

September 14, 2004

U.S. to Address Possible Abuses in Hospital Supply Industry

By MARY WILLIAMS WALSH

Efforts to end abusive practices in the marketing of hospital supplies will intensify this week, with a Senate panel expected to recommend a tougher anti-kickback law today.

Government investigators are separately looking into whether certain marketing practices have allowed hospitals to overcharge federal and state health programs, bolstering the profits of the medical supply companies.

The antitrust subcommittee of the Senate Judiciary Committee will hold a hearing today to review whether the hospital supply industry has done enough to eliminate marketing practices that have been blamed for stifling competition among medical product makers and raising hospital costs.

Subcommittee members from both parties are expected to call for legislation that would tighten a major loophole in the federal anti-kickback law, which allows hospital purchasing companies - for-profit cooperatives created and owned by hospitals as a means to squeeze discounts from medical product suppliers - to receive payments and rebates from those suppliers. The purchasing companies distribute some of this money to the hospitals that own them and use their contracts.

But critics say the Senate panel is unlikely to eliminate that loophole entirely because of pressure from hospitals, which have come to depend on the discounts and rebates, and because the panel's authority is limited to antitrust issues and does not extend to Medicare fraud.

"This area is enormously complex," said Richard Blumenthal, the Connecticut attorney general, one of several federal and state officials who are now looking into possible Medicare and Medicaid fraud. "We want to be sure that we're taking action against the individuals or companies that are the most blameworthy."

Mr. Blumenthal said the complexity arises because a number of entities play a role in every medical product's journey from its manufacturer to the hospital room.

"The hospitals may be the least culpable, morally, for whatever the legal problems may be" in this chain of transactions, Mr. Blumenthal said. "Accountability ought to be traced back to the individuals or companies who benefit the most financially." Mr. Blumenthal said he was currently investigating possible civil fraud and anticompetitive behavior.

In the last two decades, many nonprofit hospitals have joined together to form for-profit companies, which negotiate the contracts that hospitals use to buy a wide array of medical products - from drugs to gowns to X-ray machines.

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But critics say the Senate panel is unlikely to eliminate that loophole entirely because of pressure from hospitals which have come to depend on the discounts and rebates, and because the panel's authority is limited to anti-trust issues and does not extend to Medicare fraud.

"This area is enormously complex," said Richard Blumenthal, the Connecticut attorney general, one of several federal and state officials who are now looking into possible Medicare and Medicaid fraud. "We want to be sure that we're taking action against the individuals or companies that are the most problematic."

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hospital could get by itself. But an investigation by The [New York Times](#) in 2002 of the two largest such companies, Premier and Novation, disclosed a number of questionable practices.

The United States attorney in Dallas is now conducting a criminal investigation and about a month ago served subpoenas on more than a dozen companies in the hospital supply business, and on Novation.

One particular problem is the practice among the purchasing companies of accepting payments from the very medical product suppliers whose products they are supposed to evaluate.

The payments are ostensibly to cover the cost of administering the contracts, and limited payments for that purpose are expressly exempted from the federal anti-kickback law for health care. But this loophole has long created the appearance that lucrative contracts are sometimes awarded to suppliers making the highest payments.

The payments have also become extremely complicated and hard to trace over the years. In the past, some payments were made in cash, some in stock or stock options; some were a percentage of each hospital's purchases. And some payments were larger than allowed under the law.

The Senate antitrust subcommittee has been considering legislation that would permit smaller cash payments to continue. A working draft of the bill showed that it would give the federal Department of Health and Human Services the power to monitor the payments, and penalize companies that went outside the allowable limits.

Such a bill would represent a compromise between the industry's critics, who wanted the payments banned entirely, and the nonprofit hospitals, which have argued that their purchasing companies have made significant changes over the last two years and ought to be free to police their own industry.

Specialists in hospital purchasing practices said that state and federal investigators were poised to move beyond what Congress may do. They said that investigators appear to be focusing primarily on Novation, which is set up as a cooperative and is required to distribute all of its annual revenues, minus operating expenses, to its owner hospitals.

The investigators appear to be trying to trace the payments as they flow from the manufacturers through Novation to the hospitals to make sure the hospitals are correctly reporting them to Medicare.

The payments effectively reduce a hospital's supply costs, so if a hospital failed to report those payments, it could constitute Medicare fraud.

"I would guarantee you that 95 percent of the hospitals don't have a system for tracking these rebates," said Michael Bohon, a former purchasing director for a hospital system in Arizona, who is now a consultant in the industry. "They aren't reported to Medicare as a cost reduction."

Mr. Bohon said that his former employer, in Tucson, did track the payments and report them to Medicare, but that he believed such diligence was unusual.

"The majority of hospitals don't take the time to do that," he said. "It's unconscious. They don't know they're doing it wrong. It's the same old, 'it's the way we've always done it.' "

Mr. Bohon said reporting the payments accurately was so difficult that most hospitals, faced with the choice of reporting them or saying no to the manufacturers' rebates, would probably just say no. At a

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sizable hospital or medical center, he said, such rebates can easily add up to more than a million dollars a year.

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