

Testimony of

The Honorable Herb Kohl

April 30, 2002

Today our subcommittee turns its attention to an issue affecting the health and safety of every American who has ever, or ever will, need treatment at a hospital - in other words, all of us. This issue is how hospitals form buying groups to purchase nearly everything used by hospitals - everything from pacemakers to thermometers, from surgical devices and CAT scanners to needles and band aids - and how those groups affect the cost and quality of patient health and medical innovation.

These buying groups - known as group purchasing organizations or GPOs - are at the nerve center of our health care system. Because they determine what products are in our hospitals, they directly affect patient health and safety. Because they control more than \$34 billion in health care purchases, they impact the cost we all pay for our health system. Because they represent more than 75% of the nation's hospital beds, they are a powerful gatekeeper who can cut off competition and squeeze out innovation. Gaining a GPO contract is essential for any medical equipment supplier. GPOs determine which medical devices will be used to treat us when we are sick or injured, which manufacturers will survive and prosper - and which ones will fail. It doesn't do any good to invent the next great pacemaker or safety needle if you can't get it to patients because the GPO stands in your way.

With that kind of power comes responsibility. But too often it seems GPOs have failed to serve as honest brokers seeking to serve the best interests of hospitals and patients.

We have three main concerns.

First: conflicts of interests raise the specter of critical health decisions being influenced by financial ties to suppliers. We have heard startling allegations of scandal and conflicts of interests that have infected the GPOs. Premier's chief executive received millions of dollars worth of stock options from a company with a contract supplying pharmaceutical services to Premier hospitals. His response - that he recused himself from contracting decisions with respect to the company at issue and that his financial interests were disclosed, and approved by, Premier's Board - is good, but not good enough. He should have severed all ties to the company when he joined Premier. On another occasion, Premier steered business to a pharmaceutical supply company and thereby helped turn its initial \$ 100 investment into a stake worth \$ 46 million dollars last year. Novation today demands that medical suppliers it contracts with sell their products on a for-profit e-commerce site in which Novation has a substantial interest and in which many of Novation's senior executives hold personal stakes.

These practices are appalling and cannot be tolerated. We cannot accept a situation where a decision on which medical device will be used to treat a critically ill patient could conceivably or even theoretically turn on the stock holdings of a GPO executive.

Second: contracting practices may reduce competition and innovation in health care and narrow the ability of physicians to choose the best treatment for their patients. In one case we know of, a hospital denied a physician permission to use a vital pacemaker for a patient on the operating table but not yet anesthetized - all because there was no GPO contract for that pacemaker. The pacemaker that was on contract - that the hospital required him to use - was in the midst of an FDA investigation into its effectiveness and safety. Hospitals have failed to buy safety syringes which prevent accidental needle sticks because doing so would mean buying off the GPO contract. As a result, nurses have suffered easily preventable injuries and have developed H-I-V and Hepatitis.

GPO contracting policies have created a system that keeps many good products out of circulation while enabling large manufacturers to entrench their market position. Practices such as sole sourcing, high commitment levels - requiring a hospital to purchase as much as 90% of a product from one company in order to get the maximum discount - and bundling - giving hospitals extra discounts and bonuses for buying a group of products - can seriously damage the ability of doctors to choose the best products for their patients and for competitive manufacturers to survive and innovate.

Third: the General Accounting Office today revealed that these buying groups - whose goal is to save money - don't always get the best deal. We all support the basic purpose of GPOs - to hold down health care costs with volume purchasing. But the GAO study raises serious doubts as to whether GPOs are doing a satisfactory job achieving this goal. In many cases, hospitals can get a better deal if they go outside the GPO. It seems like sometimes GPOs may produce the worst of both worlds - little savings and fewer choices.

We therefore call on the entire GPO industry to work with us to create a code of conduct that will address these ethical problems and contracting issues. The industry should clean up its own house, and we believe they want to. But without quick and effective self-regulation, we would have to consider congressional action. In addition, Senator DeWine and I are today writing to the Justice Department and Federal Trade Commission to request that they re-examine their Guidelines that protect GPOs from federal antitrust scrutiny in most cases.

Our goal should be to ensure that the GPO system truly achieves cost savings in the cost of medical equipment, and that these savings do not come at the expense of patient health or medical innovation. We thank our witnesses for testifying today and look forward to hearing their views.