AGO Compliance Review was opened, Fairview claims that it offered 402

patients charity care in 2002. Ex. 35. In other words, prorated to an annualized basis, the number of patients sued by Fairview exceeds by at least 700 percent the number of patients offered charity care.

Fairview does not maintain any record of patient complaints concerning its debt collection practices or those of its outside debt collectors. Ex. 36. JCC contractually agreed to provide Fairview with reports on the number and nature of debtor complaints regarding JCC's collection tactics. Ex. 32 at p. 2. Fairview, however, has never bothered to request such reports. Ex. 36. After the AGO asked Fairview to provide this information, it obtained from JCC a short list parroting back but a few complaints previously forwarded to it by the AGO. Exs. 36, 37.

Prior to January 1, 2003, Allied Interstate was one of Fairview's principal debt collection agencies. Ex. 30. Allied Interstate has been sued by the AGO for failing to halt debt collection activities and verify debt when citizens claim they do not owe the money.<sup>39</sup> Fairview paid Allied Interstate \$5,032,300 between 1998 and 2004. *Id.* Fairview does not know how many lawsuits Allied Interstate filed in its name during that period of time. Ex. 34. At the request of the AGO, Fairview obtained a report from Allied Interstate stating that it obtained 493 court judgments against Fairview patients between 1998 and 2002. Ex. 38. Because Minnesota law allows lawsuits to be served but not filed, and garnishments to occur without any court judgment, the number of court judgments significantly understates the number of lawsuits actually commenced.

In 2002, Fairview retained one of its former vice presidents--at a cost of \$17,500 *per month*--as a consultant to help reduce its accounts receivable. Ex. 39. The agreement with the consultant identifies the following goals to measure Fairview's debt collection performance:

- Produce 100 percent accurate and compliant claims;
- Properly identify third parties liable for collection 100% of the time;

- Provide competent and immediate assistance to patients seeking to satisfy their claims;
- Complete the billing and collection cycle in 30 days; and
- Always, always provide service to patients and their families in a respectful manner.

*Id.* at p. 5. Assuming these criteria accurately reflect the standards Fairview should follow in its debt collection efforts, the consultant should not have been paid a dime.

## **5.2. Fairview's aggressive debt collection practices hurt its patients.**

The sampling of 40 affidavits attached to this report show that Fairview garnishes bank accounts of impoverished patients, sends patients to debt collectors who do not owe money, sends patients to debt collectors rather than billing their insurance companies, fails to correct its billing errors, and fails to honor payment plans established in good faith by its patients.

### **5.2.1. Fairview aggressively garnishes its cash-strapped patients.**

#### **a. Minnesota garnishment law.**

Fairview aggressively uses Minnesota's lopsided garnishment laws, which allow patient accounts to be frozen with no involvement of the court, to garnish accounts of its impoverished patients. Minnesota law allows a creditor to issue a garnishment summons to a debtor's bank 40 days after it serves a summons and complaint, if a default judgment *could have* been entered because the debtor did not "answer" the complaint. Minn. Stat. § 571.71, subd. 2. Fairview, through its attorney Seierstad, regularly makes use of this provision, unilaterally deciding that a default has occurred because the Fairview patient has not formally "answered" the complaint. Some Fairview patients, however, believe that they have "answered" the complaint by calling Seierstad's office to question the debt or asking him to bill their insurance companies. Other Fairview patients report having their bank accounts garnished even though they do not recall having first been sued. Because a garnishment summons need only be served on the debtor by mail up to

five days after the summons is issued to the bank, Fairview patients often first discover the garnishment when they learn that their account has been frozen and they have no money with which to sustain themselves. Minn. Stat. § 571.72, subd. 4. While Fairview must obtain a writ of execution from a court to actually receive the garnished funds if they do not sign Seierstad's release, for exempt debtors on fixed incomes, significant damage is done when the meager assets in their accounts are frozen.

Fairview, through Seierstad, regularly freezes patients' accounts--resulting in bounced checks, overdraft fees and the loss of fixed income--without ever having filed any pleadings in court. These stealth garnishments have allowed the scale of Fairview's debt collection practices to escape public detection. Minnesota law allows debtors to request exemptions from garnishment if their money is from certain sources, such as social security benefits, veteran's benefits, workers' compensation payments, and the like. Minn. Stat. § 571.72, subd. 8. In those cases, the debtor must file an exemption claim within 14 days or their money may be released to the creditor. Minn. Stat. §§ 571.912-913. Since Seierstad typically does not provide the debtor with a garnishment summons that is signed, some debtors believe that Fairview's garnishment summons are illegitimate, especially after courts tell them that no lawsuit has been filed. Patients who believe Seierstad's papers are fake have not responded to them. Furthermore, Seierstad routinely includes a release with his garnishment summons asking the patient to consent to the garnishment. The release threatens Fairview patients with additional costs of up to \$485 if they do not agree to the garnishment. Some patients have allowed garnishments to occur, even though they do not believe they owe the money, to avoid these additional fees.

