

Statement of
The Honorable Herb Kohl

United States Senator
Wisconsin
September 14, 2004

Mr. Chairman, thank you for your continued efforts on this important issue and for holding this hearing today. The subject matter of this hearing centers on perhaps the most important work of our Subcommittee in the last few years -- 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. With the cooperation of the industry, we have accomplished much over the past two years to reform the hospital purchasing system to make it better serve the interests of competition, of innovation, and patients. The changes we have seen are real. We should all be proud that more patients are getting access to the best medical devices more often. We must now find a way to ensure that these gains are maintained.

A review of the reforms shows how far we have come. Most significantly, six of the largest hospital buying groups, known as GPOs, agreed to fundamental reform by adopting codes of conduct governing their business activities and ethical responsibilities. These codes forbid anti-competitive business practices, and ban conflicts of interest that interfere with the GPOs' mission of buying the best products at the lowest prices.

We commend the GPOs that worked cooperatively with us in this process. The actions of Premier and the other GPOs that followed its lead especially deserve praise. Premier acted first to clearly and unequivocally ban each of the most troublesome practices. Many of its competitors followed suit, and the marketplace began to open.

We are pleased that we have made a real difference, but we also realize that two primary tasks remain. First, how can we be certain that these considerable gains will remain when the spotlight of a Senate hearing room fades away? The GPO codes of conduct are entirely voluntary and, at present, not backed with any sanctions or enforcement mechanisms. We need to be sure that these reforms will not be reversed. Second, how can the industry continue to improve in those areas that still need work?

To answer these questions, we have drafted a legislative proposal which will assure that our reforms are truly permanent. This draft was only prepared after extensive discussions with the GPO industry over the last eight weeks, discussions at which we repeatedly solicited their suggestions. Our draft legislation gives the Department of Health and Human Services the authority to forbid GPO business practices which are anticompetitive or are unethical. The purpose of this legislation is simply to create a regulatory framework so that improper business practices never return to this important industry. However, our proposal remains just that, a proposal - we are anxious to hear the suggestions and views of today's panel regarding our ideas.

We are also happy to consider any non-legislative proposal that the GPO industry or others may suggest with an open mind. However, it is essential that any such measure have teeth. In other words, 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.

We thank our witnesses for coming here today to testify and look forward to hearing their views.