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Commentary: Collins' bill fails to address root cause of drug shortages

She knows what the problem is: pricing and contracting practices that benefit suppliers and hospital executives at patients' expense.

BY **PHILLIP L. ZWEIG** SPECIAL TO THE PRESS HERALD

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On Election Day, Sen. Susan Collins addressed [a gathering](#) at the Capitol to plug a new bill that she claims will reduce the chronic shortages of hundreds of lifesaving drugs. Most are generic sterile injectables, including antibiotics, anesthetics, painkillers, epinephrine, chemotherapeutic agents and even saline solution.

This crisis has forced importation of many of them, triggering shortages in other countries.

A better title for her Mitigating Emergency Drug Shortages (MEDS) Act, co-sponsored by Sen. Tina Smith, D-Minn., might be the “Let’s Kick This Can Down the Road Again Act.” It’s another fake solution.

ABOUT THE AUTHOR

Phillip L. Zweig is a financial journalist and executive director and co-founder of Physicians Against Drug Shortages, a pro bono, nonpartisan patient advocacy group whose members are mostly physicians and other health care practitioners.

[S.2723](#) purports to restore competition by requiring the Food and Drug Administration to prioritize applications from drugmakers to make scarce drugs, among

other ineffectual provisions. But the FDA is [already doing that](#). It also ignores the fact that manufacturers have halted production because of razor-thin margins; they’re not clamoring for permission to make them. [A similar 2017 Collins bill](#) died, deservedly, in committee.

For Mainers like [Dawn DeBois of Bangor](#), who suffers from a rare condition requiring monthly infusions of immunoglobulin, the bill is a cruel hoax. Last summer, her treatments, and those of countless others, were abruptly canceled by shortages, causing a recurrence of crippling symptoms.

Sen. Collins is well aware of the real root cause of

this unprecedented market failure but has declined to address it: the exhaustively documented anticompetitive contracting and pricing practices, self-dealing, conflicts of interest and legalized kickbacks of giant hospital group purchasing organizations, which control purchasing of [an estimated](#) \$300 billion-plus annually in drugs, supplies and services for thousands of hospitals and other facilities. I know she knows because I briefed her after [an April 2018 New York Times panel](#).

The first group purchasing organization was organized in 1910 as a cooperative to save hospitals money – their sole purpose – by purchasing goods in bulk. That worked fine until 1987, when lobbyists sold Congress on the fiction that hospitals could save more if vendors, rather than hospitals, paid expenses. The upshot was the catastrophic “safe harbor” statute, [which exempted](#) group purchasing organizations (and later, pharmacy benefit managers, which distribute prescription meds to consumers) from criminal prosecution for taking kickbacks from vendors. Congress handed them a “Get out of jail free” card.

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That transformed these cartels into a lucrative “pay-to-play” scheme in which they sell sole-source contracts, on a drug-by-drug basis, to the highest bidders. That’s reduced the number of suppliers for any given drug [to one or two or none at all](#).

And since hospitals own group purchasing

organizations, hospital executives often receive a portion of the kickbacks as “[share backs](#)” – effectively a partial refund of a deliberate overcharge. Higher prices therefore mean more money for insiders – and exorbitant charges for everyone else. Instead of saving money, group purchasing organizations and [pharmacy benefit managers](#) inflate annual health care costs by an estimated \$230 billion or more.

Imagine the outcry if lobstermen had to pay kickbacks to group purchasing organizations for exclusive contracts to sell their catch!

These abuses have been exhaustively documented in numerous federal and state investigations; [congressional hearings](#), including four held by the Senate Antitrust Subcommittee; [antitrust lawsuits](#); [media exposés](#), and independent research over 20 or more years. In 2005, then-Sens. Herb Kohl, D-Wis., and Mike DeWine, R-Ohio, of the antitrust panel drafted a bill that would have repealed the unsafe safe harbor. But it was torpedoed by the powerful group purchasing organization-hospital lobby.

More recently, on Oct. 29, the same day Collins [introduced](#) her bill, the FDA [released a report](#) that [cited](#) the role of group purchasing organization contracting practices in causing the shortages.

So it wasn't surprising that last week's meeting was sponsored by publicly held Premier Inc., the second largest group purchasing organization, long a poster

child for these egregious practices.

At this love fest, Collins boasted that “more than 50 organizations” supported S.2723, while Premier gushed over her and her bill. Actually, [these supporters](#) are mostly group purchasing organization shareholder hospitals and others with a financial interest in preserving this perverse system. MaineHealth, which was [represented by](#) its pharmacy chief, is [a member of Vizient](#), the largest group purchasing organization.

Sen. Collins: If you’re serious about ending drug shortages, cancel the “Get out of jail free” card!

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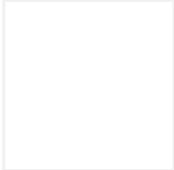
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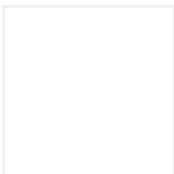
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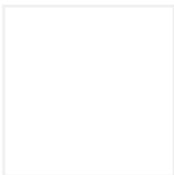


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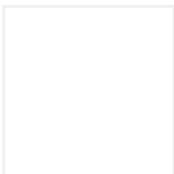
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