**b. Fairview's garnishment practices.**

Fairview aggressively garnishes the bank accounts of its patients. Fairview claims that Seierstad performed 289 bank account garnishments and 373 wage garnishments from June 2003

through December 2004. Ex. 34. In some cases, Fairview garnishes the bank accounts of economically-distressed patients whose accounts are exempt from garnishment (i.e., Hanson, Hayes, Iverson, Douglas). In other cases, Fairview's debt collectors object in bad faith to patients' exemption claims, forcing them through unnecessary legal hoops (i.e., Hanson, Fadairo), in violation of Minn. Stat. § 571.72, subd. 6. In other cases, Fairview garnishes accounts where no lawsuit (and thus default) has occurred (i.e., Hayes, Hellier), in violation of Minn. Stat. § 571.71(2). In other cases, it has levied money after failing to notify patients of a writ of execution hearing (i.e., Brown) or has garnished money that patients do not even believe they owe (i.e. James, Hellier, and Ploog).

**1. Fairview has aggressively garnished the meager bank accounts of its economically-distressed patients.**

Fairview's aggressive garnishment of the modest bank accounts of financially-strained patients further highlights the lack of implementation of any meaningful charity care policies and reflects a cavalier attitude toward its patients unbecoming of a nonprofit organization.

Angela Hanson, who is pregnant and on medical assistance, earns less than \$400 per week as a receptionist--barely enough to cover her living expenses. Ex. 40. She had surgery at Fairview Ridges Hospital in 2000, which had been pre-authorized by her insurer. In December of 2004, Angela's bank told her that Fairview had drained her bank account, racking up overdraft fees. The garnishment was performed by Seierstad on Fairview's behalf. Because of the garnishment, Angela had no money even to buy groceries. When Angela called Seierstad's office to get access to her funds, she was told to "donate plasma or go to the pawn shop" if she needed money (in violation of 15 U.S.C. § 1692 (use of language designed to abuse or harass)). Angela then sent Seierstad documentation showing that her earnings were exempt from garnishment, since she was on medical assistance. Seierstad objected to her request for an exemption, falsely claiming that he could not verify her eligibility for an exemption (in violation of Minn. Stat. § 571.72, subd. 6 (bad faith

objection)). After Angela invoked the help of the AGO, Seierstad finally released Angela's exempt funds back to her. Angela's money was garnished even though no lawsuit had been filed in court and no judge had approved the garnishment and even though citizens on medical assistance cannot have their income garnished. Minn. Stat. § 550.37, subd. 14. Angela states that, "I felt that because I was poor, [Seierstad's] office felt it didn't need to treat me with respect and dignity."

Anthony Hayes helps care for his 63 year old mother-in-law, Marva Jefferson, whose only income is the \$688 she receives from Social Security each month. Ex. 41. When Marva asked him to withdraw some money from her account in December so she could buy groceries, the bank told Anthony that Marva's checking account had only \$62 and that Fairview had emptied the rest--\$478. Because of the garnishment, Marva's rent check and credit card payment bounced, resulting in overdraft fees she could ill-afford. When Anthony called Fairview, it was unable to substantiate that Marva even owed any money. Marva had to borrow money from her children to sustain herself in December, and her Christmas was ruined. The family does not recall receiving any legal papers from Fairview (in violation of Minn. Stat. § 571.71(2)), and Social Security benefits are not subject to garnishment. 42 U.S.C. § 407(a); Minn. Stat. § 571.912(2).

Elsie Iverson is also on Social Security. Ex. 42. She is an 82 year old widow who has lived in her same home in Minneapolis for 40 years. Before she retired, she owned a vintage clothing shop. Her only income is \$977 per month in Social Security benefits. In 2002, Elsie was treated at Fairview Southdale Hospital. She was covered by Medicare and does not recall receiving any bills from Fairview. In November 2004, Fairview garnished \$410 from Elsie's bank account. Social Security benefits are exempt from garnishment (42 U.S.C. § 407(a); Minn. Stat. § 571.912(2)), but Seierstad asked Elsie to let him garnish her account or face additional court costs of up to \$485. Elsie had to live without money while she fought with Seierstad and Fairview to get the improperly-garnished money returned to her account.

Julia Douglas had brain surgery at Fairview-University Medical Center in 1998. Ex. 43. Her only income is from Social Security disability and workers' compensation. Julia kept telling Fairview to bill her insurance carrier, but it did not do so. Instead, it sued her. Julia did not respond to the lawsuit because she thought the papers were a scam, since the Scott County District Court stated that no suit had been filed. Fairview thereafter garnished the Social Security and workers' compensation income in her bank account, both of which are exempt from garnishment. 42 U.S.C. § 407(a); Minn. Stat. §§ 571.912(2)(3). After her social worker and family intervened, Julia finally got Fairview to return her money. Seierstad, however, has continued to contact Julia even though she has told him to send all correspondence to her attorney. (Rule 4.2 of the Minnesota Rules of Professional Conduct requires an attorney not to contact persons represented by another attorney.) Julia, who was sued and had her exempt income garnished even though Fairview should have billed her insurer, finds it "unbelievable that a Minnesota citizen's bank account can be garnished without a court order."

