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Danziger: Cut Kickbacks to Hospital Group Purchasing Organizations, Not Medicare and Medicaid

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By Paul Danziger
Special to Roll Call
Oct. 21, 2011, 1:59 p.m.

Many lawyers have a screenplay that was inspired by a real case squirreled away in their bottom drawer. Often, it's a case that reminds them of the idealism that drove them to study law in the first place: to seek justice for the powerless and downtrodden. Few of these scripts are ever read by a filmmaker, much less make it to the big screen.

Luckily, mine did. "Puncture," starring Chris Evans of "Captain America" fame, opened Sept. 23 in limited release. But while I'm obviously delighted, I wish I could say that "Puncture" was entirely fictional. Tragically, however, it's based on a true story involving a Houston emergency room nurse who contracted HIV/AIDS through an accidental needlestick injury and hospital purchasing cartels that control which products can be used in hospitals.

I wrote the original screenplay because the more I learned about the case, the angrier I got. With President Barack Obama proposing \$320 billion in cuts to Medicare and Medicaid over the next 10 years, I believe every American should share my outrage.

Delving into the case, my partner, Mike Weiss, (played by Evans) and I found that an engineer had developed a safety syringe that could have prevented the injury if her hospital had been able to buy it. Nurses and doctors were clamoring for this revolutionary device, and we couldn't understand why hospitals didn't buy it.

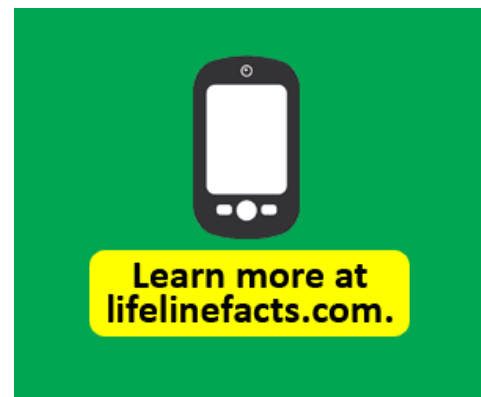
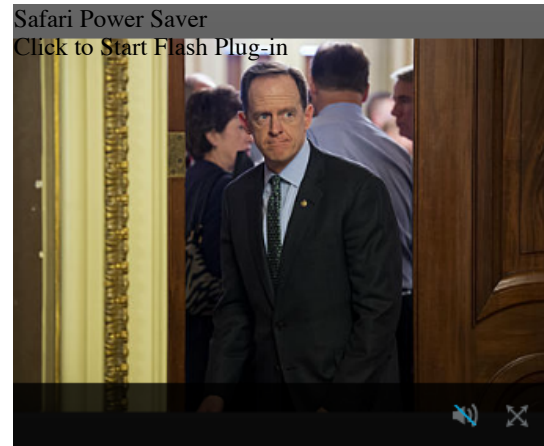
Digging deeper, we discovered why: Giant hospital group purchasing organizations, which today contract for more than \$100 billion a year in medical supplies, devices and drugs for about 5,000 American hospitals, block the sale to these hospitals of countless innovative, lifesaving products that threaten the business of their big supplier partners. These products include safer syringes, pacemakers, surgical towels, even cancer drugs — you name it. In this anti-competitive, pay-to-play scheme, the dominant medical suppliers pay kickbacks to the GPOs to make sure that their products have exclusive access to these facilities.

Incredibly, Congress created this monster in 1987, when it approved the Medicare anti-kickback "safe harbor" exemption. Enacted ostensibly to give small hospitals more clout with suppliers, this provision exempted the GPOs from criminal penalties for accepting vendor kickbacks. Before long, the safe harbor became a pirate cove.

I didn't have to attend law school to know that paying or receiving kickbacks could land you in jail. That's true for virtually every industry in America — except the GPO industry.

Although the GPOs claim to obtain volume discounts, a decade of evidence indicates exactly the opposite. This evidence includes testimony from four Senate subcommittee hearings, federal and state investigations, academic studies and numerous antitrust lawsuits and media exposes. A 2010 study by Navigant Economics (full disclosure: funded by a trade group that's been fighting this system for years) found these kickbacks inflate health care costs by up to \$37.5 billion a year, including \$17.3 billion in government outlays. That's more than half of what the president proposes to cut from Medicare and Medicaid every year.

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Terri Henderson, 6, center, whose mother is El Salvador, attends a rally with members of Congress at Union Station's Columbus Circle to announce the Restore Opportunity, Strengthen, and Improve the Economy (ROSIE) Act on July 29, 2014. The legislation provides incentives for government contractors to pay a living wage and other benefits that would help low-income workers.

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