Industry Payments to Physicians Under Scrutiny

BY JOEL B. FINKELSTEIN
Contributing Writer

WASHINGTON — Drug and device manufacturers came under scrutiny at a recent hearing of the Senate Special Committee on Aging, during which witnesses said payments to high-profile physicians appear to be more of a marketing strategy than an attempt to improve patient care.

The hearing was held in part to highlight the need to pass the Physician Payments Sunshine Act (S. 2029), which would require drug and device manufacturers to report payments to physicians. Introduced in the Senate last fall, the bill would require companies to provide physicians' names; the amounts they were paid or the value of gifts, honoraria, or travel; and the date and purpose of the payments.

"Getting enormous sums of money from a company about whose product you're writing—money that might go away if you write a negative paper—makes the research neither objective nor independent," testified Dr. Charles Rosen, president of the Association for Ethics in Spine Surgery, a professional organization he formed to address conflicts of interest.

'Getting enormous sums of money from a company about whose product you're writing … makes the research neither objective nor independent.'

Dr. Rosen said he became aware of the undue influence of industry money in 2005 with marketing approval of an artificial lumbar disc replacement based on what appeared to be a poorly designed study. When he tried to raise a red flag with the Food and Drug Administration and within the surgical community, he was rebuffed. When he persisted, the chairman of his department attempted to have him fired, but instead ended up leaving under a cloud.

"Some surgeons have become inextricably beholden to suppliers," testified Said Hilal, president of Applied Medical Resources Corporation, a small device company in Orange County, Calif.

"We hear of large suppliers approaching hundreds of surgeons with invitations to become consultants. However, these physicians appear to be no more than an extension of the sales and marketing efforts," he said.

Device makers invited to testify said that they were working to rectify past lapses.

"In this industry, the same physicians we rely on as consultants to develop or train on the safe and effective use of our products may also select products for patients. … In hindsight, it now appears that as industry expanded to meet patients' needs, the use of physician consultants may have been excessive. Such excesses fostered a degree of mistrust of the industry and physicians, and invited the understandable scrutiny of the government and other stakeholders," testified Chad Phipps, senior vice president and general counsel for Zimmer Holdings Inc.

The company was one of five device makers that recently settled with the Department of Justice over alleged violations of antikickback laws. While none of the companies admitted wrongdoing, collectively they agreed to pay fines totaling $311 million. Each of the companies also agreed to be monitored by an independent auditing firm.

The fines are unlikely to deter the companies from continuing to foster inappropriate financial arrangements with physicians, said Mr. Hilal. "A multibillion dollar medical supplier does not consider $40 million or $400 million in penalties, after years of violations, as painful or prohibitive," he said.

According to testimony from the Inspector General's office at Health and Human Services, the Department of Justice is also investigating whether to pursue charges against surgeons who might have solicited kickbacks from companies. However, witnesses said that the vast majority of surgeons eschew such conflicts of interest.

Industry critics said there is a need to ensure that the information provided by companies is communicated to the public in a consumer-friendly way, while industry representatives argued that small companies should also be included in the legislation. Currently, the bill applies only to drug and device makers with annual revenues in excess of $100 million. ■