## **2. Fairview garnishes money in bad faith.**

Fairview debt collectors also ignore in bad faith patients' claims of exemption from garnishment (in violation of Minn. Stat. § 571.72, subd. 6 (disregarding claim of exemption in bad faith)). In May 2004, Fairview garnished the account of Olukayode Fadairo. Ex. 44. Mr. Fadairo told Seierstad that the money was a claims payment from his insurance company and exempt from garnishment. When Fairview refused to recognize an exemption, Mr. Fadairo requested a court hearing. Fairview did not show up. Ramsey County District Court Judge Judith Tilsen ordered that the \$740 in insurance proceeds was exempt from garnishment and must be returned to Mr. Fadairo's account. After Mr. Fadairo transferred the exempt money from his savings account to his checking account, Fairview garnished it again. Mr. Fadairo supplied to Seierstad documentation that this was the same money that Judge Tilsen had previously found to be exempt. Fairview

nevertheless forced Mr. Fadairo to attend another exemption hearing at which it again did not show up. On July 19, 2004, Ramsey County District Court Judge William Leary granted Mr. Fadairo's exemption claim a second time and once again ordered that the \$740 be returned. Judge Leary also fined Fairview and Seierstad for putting Mr. Fadairo through the hoops of another hearing.

**3. Fairview garnishes accounts of patients who do not believe they owe the money.**

Fairview also garnishes the bank accounts of patients who do not believe they even owe Fairview money. During Charles James' most recent hospital stay for his third heart attack, Fairview assured Charles that it would get the approval from his insurance company. Ex. 7. Because it never did, Charles' insurance company denied coverage of \$9,000 in charges. Fairview then told Charles that he must pay "in full today" and referred his account to JCC, even though Fairview should have worked out payment with his insurance company. JCC called Charles every day and even appeared at his house demanding payment. In 2004, Fairview filed two lawsuits against Charles for \$9,035 and \$1,100, respectively, and in August Seierstad sent him an unsigned garnishment summons. Although the family recently barely saved their home from foreclosure with the help of their church and doesn't know how it can pay these bills, Fairview never told them about any financial assistance programs until after the AGO intervened.

Edward Hellier works in Wells Fargo's insurance department and lives in Lakeville with his wife and two sons. Ex. 45. He took his 11 year old son to the Fairview Ridges Hospital emergency room for a kidney stone in 2002. The family was billed \$2,800. Their insurer, Life Investors Insurance Company, told them it would reimburse Fairview \$1,400 and that the remaining \$1,400 would be written off by Fairview as the discount it offers to insurance companies. In July 2004, Edward received an unsigned garnishment summons from Seierstad. He called Fairview, which would not discuss the matter with him. In September 2004, Fairview garnished \$1,400 from the family's bank account and withdrew \$460 the next month for its costs. The family had never been



sued and does not believe they owe this money--which represented the discount by which Fairview was supposed to reduce its bill to the insurance company--but chose not to fight the garnishment because hiring a lawyer would cost too much.

#### **4. Fairview fails to notify patients of court hearings.**

While Fairview puts patients through the unnecessary legal hoops of requesting hearings at which it has no intent of showing up, Fairview also has failed to give patients notice of the proceedings it brings against them to levy their money. For example, Aaron Brown, a diesel technician who lives in Minneapolis, was admitted to the emergency room of Fairview Riverside Hospital in 2002 with chest pains. Ex. 46. Unbeknownst to him, his health insurance had lapsed because his employer had not made the premium payments. Fairview sued him for the \$7,600 in charges after refusing to negotiate an affordable payment plan. Aaron called Seierstad, thinking that by doing so he had "answered" the summons and complaint. Seierstad, however, deemed Aaron's failure to file a formal pleading a "default." Seierstad then garnished Aaron's bank account and obtained a "writ of execution" to withdraw money from his account--without giving notice to Aaron or his sister, an attorney who Seierstad knew was representing Aaron. Because of the garnishment, Aaron had to borrow money from family to pay his mortgage and racked up 39 separate overdraft and bank fees. After Aaron made a motion to the court to vacate the default judgment on the basis that it was fraudulently obtained, Fairview finally resolved the matter.

#### **5.2.2. Fairview's other debt collection practices are inconsistent with the mission of a nonprofit health care organization.**

Fairview and its debt collectors engage in a number of other illegal and questionable practices in their debt collection efforts indicative of mismanagement and indifference toward its patients that is not consistent with its nonprofit mission. For instance, Fairview sends patients to debt collectors who don't owe money, sends patients to debt collectors rather than billing their insurance companies, sends bills too late to insurance companies, resulting in claim denials, fails to

correct its billing errors, and refers patients to debt collectors who have established payment plans in good faith.

**a. Fairview sends patients to debt collectors who don't owe it money.**

It is a violation of the FDCPA for a debt collector to falsely represent the legal status of any debt. 15 U.S.C. § 1692e(2)(A). Further, Minnesota law prohibits a person from engaging in any deceptive practice. Minn. Stat. § 325D.44. By referring patients for debt collection who do not owe it money, Fairview has not adhered to these standards.

