GPO hearing inconclusive
Senators wait for response on bills to tighten regulation

The fourth Senate Judiciary Committee antitrust subcommittee hearing investigating the business practices of group purchasing organizations still isn’t likely to result in legislation that beefs up regulation, but the hearing hasn’t ended the speculation that Congress eventually will act, either. Even though leaders of the subcommittee are again making moves that could lead to introducing bills in Congress, passage before the expected October recess would be unlikely. The leaders are giving GPOs a chance to prove their self-regulation effort is sufficient to ward off legislation.

Sens. Mike DeWine (R-Ohio), subcommittee chairman, and Herb Kohl (D-Wis.), its ranking minority member, said legislation was being considered, but they would wait for GPOs’ responses on three drafted bills—that haven’t been introduced—before deciding to go ahead with one. GPOs act as middlemen between hospitals and manufacturers, and they say their existence is vital to negotiating lower rates on supplies for hospitals. But they’ve also been accused of getting too cozy with the large suppliers they’re supposed to be negotiating with.

The senators said they would be mailing questionnaires about the possibility of legislation to GPOs. If the senators decide to move ahead with a bill, it would likely be another month before one was submitted and that wouldn’t give senators much time in the current session to act.

At last week’s hearing, no GPO executives accepted an invitation to testify, to the disappointment of DeWine and Kohl. The Health Industry Group Purchasing Association, the GPOs’ trade group, instead nominated Mina Ubbing, president and chief executive officer of Fairfield Medical Center, Lancaster, Ohio, and Richard Bednar, the coordinator of the GPO industry ethics initiative, to testify.

A HIGPA spokesman said the group wanted Bednar to speak about the ethical strides GPOs have made instead of having one CEO speak for the entire industry.

Even if the GPO industry has forestalled legislation, that doesn’t mean it’s not coming.

Payment changes debated
LTCHs worry that payment levels will be too low

The debate about proposed Medicare payment changes for long-term-care hospitals intensified last week at a House subcommittee hearing held just before the March 20 close of a CMS comment period on the proposals.

As of March 17, the CMS had posted one electronic comment and seven letters on its Web site, which are critical of the CMS’ proposed rule changes, arguing that the new payment levels would not be sufficient.

On Jan. 27, the CMS published the long-term-care hospital prospective payment system proposed rule that, in addition to freezing the marketbasket update for 2007, would change reimbursements for short-stay outliers, or patients who stay at those facilities fewer than the average 25 days (Jan. 30, p. 14).

Healthcare providers were clear in their opposition to the proposals. The American Hospital Association said in a comment letter last week that the CMS proposal is “excessive and would severely and inappropriately threaten patient access to LTCH care.”

On Capitol Hill, Rep. Nancy Johnson (R-Conn.), chairwoman of the Health Subcommittee of the House Ways and Means health subcommittee, led the hearing that allowed key players in the debate to discuss the Medicare payment policy, the proposed rule and the Medicare Payment Advisory Council.
that the CMS’ proposed policy on adequate. William Walters, chief industry leaders believe the payment system is far from
in 2007.
$3.3 billion in 2004 from $398 million in 1993, and the CMS
Commission’s recommendations this month.
According to MedPAC, Medicare payments to long-term acute-care hospitals have increased to about $3.3 billion in 2004 from $398 million in 1993, and the CMS estimates payments of $5.2 billion in 2007.
Despite the payment increases, industry leaders believe the payment system is far from adequate. William Walters, chief executive officer at the Acute Long Term Hospital Association, said that the CMS’ proposed policy on the short-stay outlier was “always based more on a hunch rather than what CMS could show in clear, quantifiable data.”
A spokesman for Johnson said the lawmaker had “serious concerns” about the definition of the short-stay outlier. “She believes it is an inappropriate way to ensure that LTCHs are treating the most appropriate payments,” the spokesman said.
The CMS will propose its final rule in May, and it will apply to the rate year beginning July 1 and ending June 30, 2007.

