

Statement of

The Honorable Herb Kohl

United States Senator
Wisconsin
March 15, 2006

STATEMENT OF SEN. KOHL AT ANTITRUST SUBCOMMITTEE HEARING ON GROUP PURCHASING ORGANIZATIONS

Thank you, Mr. Chairman. Our hearing today will consider what steps remain to be taken to ensure that competition prevails in hospital purchasing so that the abuses our subcommittee uncovered in the last several years never return. We will need to carefully consider the industry's latest efforts at self regulation. We also will examine possible legislative alternatives we have drafted should the industry's efforts fall short.

The last year has witnessed important developments for all of us who care about competition in hospital purchasing. At the behest of our Subcommittee, the industry has created a new organization to set standards and monitor the purchasing activities of hospital group purchasing organizations. The purpose of this new Industry Initiative is to ensure that GPOs do not engage in anticompetitive or unethical practices that freeze out new and innovative medical device manufacturers from the hospital market.

The founders of this new Industry Initiative -- the nation's largest and most influential GPOs -- are to be commended for voluntarily forming this organization. The goals of this organization, and the goals of the work of this Subcommittee over the last four years, are central to American health care -- ensuring that physicians, patients, and health care workers have access the best and safest medical devices, devices that can literally make the difference between life and death.

The vital question that remains for us to consider is whether the organization is strong enough to do the job. The founders of the Industry Initiative now argue that the creation of this organization means that we need do nothing more, and that we can rely entirely on the Initiative to guarantee an open and honest marketplace. They argue that any further legislation is unnecessary.

In order to assess this claim, two vital questions must be answered. First, is this organization really up to monitoring what is taking place in this enormous, multi-billion dollar industry? And, second, does this voluntary Industry Initiative contain sufficient sanctions to prevent wrongdoing and to penalize those GPOs that violate its founding principles? Any industry plan must include real and meaningful sanctions if any GPO violates ethical principles or the rules of free competition. In an industry as important to health and safety as the purchasing of medical equipment for critically ill patients, half-measures which do not assure that the best medical devices are available for patients are simply not acceptable.

And we have legislative tools available should we conclude that the Industry Initiative falls short. In the last Congress, Senator DeWine and I introduced the Medical Device Competition Act. This legislation would give the Department of Health and Human Services the authority to forbid GPO business practices which are anticompetitive or unethical. Other commentators have suggested an alternate approach -- simply forbid GPOs from receiving payments from hospital suppliers. Advocates of this approach argue that such a prohibition would remove an inherent conflict of interest in the present system. No longer would hospital vendors pay the very organizations that are supposed to negotiate with these vendors to get the best deal for their hospitals. We will therefore need to pay close attention to the testimony of our witnesses today as we evaluate whether we need to take further steps.

Before closing, I must express my disappointment that no representative of the GPO industry accepted our invitation to testify today. The GPOs' willingness to provide us with candid answers is a factor we will evaluate in determining whether self-regulation will suffice.

We thank the witnesses who are testifying for coming here today to testify and look forward to hearing their views.

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