B.J. is an elderly patient who lives in northern Minnesota. Ex. 47. She gets her yearly physicals at Fairview, which her insurance company is supposed to cover. Fairview nevertheless billed her directly. B.J. started to make \$50 monthly payments to both Fairview and its collection agency. In October, 2003 Fairview sued her. B.J. wrote to Fairview's attorney, Seierstad, asking him to verify whether she owed any money and stating that she would nevertheless also send him \$50 per month "depending on how much higher the heating costs go this winter." After B.J. complained to the AGO, Fairview dismissed the lawsuit, acknowledging that B.J. actually had a \$50 credit balance.

Fairview keeps billing Rebecca Jankovich and her family for amounts not owed and refuses to explain what the charges are for. Ex. 48. In August 2001, for example, the family received a collection notice from Allied Interstate for \$13.81. Fairview refused to rescind the bill from collections, even after Rebecca told it that the bill had already been paid. Only after the AGO intervened did Fairview acknowledge Rebecca's payment and call off its collection agency. Rebecca writes that while this particular bill was not that much, "it did not seem right for Fairview to send this bill to a collections agency when it had been paid."

The bill that Fairview sent Mary Johnson had the wrong city and was for a visit with doctors she did not know. Ex. 49. After she told Fairview she did not believe this could be her bill,

Fairview referred the matter to the Weisberg Law Office, which told her it would “assume a lawsuit is necessary....” After Mary contacted the AGO for help, Fairview admitted that it should not have referred the matter to its collections attorney. Mary found the experience so troubling that she found a new clinic.

In some cases, Fairview even uses its debt collectors to pursue litigation costs that are not owed. Shortly after Kristie Curtis’ father paid his hospital bill in full, Fairview sued him. Ex. 50. Fairview dropped the suit after Kristie’s father explained that he had already paid the money. Nevertheless, Fairview’s attorney (Seierstad) continued to hound him for the expenses of filing the lawsuit, refusing to back off until the AGO sent several letters.

**b. Fairview sends patients to debt collectors rather than billing their insurance companies.**

JCC and Seierstad are entitled to a commission if they get a patient to pay on an account. Ex. 32. Because the contract between JCC and Fairview provides that JCC does not get paid for collection on accounts placed in error by Fairview, it does not appear that JCC or Seierstad are entitled to a commission if the patient’s insurance company pays. This may help explain why Fairview’s debt collectors hound patients for collection rather than facilitate the proper billing of their insurance companies. It does not explain why Fairview would refer the debt to the collection agency in the first place.

Brucienne Ploog’s husband was treated at the emergency room of Fairview-University Medical Center for an abscessed tooth. Ex. 51. Although it had their insurance information, Fairview billed the Ploogs rather than their union health plan. After Brucienne reminded Fairview that it should bill their health plan, Fairview, through Seierstad, sued them. Brucienne called Seierstad’s office and explained that the health plan should have been billed. When she didn’t hear back, she called Fairview, which denied that it had retained Seierstad. In October, Seierstad garnished the family’s bank account. Brucienne called Seierstad’s office again and was threatened

with additional attorneys' fees if she did not agree to the garnishment. To avoid these fees, she agreed, but also contacted the AGO. After the AGO intervened, Seierstad made a partial refund. Brucienne, who has worked for State Farm and Prudential as an insurance agent, states that, "In my nine years in the insurance industry, I have never seen a medical claim so mishandled from beginning to end."

Fairview also sues patients when the law prohibits the lawsuit. Linda Belanger's youngest son, Kyle, is covered by two health plans: one through Linda's employer, and one through her ex-husband's employer. Ex. 52. One year after Kyle's physician visits at a Fairview clinic, Linda received a bill from Fairview totaling \$156, or \$78 for each visit. Linda told Fairview that the bill should have been submitted to the HMO, but Fairview continued to bill her and, in October, it sued her. Just as she had with Fairview, Linda told Fairview's attorney, Seierstad, that the charges should be submitted to the insurance carriers. Seierstad told her to just pay the bill. After the AGO intervened, Fairview finally processed the claim through the HMO and dropped the lawsuit. Not only was the lawsuit unnecessary, but Minnesota law prohibits Fairview from recovering money directly from a patient that an HMO is obligated to pay. Minn. Stat. §62D.123, subd. 1 (provider shall not have recovery against patient whose insurer is obligated to cover charges).

Fairview also sued Kingsley Furo instead of properly billing his insurance company. Ex. 53. Kingsley's insurance company denied coverage of a \$5,000 bill after Fairview supplied it with the wrong name of the referring doctor. Kingsley kept asking Fairview to correct its error, but Fairview just kept billing him and eventually referred the matter to JCC, which also would not correct the error. In June 2004, Fairview sued him. Fairview finally dismissed the lawsuit after the AGO intervened.

