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## Hearing Problems

The weather was chilly in Washington for Texas-based Novation.

By **PABLO LASTRA**

The power-suits' ties flapped wildly in the wind last Wednesday in Washington, D.C., with strong gusts sending newspapers flying all over the sidewalks. Inside the Capitol, too, the breezes were blowing pretty cold for the nation's hospital group purchasing organizations — including Irving-based Novation — that, for the fourth time in four years, had been called before the Senate antitrust subcommittee to account for the seemingly endless allegations of fraud and monopoly that plague them.

This time, the GPOs, which act as middlemen between hospitals and medical supply companies, had been asked to explain how their new self-imposed ethics code would remedy the accusations of Medicare and Medicaid fraud and legalized kickbacks that face Novation and many of the other companies ("Hijacking at the Hospital," Nov. 23, 2005). The GPOs, however, were conspicuous by their absence: Instead of attending, they had chosen to send only one witness, representing a GPO trade group. The response from the committee, and from a panel of other witnesses, was frosty.

"I'm sorry that GPOs chose not to attend," said U.S. Sen. DeWine of Ohio, who called the subcommittee's probe of the industry "the most substantive investigation done — some in the industry might say it's too extensive."

GPOs were created to save hospitals money by combining the purchasing power of many hospitals as a way to negotiate lower prices from equipment and supply companies. However, instead of being financed directly by the hospitals, GPOs take a percentage of the money paid to vendors by hospitals under negotiated contracts — a situation that would constitute illegal kickbacks in many industries but is allowed for GPOs under a congressionally OK'd exemption. This has resulted in accusations that GPOs have taken advantage of this exemption to arrange sweetheart deals with major manufacturers and drug companies and exclude smaller companies from the market.

Novation, the largest GPO in the country, is under investigation by the U.S. Department of Justice and the Connecticut attorney general for alleged Medicare and Medicaid fraud. With regard to reforming its business practices, "Novation has been stagnant," said DeWine. "We've had some pretty strong testimony in this area."

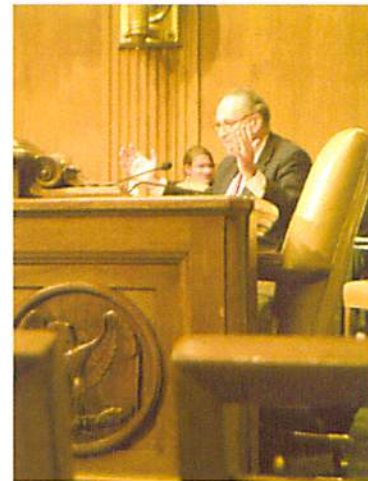
DeWine and Sen. Herbert Kohl of Wisconsin convened a panel of witnesses that included Mark Leahy, executive director of the Medical Device Manufacturers Association, a trade group for small medical supply companies, Dr. S. Prakash Sethi, a professor at the City University of New York's Zicklin School of Business, and Mina Ubbing, CEO of Fairfield Medical Center in Ohio. The GPOs sent Richard Bednar, coordinator of the Healthcare Group Purchasing Industry Initiative (HGPII). That trade group is composed of nine of the largest GPOs, including Novation; members recently agreed to abide by a code of ethical business practices.

Bednar testified that legislation repealing the "safe harbor" that GPOs enjoy from anti-kickback laws was unnecessary — in part, he repeatedly said, because of the "tremendous commitment and enthusiasm" HGPII members showed in voluntarily adopting a code of ethics. In fact, Bednar mentioned this commitment in nearly every sentence he spoke.

Other witnesses gave short shrift to the ethics code. Dr. Sethi, president of CUNY's International Center for Corporate Accountability, said that in order for such a code to work, the guidelines must include specific standards, independent governance, and external verification. The GPOs' code, he concluded, had none of those qualities but did have "built-in structural flaws and financial incentives so perverse that [ the ethics guidelines] cannot possibly remedy the situation."

"With all due respect, I don't think this initiative amounts to anything," he said. "It simply says 'thou shalt be good, thou shalt not lie.' They were supposed to do those things in the first place."

True change, he said, will be impossible so long as GPOs are funded by vendors. "We cannot talk seriously about the initiative until Congress realigns the financial incentives so that hospitals, and not the vendors, are the GPOs'



*Schumer: 'There may have been some abuses in these GPOs, but I sure as heck don't want to see them eliminated ...'*

only clients," Sethi said. "As long as vendors continue to pay fees to the GPOs, any attempt to implement a voluntary code is doomed to failure and will not improve the situation, but only worsen it."

Leahy, representing the small medical suppliers who are often in conflict with GPOs, said his group isn't out to kill off the group purchasing giants, but to change the way they work so that they actually save money for hospitals. He pointed out two studies done last year by the inspector general's office of the U.S. Department of Health and Human Services that found that six GPOs collected \$2.3 billion in fees from vendors, but incurred only \$725 million in operating expenses.

"That means the GPOs collected \$1.6 billion in fees, and they don't manufacture or distribute products. Where did this money go?" he asked. "The GPOs will say this money is returned to member hospitals, but the inspector general found otherwise." Nearly \$500 million of that money, he said, was "siphoned off by the GPOs for their own business, including for-profit business ventures."

Connecticut Attorney General Richard Blumenthal, in a written statement to the subcommittee, said that his investigation, which has been going on for more than a year, has "uncovered suspect interrelationships and questionable business practices involving hospitals, GPOs, and major medical supplier executives whose practices often benefit themselves, rather than patients, insurers, and government programs that pay hospital bills."

Blumenthal wrote that his office found some Medicaid providers, such as hospitals and nursing homes, improperly accounted for the rebates they received from GPOs, which could constitute fraud.

"What is the point of [the ethics guidelines] for GPOs, when the only sanction for members that fail to live up to them is suspension from the group?" asked Kohl.

"There is enormous peer pressure to do the right thing," responded Bednar. The initiative, he said, is not designed to penalize but to encourage an ethical climate.

"This controversy keeps going on and on, and the critics of the system keep beating us over the head," DeWine said. "It seems to me that paying directly for a service is the American way, instead of this back-door payment."

The GPOs got some support from New York Sen. Charles Schumer, who joined the hearing halfway through. Schumer looked visibly exasperated by his colleagues' questioning of the witnesses, and when his turn came, he punctuated his loud responses by pounding the rostrum.

"Here we have an industry [of pharmaceutical and healthcare equipment suppliers] making record profits, while most of our hospitals in New York are losing money," he said. Hospitals "try to get together to form an organization to save them some money, to give them bargaining power, and they look like the bad guys."

"There may have been abuses in these GPOs, but I sure as heck don't want to see them eliminated, paralyzed, or handcuffed so that some businesses can make more money," he said. "This is getting to the point of absurdity."

DeWine and Kohl reminded Schumer that the subcommittee is not looking to do away with GPOs, but to reform them.

"I'm concerned about [the GPO trade group] coming to us and saying 'you can go away now, Congress, we're going to police this organization,'" Kohl said. "That to me doesn't sound like the kind of oversight that we have been trying to organize."

Bednar insisted that self-governance is the only way to institute meaningful change. He referred to governmental oversight as "outsourc[ing] the ethical compass" of a company.

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