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GPOs fuel drug shortages [Commentary]

The group purchasing organizations push manufacturers out of the market, leaving fewer drug producers

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By Mollyann March and Phillip L. Zweig

1:00 p.m. EST, February 7, 2014

Maryland has been a pacesetter on some important health care issues like hospital cost control. But on one matter that is seriously impairing patient care — generic drug shortages — Marylanders are facing the same crisis as everyone else.

For several years, our hospitals and outpatient surgery centers have been dealing with frequent shortages, and at times complete outages, of mainstay drugs that are often physicians' first choices for high quality care. All Marylanders have a personal stake in ending this public health emergency.

Most of the nearly 300 drugs in short supply are sterile injectables, including chemotherapy agents, antibiotics, medications for anesthesia and pain relief and intravenous nutrients. Prices of many have risen astronomically; others are sometimes unavailable at any price. Hospitals are now confronting acute shortages of sterile saline solution, a commodity vital to medical and surgical practice.

The highly-publicized, and sometimes lethal, problems with contaminated products made by so-called "compounding pharmacies" have resulted from both ineffective regulatory oversight and the lack of drugs from more reliable sources.

How did we find ourselves in this predicament, where physicians may not know, from day to day, whether the drugs they need will be available? The main reason is that most of these drugs are purchased through a handful of supply chain middlemen called hospital group purchasing organizations, or GPOs, whose anticompetitive practices and self-dealing have been documented in Senate antitrust hearings, media reports, government investigations and lawsuits. These buyers' monopolies purchase upward of \$300 billion in drugs, devices and supplies annually for about 5,000 private acute care hospitals, including virtually every one in Maryland. Five giants account for roughly 90 percent of all such purchases.

Under a "pay-to-play" arrangement, vendors compete not on the basis of who can supply the best product at the best price but on who can pay the biggest fees to these cartels. In return, they receive exclusive contracts. This artificially constrained supply chain is why many drug manufacturers

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have fled the marketplace, leaving just one or two to produce many drugs. In turn, hospitals receive incentives based on their compliance with contracts the GPOs award to favored suppliers.

In 1987, **Congress** enacted the Medicare anti-kickback "safe harbor," which exempted GPOs from criminal penalties for accepting payments from suppliers — payments that in virtually every other industry would be considered unlawful kickbacks. One rationale at the time was that small hospitals would save more money if vendors, rather than hospitals, paid "administrative fees." Instead, the safe harbor has undermined competition and inflated costs.

Some lawmakers have unfairly blamed so-called "gray market" drug distributors. These are generally small to mid-sized firms that serve a vital market function by supplying relatively small quantities of drugs, often on short notice. They most certainly didn't cause the crisis.

Other lawmakers have written to **Food and Drug Administration** Commissioner **Margaret Hamburg** about the problem. Unfortunately, the FDA simply doesn't have jurisdiction over the GPO supply chain. Rather, they should call for antitrust investigations by the Justice Department, the **Federal Trade Commission** and Maryland's attorney general.

Recently the FDA publicly acknowledged the GPOs' central role in drug shortages, and the Government Accountability Office, the investigative arm of Congress, is probing the GPO/drug shortage connection. The Healthcare Supply Chain Association, the GPO trade group, and its allies would have us believe that the causes of drug shortages are "complex and multifactorial," a "perfect storm." This is a canard intended to deflect attention from the real root cause: the GPOs themselves.

After a quarter century, it is time to address, on an urgent basis, the grave consequences that the GPO-controlled supply chain and their anti-kickback exemption have had for clinicians, patients and taxpayers. Repealing the GPO "safe harbor" provision is the right first step. That would begin to restore free market competition and integrity to the manufacture and sale of medications, and other hospital supplies, in Maryland and throughout the United States.

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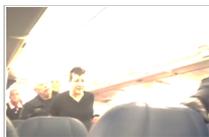
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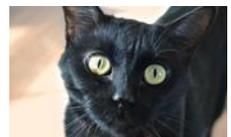
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