When Olukayode Sennowo was hospitalized at Fairview-University Medical Center in 2001, he was covered by MinnesotaCare. Ex. 54. When Fairview sent him the bills, he asked it to bill

MinnesotaCare. When he did not hear back, he assumed the matter was resolved. Three years later, Fairview sued him for \$15,800. When he called Seierstad's office to explain that he thought the matter should have been resolved by Fairview billing MinnesotaCare, the employee who answered the phone called him a "deadbeat." Mr. Sennowo recently filed a complaint with the AGO.

After Steven Jacques, a door-stainer who lives in Avon, Minnesota, received a letter from Seierstad in 2004 stating that he owed Fairview money, he called Fairview because he did not recall receiving any bills. Ex. 55. When Fairview told him that there was an outstanding bill from 2003, Steven told Fairview that any treatment should have been billed to his insurance company. Fairview told Steven it would investigate the matter and get back to him. Instead, it sued him. After the AGO intervened, Fairview admitted that it had failed to credit a large portion of his insurance company's payment to his account.

As an employee of Blue Cross and Blue Shield of Minnesota, Stephen Burdette has processed health insurance claims for a living. Ex. 56. He used to work at Fairview, where he was treated in March of 2000. The treatment should have been covered by his Fairview COBRA plan, which is administered by PreferredOne, which is partially owned by Fairview. In July, 2001--over one year after Stephen's treatment--Fairview billed him \$101. Stephen put substantial time and effort into finding out the cause of the bill: that Fairview denied receiving his March, 2000 COBRA premium payment. Stephen sent Fairview a copy of his cancelled check showing his premium payment to Fairview, to no avail. Stephen also told Fairview to no avail that, because Fairview was both the provider (i.e., the clinic) and the payor (i.e., the COBRA plan), it should be able to work out the matter internally. After Fairview threatened to send Stephen's account to a collection agency, he finally paid the \$101, which he did not believe he owed, because it was cheaper than disputing the issue in court. Stephen notes that he could not get the matter resolved

even with his health care background and that, "I can only imagine how difficult it would be for someone who is unfamiliar with the health care field or claims to sort out this type of problem."

Dr. Mary Jo Connelly, a physician at HealthEast, also has a health care background. Ex. 57. In 2001, her 18 year old son Michael was hospitalized at Fairview. There was an outstanding balance after Michael's primary insurer paid the claim, and Dr. Connelly asked Fairview to submit the remainder of the bill to Michael's secondary insurer, her HealthEast health plan, which had assured Dr. Connelly it would pay the claim if one was submitted. Instead, Fairview sent the \$1,729 bill to JCC, which reprimanded Michael that "the fact that you still have not made payment of the money due our client is of great concern to them" and told him that he should borrow the money to pay the bill if he did not have it. It took the intervention of the AGO to get Fairview to halt its collections efforts. Dr. Connelly does not understand why Fairview did not simply bill the secondary insurer rather than retaining a collection agency to threaten her son.

Lisa Norton's daughter, Mahalia, was born prematurely and needs medical treatment. Ex. 58. As a result, Lisa must stay home with Mahalia, who is covered by both Blue Cross and MinnesotaCare. In 2004, JCC contacted Lisa, claiming she owed Fairview money. After calling Fairview, Lisa discovered that it had erred by not billing MinnesotaCare. Even though Fairview told Lisa it would submit the claim to MinnesotaCare, it allowed JCC to continue to hound Lisa for the money.

Kenneth Anderson, who lives in Hopkins, was treated for pneumonia at the emergency room of Fairview-University Medical Center. Ex. 59. When Fairview wanted to order a stress test, Kenneth questioned whether the insurance company would cover the test, since it appeared unnecessary. As Kenneth predicted, his insurance company later denied coverage for the \$1,483 stress test. Kenneth told Fairview and its collection agency that he should not have to pay the bill, since his insurance company deemed it medically unnecessary. After Fairview sued him, Kenneth

paid \$150 to file an Answer, in which he stated that he did not owe the money because the services were not appropriate for the condition for which he was hospitalized. Fairview then dropped the lawsuit.

**c. Fairview's billing delays prejudice its patients.**

Fairview frequently bills insurance companies outside of the contractual deadlines for submitting such bills, causing the insurance companies to deny coverage of the claim.

In 2001, Mary Ehalt received physical therapy for her arthritis at Fairview. Ex. 60. At the time, she had health insurance coverage from Medicare and PreferredOne. Two and one-half years later, Fairview told Mary that PreferredOne had denied coverage because Fairview billed it too late. Fairview told Mary that she therefore owed Fairview \$1,153 and referred the matter to JCC, which lectured her that avoidance of the debt was "no longer an acceptable course of action." Mary told JCC that she did not owe the money because Fairview had erred in not billing PreferredOne on time. JCC would not accept this explanation. After the AGO intervened, Fairview wrote off the balance. Fairview's contract with PreferredOne prohibits Fairview from billing the patient if a claim is denied because Fairview fails to submit a claim in a timely fashion. Ex. 61.