Robert Betz, a consultant and former HIGPA president and CEO, said he doesn’t support legislation but he believes that the senators are going to pursue a bill. And he said it won’t take much for a bill to get to President Bush’s desk if one senator decides to get behind it. Betz said that in recent years GPOs have improved their business practices by doing such things as limiting bundling and sole-source contracts, practices that small device companies say hurt their chances to compete with large manufacturers.

One of the three options being considered in possible bills would do away with the GPO safe-harbor provision, an exemption from the Medicare anti-kickback law that allows GPOs to receive administrative payments from vendors (March 13, p. 14).
Manufacturer payments are the main revenue stream for GPOs and the unknown consequences of doing away with them would affect the entire hospital supply chain, Betz said.

Most GPOs say they use the administrative fees from vendors to cover their operation costs and then give the leftover money to their hospitals. That practice has been scrutinized in two audits by HHS’ inspector general’s office; the audits showed that not all payments were being reported on hospitals’ Medicare cost reports (June 13, 2005, p. 18).

At least one senator, Charles Schumer (D-N.Y.), would likely be a vocal supporter of keeping the safe-harbor provision and said during the hearing that an overhaul of how GPOs are to manage said getting rid of the safe-harbor provision would increase hospitals’ costs.

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Guard, was a delight to the many GPO representatives, who have gone to great lengths to show they support hospitals’ best interests and not large manufacturers.

Sens. DeWine and Kohl said that if they choose to pursue legislation they would attempt to tailor it as much as possible to not hurt hospitals’ bottom lines.

GPO critics, mainly the Medical Device Manufacturers Association, a trade group that represents independent device makers, and MDMA Executive Director Mark Leahey, called for repealing the GPO safe-harbor provision. Leahey argued GPOs should generate revenue from hospital membership dues alone.

Testifying on behalf of GPOs, Ubimg said that eliminating the safe harbor would increase hospitals’ supply costs. She said that hospitals are under no obligation to purchase supplies through GPO contracts and that 37% of her hospital’s purchases aren’t through GPO contracts. She added that caregivers, not GPOs, decide what hospitals purchase.

DeWine and Kohl also indicated they were concerned about the lack of independent oversight of the GPO ethics project, the Healthcare Group Purchasing Industry Initiative. The group was founded by nine GPOs in 2005, and the CEOs of the founding members make up the steering committee that hired Bednar.

Prakash Sethi, president of the International Center for Corporate Accountability, after testifying said that the initiative might carry more weight if there were some independent oversight, such as a board of directors made up of hospital executives.

The moves came after the Fort Smith, Ark.-based company completed its $1.8 billion merger with Pearl Senior Care, an affiliate of private equity firm Fillmore Capital Partners on March 14. As a result of the merger, Beverly Enterprises has become Golden Gate National Senior Care.

Randy Churchey, 45, will become president and chief executive officer of the newly formed Golden Gate, Fort Smith, which now manages the former Beverly and other businesses.

Most recently, Churchey served as president of Encore Cos., a hotel development and management firm in Germantown, Tenn., the company said. William Floyd, 61, who has served as CEO and chairman of the board of Beverly since 2001, is retiring from both positions. He will receive $8.37 million under a nonqualified, deferred compensation plan, according to a filing with the Securities and Exchange Commission.

Ron Silva, president and CEO of Fillmore Capital Partners in San Francisco, is the new owner and chairman of the board at Golden Gate. Chief Financial and Information Officer Jeffrey Freimark, 51, decided to leave the company, according to the SEC filings. Richard Skelly Jr., 46, was promoted to CFO from his position as senior vice president and treasurer. Six other senior executive departures also were announced.

The employees were not asked to leave, but made personal decisions as Beverly transitions to a private company, said spokesman Blair Jackson. Replacements for all six executive positions have not yet been named, and all changes are immediate, he said.

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—Jessica Zigmond