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AMDR Action Alert:

Your Voice Matters:

Hospital Purchasing Representatives Encouraged to Report Anticompetitive SUD Purchasing Contracts and Related Behavior

[Washington, D.C. - June 18, 2024] Last December, the Biden Administration declared war on corporate greed in healthcare. The announcement included a range of fronts in the war, from fighting bloated drug costs to attacking anticompetitive contracts that cause unnecessary waste for hospitals, payors, and the patients they serve.

As reported by *Healthcare Business News*, the White House announcement led to a March 2024 from the Federal Trade Commission (FTC), the Department of Justice (DOJ) and the Department of Health and Human Services (HHS) of an online portal for reporting anticompetitive business practices in hospitals, among other examples of antitrust in the health sector.

Sunlight is the best disinfectant, it's been said, and there has never been a better opportunity to expose unscrupulous, potentially anticompetitive contracting practices than now. For over 20 years, our members have shared stories of some original equipment manufacturers offering what may amount to kickbacks, chipping equipment with the intent of hindering reprocessing, and other antics that inhibit a hospital's right to use FDA-regulated, reprocessed single-use devices (SUDs).

When hospitals use reprocessed SUDs, they reduce cost (to the tune of hundreds of millions of dollars), waste, and greenhouse gas emissions. Numerous peer reviewed studies show that reprocessing cuts costs (typically by 30 to 50% compared to using a virgin device each time) and CO2 emissions are reduced by about 40%. Reprocessing programs should be maximized at this time to insure urgently needed resilience, cost savings and waste and emissions reducing benefits.

This is a red flag moment, and if we want to see an end to unfair, anticompetitive contracts, our industry needs to speak up.

Hospitals have an unprecedented opportunity to comment on the state of purchasing contracts for medical devices. To encourage filing complaints on the portal (which can be submitted anonymously), we want to share a few ideas about what kinds of topics the government might want to hear about from providers, supply chain purchasers, and hospital sustainability managers.

For years, we have chronicled common anti-reprocessing tactics and how to combat them. We

believe some of these tactics may rise to the level of anti-competitive behavior and urge those who have experienced the below examples to report them on the FTC portal.

1. Original equipment manufacturer (OEM) "Chipping," or use of ePROMs, specifically to render reprocessed single-use devices (SUDs) inoperable.

2. Similarly, OEM "updating" software that disables the use of reprocessed devices on hospital generators and consoles without hospital permission or notification, or, by misleading hospital personnel as to true nature or the anti-reprocessing impacts of such "upgrades."

3. OEM threatening of voiding of warranties or case support when reprocessed SUDs are used in a procedure.

4. Unfair contracting such as restricting hospitals' ability to reprocess in exchange for discounts, or "free" equipment in exchange for minimum purchasing requirements which undermine reprocessing programs.

5. Price gouging: for example, in the EP space, a several fold price increase for the reprocessable version of a device intended to push hospital towards the non-reprocessable version of a similar device.

6. Interference with hospital assets such as replacing cables without hospital permission to make reprocessed SUDs inoperable; moving or rearranging hospital stock of reprocessed SUDs to push hospital use of only new SUDs; moving/hiding SUD reprocessing collection containers and/or disposing of the contents of the bins; finally, instruction to surgical or EP physicians to destroy hospital medical devices assets to prevent reprocessing.

These kinds of practices cost health systems and patients, they weaken supply chains, and they contribute to climate change.

If you or someone you know has witnessed or been impacted by any of the above practices, we hope that you will take this opportunity to tell the government about it. Click here to submit your comments to the FTC.

Want to do more to help? If you or a colleague is interested in speaking out on this issue by bylining news editorials or speaking with media, please contact dsheon@AMDR.org.

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