Michelle Olson had surgery at Fairview Southdale Hospital in 2001 for a nerve disorder, followed by physical therapy. Ex. 62. She was covered by both a workers' compensation carrier, as well as her husband's union health plan. After Fairview started to send her bills, she instructed it to bill the insurance carriers. She was then contacted by Seierstad, who demanded that she pay \$447. She instructed Seierstad to have Fairview submit the bills to the insurance company. The insurance company, however, denied coverage because Fairview submitted the bill so late. Fairview then sued Michelle, who recently contacted the AGO for help.

Fairview also sends untimely bills to patients, prejudicing them as well. Almost two years after L.H.'s radiation treatment at Fairview-University Medical Center, Fairview for the first time

billed him for \$657. Ex. 63. Fairview's delay in sending the bill cost him his ability to deduct the payment from his tax returns. After the AGO intervened, Fairview wrote off the balance, acknowledging that "there could have possibly been a more efficient resolution done." Similarly, when P.B. visited Fairview Southdale Hospital in March 2002, she had health coverage through her employer's self-funded health plan. Ex. 64. Fairview billed P.B., rather than the health plan. P.B. repeatedly asked Fairview to bill the health plan, but when Fairview finally got around to doing so, the claim was denied because Fairview had submitted it too late. P.B. then began to receive collection letters from the Weisberg Law Office. Not only did she spend 15 hours getting the matter resolved, she lost the ability to use her flex-plan to pay claims because of Fairview's delays.

**d. Fairview doesn't correct its billing errors.**

Fairview patients report that when they bring billing errors to Fairview's attention, it won't correct them. In some cases, rather than fixing the errors, Fairview refers patients to debt collectors.

Beth Ann Schultz works in the billing office of one of Fairview's competitors. Ex. 65. In 1995, she had a kidney and pancreas transplant. Her transplant and followup care were covered by Medicare. In October 1999, Fairview billed Beth Ann \$232. She called Fairview many times between 1999 and 2001 to explain that Medicare should have paid the bill, but Fairview would never correct the error. As a last resort, Beth Ann wrote to the AGO, which contacted Fairview, which then admitted that Medicare denied coverage because Fairview had incorrectly coded the treatment as relating to an automobile no-fault claim, rather than a transplant. Beth Ann notes that it took her two and one-half years to get the problem resolved and that, "I work in the health care system and was able to stand up for myself. Many people probably would be kow-towed by such a powerful organization and forced to pay a bill they do not owe."

Frank Wisnew, a Fairview patient for 30 years, also got no help from Fairview in fixing its billing error. Ex. 66. In November 2003, Frank received a bill from Fairview for \$284 for



treatment received two and one-half years earlier. It threatened him with further action if he did not make payment on the "seriously past due" account. Even after Frank submitted documentation showing that he had already paid the bill, Fairview referred the matter to American Accounts and Advisors, Inc., one of its debt collection agencies. Only after the AGO intervened did Fairview acknowledge the error and call off its collection agency.

Seventy six year old Ben Gorecki had physical therapy at Fairview Northland Clinic in Milaca. Ex. 67. The bill sent to Ben's insurer, however, stated that the treatment was rendered at Fairview Northland Regional Hospital in Princeton, causing Ben's insurer to charge him the higher hospital deductibles. Ben told Fairview of its error, but Fairview simply threatened to send him to a collections agency unless he paid the bill. Fairview eventually backed down, but only after the AGO's intervention.

Fairview also does not substantiate the debt allegedly owed by patients who attempt to find out whether or not they owe the money. When Samuel Justus began receiving calls from JCC stating that his family owed Fairview money, he asked JCC to document the debt. Ex. 68. JCC's representative yelled at him and hung up the phone. Fairview then sued him. Samuel kept telling Fairview, JCC, and its attorney, Seierstad, that he was not aware he owed any money and requested documentation that he did. The best response he got was that Seierstad was "presently reviewing your account for litigation" (though a lawsuit had been commenced many months earlier). After the AGO intervened, Seierstad finally closed the matter. Samuel was never given any documentation to show to whether or not he had owed any money.

After intervention by the AGO, Fairview finally gave Taepin Lynch an unintelligible explanation of whether she owed it money. Ex. 69. Taepin, who was born in Thailand, was treated by Fairview in 2002. Although she had health insurance, Fairview billed her \$98. When she called Fairview several times to find out if she really owed the money, Fairview told her to submit her

question in writing, which she did. Fairview then ignored her letter and advised her that if she did not pay the account in ten days, it would refer the matter to a collection agency. After the AGO intervened, Fairview wrote off the bill with a garbled explanation of why it was sent. Taepin prefers to return to Thailand each year with her children for medical treatment, where health care costs are much lower.

While Fairview is quick to send patients' accounts to collections, it is slow to refund their money. M.G., who is 88 years old, had five physical therapy sessions at Fairview in 2002, for which Fairview charged her a \$10 co-payment each time. Ex. 70. After M.G. learned that her insurance plan did not require a co-payment, she tried to get Fairview to refund the money. After a year went by with no refunds, M.G. turned to the AGO for help. M.G. notes that, "although \$50 may not be a lot of money to some people, I am 88 years old and living on a fixed income." She only got her refund after the AGO intervened.

