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Wyden Hearing Statement on Physician-Owned Distributorships

When you walk into a doctor's office, you're putting an extraordinary level of trust -- and maybe even your life -- in your physician's hands. Today the Finance Committee will hear about one type of business called a physician-owned distributorship that in some cases might violate that trust with dangerous and life-threatening consequences.

Here's how they work: a doctor sets up a distributorship company, which is often a middleman between a medical device manufacturer and a hospital or surgical center. The doctors then get an extra financial reward for every device used in treatment. That comes in addition to the payment they get from insurers or from taxpayers through Medicare or Medicaid. In theory, the more surgeries implanting devices into patients, the more money in the bank. That's what makes some of these arrangements so deeply concerning. In the worst cases, scam-artist doctors have left long trails of patients to recover from unnecessary or complicated procedures involving invasive and painful surgeries.

In fact, the Inspector General of the Department Health and Human Services issued a special fraud alert about these companies. Referencing the laws that are designed to protect against what seem to be serious conflicts of interest, the IG wrote that it, quote, "views [distributorships] as inherently suspect under the anti-kickback statute."

This week, Dr. Aria Sabit is being sentenced for conducting unnecessary surgeries. Some resulted in direct harm to his patients. Dr. Sabit was an active participant in a physician-owned distributorship that allowed him to profit directly from the spinal fusion surgeries he performed, and he is not the only one.

In 2013, Dr. Atiq Durrani, a surgeon in Ohio who was also reported to be a part of a distributorship, fled the country after being arrested for unnecessary surgeries. The hospital where he practiced just reached a \$4.1 million settlement with the U.S. Department of Justice for unnecessary spine surgeries.

In my own state of Oregon, Dr. James Makker had his medical license revoked in 2012 after a long string of questionable surgeries and malpractice lawsuits. According to news reports, Dr. Makker was also affiliated with a physician-owned distributorship. Before he lost his license, Dr. Makker had one of the highest number of spinal fusion surgeries of any surgeon in the country. He would sometimes operate six or seven times on the same patient.

A few bad apples don't mean the whole bushel is rotten. But the fact is, this type of business operates too often in the dark. Frequently, neither patients nor hospitals nor regulators know when a doctor is part of a distributorship.

Two years ago, the Health and Human Services Inspector General asked hospitals whether they did business with these distributorships. Only 60 percent of the hospitals buying from distributorships reported correctly. The IG found the rest by digging into invoice data. According to the IG's report, less than two-thirds of the hospitals surveyed even had a policy requiring doctors to disclose ownership interests in a distributorship. Only eight percent of the hospitals that purchased from distributorships required that patients be told about these potentially serious conflicts of interest.

One of the claims made in favor of these distributorships is they lower costs of treatment by reducing the price of devices that they sell. The IG found no such savings. And when hospitals don't even know they're dealing with distributorships, it's difficult to imagine how they can tally up any savings.

The Finance Committee has also received some extremely troubling information from industry sources. Under the Sunshine Act, distributorships are required to report doctors' ownership interests, as well as their own payments to doctors. But neither is happening when it comes to many distributorships. Furthermore, the committee has received one report of a device manufacturer offering to make payments to doctors through a third party to avoid disclosure. Senator Hatch and I will be referring information about this allegation and about possible Sunshine Act violations to the Inspector General, and I hope to work with Chairman Hatch and the committee on a bipartisan basis to shed a lot more light on this issue.

Transparency might not prevent every unnecessary surgery, but it's a good place to start. And right now, in my view, this part of our health care system is buried far too deep in the shadows. The bottom line is that patients should be getting care designed to help *them* -- not to pad a physician's bank account.

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