

Statement
United States Senate Committee on the Judiciary
Hospital Group Purchasing: How to Maintain Innovation and Cost Savings
September 14, 2004

The Honorable Mike DeWine
United States Senator , Ohio

OPENING STATEMENT
ANTITRUST SUBCOMMITTEE HEARING
“Hospital Group Purchasing:
How to Maintain Innovation and Cost Savings”
U.S. SENATOR MIKE DEWINE
SEPTEMBER 14, 2004

Good afternoon and welcome to the Antitrust Subcommittee hearing on hospital group purchasing organizations. Senator Kohl and I have devoted substantial energy and time to exploring allegations of questionable ethics and business practices in this industry. We have commissioned two General Accounting Office studies on this issue, and this is our third hearing on the hospital group purchasing organizations, often referred to as “G-P-Os”.

The purpose of this hearing is to look toward the future. Since our first hearing in April of 2002, I am pleased to say that many of the questionable practices in the industry have been voluntarily eradicated by the GPOs, themselves. In particular, business practices, such as GPOs owning stakes in their vendors or GPOs accepting an ownership interest in a vendor in place of an administrative fee, appear to have ended.

The GPOs took these steps in response to the Subcommittee requests for them to implement voluntary codes of conduct, and they deserve our applause for so doing.

GPOs also have taken important voluntary steps to address certain controversial contracting practices that are of concern to both Senator Kohl and to me. For example, GPO practices, like the bundling of clinical preference products with commodity products, extremely high commitment levels, or sole source contracting are often the focal point of debate within the medical community. Small manufacturers complain that these practices prevent fair market access to new, potentially innovative products, and as a result, prevent improved patient care. Larger incumbent manufacturers and GPOs often argue in response that these practices generate significant cost savings for high quality products without harming patient care at all. One GPO, for example, recently has pointed to an instance where it entered into a long-term sole-source contract for surgical sutures and was able to save \$55 million for its hospitals.

My sense is that both sides make good points -- in fact, these are business practices with the potential to save significant money in certain circumstances but, unfortunately, they sometimes make it harder for legitimately innovative products

to reach the market. Under these circumstances, it seems that the best result is one that maintains maximum flexibility in the market, and in some ways, we may already have achieved that; all of the major GPOs have adopted codes that address these issues, but they vary in their details and how they are applied. As a result, it appears that we are seeing fewer long-term contracts, less bundling of clinical preference items, and less sole-sourcing, but that those contracting practices are still available in certain circumstances.

Unfortunately, however, the Subcommittee still hears complaints -- principally from small medical device manufacturers with arguably cutting edge products -- that they are unable to negotiate a contract with GPOs. I'll be honest: It is often difficult to assess the credibility of certain complaints from medical device manufacturers and the GPOs' responses to such complaints.

On one hand, I certainly don't believe that every small medical device manufacturer that fails to win a contract with a GPO has a legitimate complaint. We all know that competition for contracts produces winners and losers and sore losers ought not hamper free competition. On the other hand, these complaints have been continuous and steady and appear to have at least a degree of credibility. This makes me wonder if the GPOs, indeed, are all living up to their pledge to decrease or stop some of these controversial business practices.

So, that brings us here today -- to explore where we should go from here. I know Senator Kohl and I share a concern that if the Antitrust Subcommittee turns its "oversight spotlight" away from the GPO industry, there is a risk that there may be backsliding. That means we need to decide if we can trust that the current reforms are sufficient or, if not, what pathway we can take to ensure that the current reforms are actively implemented and long-lasting.

I think it is fair to say that we are at the crossroads and sitting here today, I see at least three paths we could choose. I have made no decision which path is best, nor do I think we are necessarily limited to these three paths. But, sitting here today, I think these three paths are evident.

One path is to do no more, at least for now. We have studied the issue, held numerous meetings within the industry, commissioned studies, and held three hearings. The GPOs, hospitals, and manufacturers know all of our concerns and have acted on them, to one degree or another. Some would argue that we have done our job and, perhaps more importantly, the GPOs have done their job, by adopting the voluntary codes. Under that view, no more action is needed.

Another path is to formally transfer our oversight of the industry somewhere else. The primary example thus far of this approach is embodied in the staff Discussion Draft that has been circulated within the industry and provided to today's witnesses.

It would move the oversight role to the Department of Health and Human Services, which as an executive agency, is arguably better equipped to oversee the activities in the GPO industry. The Department of Health and Human Services already has a degree of expertise in this area, and it currently oversees the “anti-kickback” exemption upon which the entire GPO industry is built.

Another path is for the GPO industry to build upon their work of setting up individual codes of conduct to create what I call a “voluntary plus” approach. Currently, existing voluntary codes are enforced by each company on its own, an approach which has both strengths and weaknesses. On the one hand, because it is voluntary and self-enforced, it provides maximum flexibility and does not hamstring the industry. On the other hand, for those very same reasons, there is no assurance that it will continue to be implemented in the future or that it always will be implemented actively. Most troubling is the fact that there is really no mechanism to discipline GPOs that don’t follow their own code.

I welcome any proposals from the GPOs that would create this sort of “voluntary plus” approach -- proposals that build upon the current voluntary codes, but add some “teeth” so that the Subcommittee can be assured that the reforms are made permanent and that if a GPO chooses to disregard its own code of conduct, that it is disciplined in a way that has real consequences.

I have set out these three paths as what I see now, but I am not wedded to just these three paths. If there is a fourth pathway or a fifth out there that are products of this hearing, I look forward to considering them too. We hope today to hear our witnesses comment not only on the strengths and weaknesses of the discussion draft, but on all of these ideas and any others that may arise.

Before I turn to our ranking member, Senator Kohl, I would like to add that throughout our oversight of the GPO industry, I have tried to stay in close contact with the hospitals in Ohio to find out how they view GPOs. Of course, GPOs work as purchasing agents on behalf of these hospitals, so it is really the hospitals that get the benefits of GPO activities.

I think it is fair to say that nearly all the hospitals I have spoken to are confident that their GPOs are saving them significant amounts of money. In this age of escalating health care costs, that is a very important outcome, and one that we must maintain. So, I certainly believe that GPOs can provide significant benefits for hospitals. Ensuring that in the future GPOs both save money and allow for new technology and vigorous competition in healthcare products is the goal of this hearing today.

One final point -- the Subcommittee first started investigating this issue in the fall of 2001, under the Chairmanship of Senator Kohl. He has continued to work tirelessly on this important issue. I think it is fair to say that without his work, the Subcommittee would not be holding this hearing today and the industry would not have progressed to where we are now without his efforts, so I thank him for that.