**e. Fairview refers patients to debt collectors who have established good faith payment plans.**

In some cases, Fairview and its debt collectors establish payment plans with patients, only to ignore them. In other cases, Fairview refuses to work out any payment plan at all, even though patients explain that they cannot afford to pay the full amount at once.

When 64 year old Patricia Larson was hospitalized for pneumonia at Fairview Ridges Hospital, she faced a co-payment of over \$1,000 after her insurance company paid its portion of the claim. Ex. 71. Rather than return Patricia's repeated calls requesting a payment schedule, Fairview referred Patricia's account to JCC. She arranged with JCC to pay Fairview \$50 per month. After she started making the promised payments, Fairview threatened her with a lawsuit if the full amount was not paid in full in ten days. It took the intervention of the AGO to get Fairview to honor the original payment schedule.

Fairview did the same thing to [REDACTED] whose only income is the \$900 monthly disability checks he receives from Social Security. Ex. 72. [REDACTED] agreed to pay Fairview \$20 per month for an unpaid bill, which was all he could afford. Even though he faithfully made his payments each month, Fairview referred his account to JCC, which told him that debt "avoidance is no longer an acceptable course of action." [REDACTED] sent both Fairview and JCC documentation showing he had complied with the payment plan and requested an itemized statement of anything he owed. In response, he just got more collection letters from JCC until the AGO intervened and Fairview acknowledged that it "should have recognized you had a payment arrangement in place."

While a student at the University of St. Thomas, Takis Taratsas received allergy treatment at Fairview-University Medical Center. Ex. 73. PreferredOne, his health plan, denied coverage, citing an exclusion for pre-existing conditions. Takis arranged to pay Fairview \$300 per month until he paid off all of his open accounts. Even though Takis made regular payments, Fairview referred the matter to JCC, which nonsensically told him he needed to work out a payment plan.

In other cases, Fairview does not offer any payment plans at all. For example, Nicole Hansen, a single mom of a four year old daughter, gets by paycheck-to-paycheck. Ex. 74. Fairview billed her over \$2,000 for an uninsured visit to its urgent care center for severe vascular migraines. Nicole offered to pay Fairview \$100 per month, but JCC kept hounding her at work for higher payments. Once again, it took the intervention of the AGO to get Fairview to accept the only payment plan Nicole could afford.

## **6. Conclusion.**

Patients who lack full insurance coverage for their health care can quickly become overwhelmed with medical debt. This has serious economic and health consequences for the patients and their families and for the community. Patients without full insurance coverage or with medical debt are less likely to receive necessary medical treatment, often resulting in more

expensive and less effective care down the road. Only “a few days of medical care may be enough to sink a middle-class family” that is underinsured or uninsured.<sup>40</sup>

Nonprofit health care organizations are supposed to be driven by their missions. They should promote the health of their patients. Indeed, nonprofit health organizations receive significant tax exemptions for just this reason. In light of these tax exemptions and the impact that medical debt has on patients, nonprofit health care organizations should follow certain standards regarding their charity care and medical debt collection activities. Fairview has neglected its mission by hiring debt collectors to aggressively pursue the collection of medical debt from those who are impoverished, who do not owe anything, who are billed in error, or who are attempting in good faith to establish payment plans. By allowing these practices to occur, the Fairview board of directors and the executive staff have not acted in a manner consistent with their fiduciary duties.

It is noteworthy that at its last meeting, the Fairview board of directors adopted the charity policy attached as Exhibit 75. The adoption of this policy is a significant step forward for the organization. It is troubling, however, that this policy was not adopted sooner, and it remains to be seen how it will be implemented. A major shortcoming of the charity care policy is that it states that Fairview’s collection policies will remain in place. This is troubling, because Fairview’s collections policies appear to condone the above-described tactics.

