

Statement of

The Honorable Amy Klobuchar

United States Senator
Minnesota
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DEWINE HEARING STATEMENT

ANTITRUST SUBCOMMITTEE HEARING

"Hospital Group Purchasing: Are the Industry's Reforms Sufficient to Ensure Competition?"

Good afternoon and welcome to the Antitrust Subcommittee hearing on hospital group purchasing organizations (GPOs). This is the fourth hearing in the last few years that the Subcommittee has held on these organizations -- known as GPOs. I think it's fair to say that this is the most extensive investigation this Subcommittee has done, and I think to some of our friends in the industry, it has felt much too extensive. But, we've focused so much time and energy on it because of the importance of this industry to the health of our economy and, of course, the health of our citizens.

The purpose of this hearing is to evaluate where we stand today. Is this industry competitive, or is legislation required to inject competition into this industry? As we have discussed before, GPOs are, simply, organizations that manage purchasing of medical equipment and supplies for most of our Nation's hospitals. Their ability to combine the purchasing power of the hospitals makes them an important part of the health care market.

Today, we will be evaluating current industry practices, as well as considering a number of legislative proposals for other ways that the industry could operate. I think a brief review of this Subcommittee's activity in this area will help to explain the various proposals.

We held our first hearing on GPOs in April 2002, because of complaints of ethical violations in the industry, and also a more general complaint that the GPO system sometimes decreased the flexibility of hospital purchasing and made it difficult for doctors and nurses to get the best medical equipment. We found, unfortunately, that both of these allegations had some merit. During the course of our ongoing investigation, we also assessed a number of contracting practices, such as sole-source contracts, discounts based on high commitment levels, and bundling of clinical preference products with commodity products. All of these practices have positive aspects, but also may cause competitive difficulties.

Our analysis of the industry has been complicated further by the so called "safe-harbor" that underlies this industry. GPOs have an unusual business model: they are funded not by their member hospitals, but rather by their suppliers. In other words, GPOs agree to purchase equipment and supplies from certain companies, and as part of those contracts, the suppliers pay an administrative fee, based on the size of the contract, which is used to fund the existence of the GPOs. Under normal circumstances this would be considered a kick-back, and so the GPOs require an exemption from the anti-kickback laws. We have been told that this safe harbor is what allows the GPO industry to exist in its current form. However, this relationship between the GPOs and the manufacturers has led many to distrust the purchasing decisions the GPOs make, because, in effect, they benefit from larger contracts, which are easier to sign with larger suppliers.

Despite the complexity of these issues, our efforts have paid off. Senator Kohl and I worked with the industry to resolve the ethical violations we uncovered; we also made some progress in assessing the various contracting practices and worked with individual GPOs as they agreed to adopt voluntary codes of conduct. And the good news

is that the voluntary codes of conduct helped matters somewhat. Smaller manufacturers seem to have greater access to the market, and the industry generally is more aware of the potential problems and has been taking steps to avoid additional problems. Under these circumstances, the Subcommittee has turned its focus to ensuring the permanence of the industry's reforms, and Senator Kohl and I introduced Senate Bill 2880 last term as an effort to do that.

S. 2880 would have given oversight of this industry to the Department of Health and Human Services, charging it with drafting rules for this industry to ensure that each GPO conformed with principles of competition, ethical standards, and the goal of maintaining access to products necessary for proper patient care. If a GPO failed to follow these rules, it could lose its exemption from the safe harbor.

The GPO industry objected to this approach, and to address its concerns, we agreed to hold off on introducing this legislation and allow them the opportunity to develop a method for ensuring their changes would be implemented effectively in a permanent way. The industry response is the so-called "Hospital Group Purchasing Industry Initiative." This measure has been in place since July 2005, and it won't surprise our witnesses to hear -- some like it and some don't.

So today, we are holding this hearing to consider whether the initiative has been effective at promoting competition in the industry, and we will consider what future steps -- if any -- are necessary to ensure that the reforms will be permanent and actively enforced. To this end, we will look not only at the effect of the Initiative, but also at S. 2880, as well as two other proposals.

One of these new proposals, which we are tentatively calling the "individual code" proposal, would empower Health and Human Services to codify and enforce the individual voluntary codes of conduct created by each specific GPO, and set minimum standards for the codes. Another option is, simply, to repeal the safe harbor.

Before I turn to our Ranking Member Kohl, I would like to add that throughout this ongoing process, I have kept in close contact with the hospitals in Ohio. I think it is fair to say that nearly all the hospitals in Ohio that I have spoken with, are confident that their GPOs are saving them money. In this era of skyrocketing health care costs, this is obviously a critical consideration, and one that this Subcommittee understands well. Our goal has been -- and will continue to be -- to promote vigorous competition, which will ensure that GPOs both save money and allow new and improved technologies to get to the market to help medical professionals better care for all of us. We must strike the right balance, and we are committed to doing just that.

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