

Practical Considerations for Hospitals Regarding Sales Agreements Involving Reprocessed “Single-Use” Devices¹

The Association of Medical Device Reprocessors (AMDR) has been alerted, and is investigating reports, that some medical device manufacturers, in an attempt to protect their profits, have employed various new tactics to dissuade hospitals and their clinicians from purchasing reprocessed “single-use” devices (SUDs). Hospitals and their clinicians deserve to be aware of the true implications of these contracts. As such, this memorandum highlights some of these new contracting tactics that appear intended to thwart hospitals from realizing the true financial and environmental benefits of third-party SUD reprocessing.

At first glance, some new medical device manufacturer contracts may appear to save hospitals money. However, intentionally ambiguous or complicated terms may ultimately prevent or limit savings by restricting the hospital’s right to purchase third-party reprocessed SUDs. Please keep in mind that:

1. Despite initial promises of big savings potential, some contracts may not, ultimately, save the hospital money.
2. By using fewer reprocessed devices, hospital waste-reduction goals may not be reached and waste-disposal costs may increase.
3. By agreeing to use fewer SUDs (or not reprocess), hospitals are voluntarily reducing the number of competitive firms seeking their business. Ultimately, this decreases competition and could result in increased costs over time.

Certain Types of Contractual Arrangements May Prevent Hospitals from Saving Money²

Some medical device manufacturers constantly adjust their tactics to impede reprocessing. The following are examples of the types of contracts that prevent the use of reprocessed SUDs (list is not exhaustive):

1. Free capital equipment in exchange for an exclusive agreement to provide disposables.
 - a. The Offer: Original equipment manufacturer (OEM) includes free equipment.
 - b. Possible Problematic Terms: May perpetually bind hospitals to purchase disposables from one manufacturer – sometimes at full price and with minimum purchasing requirements.
 - c. Considerations: A new SUD is typically twice as expensive as a reprocessed SUD. Although free equipment is offered, this type of arrangement may **not** actually save hospitals money in the long run and may bind the hospital into a perpetual arrangement to meet minimum purchase quotas.

¹ © **AMDR 2015**. AMDR serves as the trade association for third-party reprocessors of “single-use” medical devices. AMDR works to educate healthcare providers by sharing accurate information about reprocessed medical devices, which have proven to be cost-saving, environmentally-conscious, and safe alternatives to new devices.

² **This document does not provide legal advice and is for general information purposes only. It is always important to fully understand the terms of any contract before agreeing to be bound by it. Any hospital presented with a new contract that may impact its ability to reprocess should always consult with its own independent legal counsel.**

2. Push/Pull pricing arrangements.
 - a. The Offer: Includes unusually low prices on SUDs.
 - b. Possible Problematic Terms: In exchange for lower prices on SUDs, the manufacturer may inflate prices of complimentary equipment or unrelated products.
 - c. Considerations: Compare whether the perceived savings from the lower-cost SUD will be nullified by the inflated cost of the other products.

3. Discounts in exchange for an agreement not to reprocess.
 - a. The Offer: New devices at discounted prices.
 - b. Possible Problematic Terms: Typically, to achieve an agreement for significant reductions in the price of new devices, these agreements require hospitals **not** to purchase reprocessed SUDs from third-party vendors and/or to meet certain new device purchase minimums to achieve the discount.
 - c. Considerations: Compare the offered discount to the low prices of third-party reprocessed devices coupled with the attendant reduction in hospital disposal costs and environmental benefits (*e.g.*, reprocessing eliminates red bag waste—this waste alone can cost ten times as much to dispose of as normal waste).

4. Blending arrangements.
 - a. The Offer: Discounted pricing on a blended combination of new and reprocessed devices.
 - b. Possible Problematic Terms: If minimum-purchasing requirements are not met, the price may increase substantially. The manufacturer, not the hospital, may also have the ability to decide whether to provide new or reprocessed devices, impacting the hospital's environmental/waste-reduction goals and/or waste-disposal costs.
 - c. Considerations: Evaluate if the requirements (*e.g.*, minimums) are realistic and consider the potential costs vs. savings. If the manufacturer has the ability to provide only new devices, consider the effects of disregarding the environmental benefits of reprocessing.

5. Collection requirements.
 - a. The Offer: Credit toward future SUD purchase.
 - b. Possible Problematic Terms: Hospital earns credit for the return of used SUDs to the original manufacturer after use.
 - c. Considerations: The original manufacturer may not actually reprocess the returned devices, but rather simply provide new ones. Do the apparent savings outweigh the savings of purchasing reprocessed SUDs that have less impact on the environment and lower the hospital's waste disposal costs?

Environmental Benefits of Third-Party Reprocessing:

More than ever, reducing environmental impact is a significant factor in the healthcare industry, and reprocessing has allowed hospitals to accomplish this. In 2013, 82% of Practice Greenhealth participant hospitals reported that the use of single-use device reprocessing was a component of their reduction initiative.³ In 2014, participant hospitals prevented 847 tons of medical waste from accumulating in landfills, savings millions in disposal costs.⁴ Many device manufacturers do not consider the environmental benefits of reprocessing, and actually push hospitals to sign contracts that prevent it.

(AMDR November 2015)

³ Practice Greenhealth. 2013 Sustainability Benchmark Report: A Practice Greenhealth Member Benefit. 2013.

⁴ Practice Greenhealth. 2014 Sustainability Benchmark Report: A Practice Greenhealth Member Benefit 2014.