- <sup>1</sup> TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 141 (2000).
- <sup>2</sup> TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 155-56 (2000).
- <sup>3</sup> Melissa B. Jacoby et al., *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 377 (May 2001).
- <sup>4</sup> Julie Winokur, *Medical Emergency, Neglected for a Decade, Health Care is Metastasizing Into a New Crisis*, SAN FRANCISCO CHRONICLE, Apr. 27, 2003.
- <sup>5</sup> Melissa B. Jacoby et al., *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 377 (May 2001).
- <sup>6</sup> Melissa B. Jacoby et al., *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 401 (May 2001).
- <sup>7</sup> Melissa B. Jacoby et al., *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 406-07 (May 2001).
- <sup>8</sup> TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 142 (2000).
- <sup>9</sup> CAROL PRYOR & DEBORAH GUREWICH, *THE ACCESS PROJECT, GETTING CARE BUT PAYING THE PRICE: HOW MEDICAL DEBT LEAVES MANY IN MASSACHUSETTS FACING TOUGH CHOICES* 19 (Feb. 2004).
- <sup>10</sup> TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 159-60 (2000).
- <sup>11</sup> U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *Health Insurance Coverage in the United States: 2002* (Sept. 2003), at 1.
- <sup>12</sup> U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *Health Insurance Coverage in the United States: 2002* (Sept. 2003), at 4.
- <sup>13</sup> U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *Health Insurance Coverage in the United States: 2002* (Sept. 2003), at 3.
- <sup>14</sup> FAMILIES USA, *WHO'S UNINSURED IN MINNESOTA AND WHY?* (Nov. 2003).
- <sup>15</sup> FAMILIES USA, *WHO'S UNINSURED IN MINNESOTA AND WHY?* (Nov. 2003), at 2.
- <sup>16</sup> Hugh F. Daly III et al., *Into the Red To Stay In the Pink: The Hidden Cost of Being Uninsured*, 12 HEALTH MATRIX 39, 44 (Winter 2002).
- <sup>17</sup> Hugh F. Daly III et al., *Into the Red To Stay In the Pink: The Hidden Cost of Being Uninsured*, 12 HEALTH MATRIX 39, 46 (Winter 2002).
- <sup>18</sup> Susan D. Kovac, *Judgment-Proof Debtors in Bankruptcy*, 65 AM. BANKR. L.J. 675, 710 (Fall 1991); Robert B. Avery, et al., *An Overview Of Consumer Data and Credit Reporting*, 89 Fed. Reserve Bull. 47, 69 (Feb. 2003) (52 percent of collection actions reported by collection agencies on consumer credit reports related to medical bills).
- <sup>19</sup> Glenn B. Canner et al., *Recent Developments in Home Equity Lending*, 84 Fed. Reserve Bull. 241, 248 (2000).
- <sup>20</sup> Hugh F. Daly III et al., *Into the Red To Stay In the Pink: The Hidden Cost of Being Uninsured*, 12 HEALTH MATRIX 39, 48 (Winter 2002); TERESA SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT* 153 (2000).

- <sup>21</sup> Hugh F. Daly III et al., *Into the Red To Stay In the Pink: The Hidden Cost of Being Uninsured*, 12 HEALTH MATRIX 39, 53-54 (Winter 2002).
- <sup>22</sup> CAROL PRYOR & DEBORAH GUREWICH, THE ACCESS PROJECT, GETTING CARE BUT PAYING THE PRICE: HOW MEDICAL DEBT LEAVES MANY IN MASSACHUSETTS FACING TOUGH CHOICES 18 (Feb. 2004).
- <sup>23</sup> CAROL PRYOR & DEBORAH GUREWICH, THE ACCESS PROJECT, GETTING CARE BUT PAYING THE PRICE: HOW MEDICAL DEBT LEAVES MANY IN MASSACHUSETTS FACING TOUGH CHOICES 18 (Feb. 2004).
- <sup>24</sup> Dianne Miller Wolman & Wilhelmine Miller, *The Consequences of Uninsurance for Individuals, Families, Communities, and the Nation*, 32 J.L. MED. & ETHICS 397, 400 (Fall 2004).
- <sup>25</sup> Lucette Lagnado, *Hospital Found "Not Charitable" Loses Its Status as Tax Exempt*, WALL ST. J., Feb. 19, 2004, at B1.
- <sup>26</sup> Irene Wielawski, *Gouging the Medically Uninsured: A Tale of Two Bills*, 19 HEALTH AFFAIRS 180 (Sept./Oct. 2000).
- <sup>27</sup> Jonathan Cohn, *Uncharitable?*, N.Y. TIMES MAG., Dec. 19, 2004, at 53.
- <sup>28</sup> Jonathan Cohn, *Uncharitable?*, N.Y. TIMES MAG., Dec. 19, 2004, at 53.
- <sup>29</sup> Lucette Lagnado, *Full Price: A Young Woman, An Appendectomy, and a \$19,000 Debt*, WALL ST. J., Mar. 17, 2003, at A1.
- <sup>30</sup> Irene Wielawski, *Gouging the Medically Uninsured: A Tale of Two Bills*, 19 HEALTH AFFAIRS 180, 180 (Sept./Oct. 2000).
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- <sup>32</sup> *Decoding Your Hospital Bills*, CONSUMER REP., Jan. 2003, at 19.
- <sup>33</sup> *Decoding Your Hospital Bills*, CONSUMER REP., Jan. 2003, at 19.
- <sup>34</sup> *Decoding Your Hospital Bills*, CONSUMER REP., Jan. 2003, at 19.
- <sup>35</sup> TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 154 (2000).
- <sup>36</sup> TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 154 (2000).
- <sup>37</sup> Lucette Lagnado, *A Nonprofit Hospital Fights to Win Back Charitable Hero*, WALL ST. J., June 29, 2004, at B1.
- <sup>38</sup> Jonathan Cohn, *Uncharitable?*, N.Y. TIMES MAG., Dec. 19, 2004, at 55.
- <sup>39</sup> *State of Minnesota v. Allied Interstate, Inc.*, Hennepin County District Court, Ct. File No. 04-8719.
- <sup>40</sup> TERESA A. SULLIVAN ET AL., THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT 170 (2000).