Where Does the Law Against Kickbacks Not Apply? Your Hospital

By Phillip L. Zweig and Frederick C. Blum

Doctors have long struggled to care for patients amid artificial shortages of — and soaring prices for — hundreds of drugs — notably generic sterile injectable products, including saline, epinephrine, chemotherapeutic agents, anesthetics, painkillers, antibiotics, even sterilized water.

So when Amazon Business signaled last year that it planned to infuse competition into the marketplace for hospital supplies, clinicians were optimistic that scarce items would soon reappear. Wrong. Mighty Amazon has now backed away from the market. CNBC, which reported the news in April, attributed the decision partly to the barrier posed by hospitals' tight relationships with group purchasing organizations, or GPOs.

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values you were taught as a child. politics seem like the only solution parties compete for their support. contracting officers, is that the current system may inflate costs by 30% or more. Still, most administrators are enculturated to the GPO system, and the web of rebates and fees helps keep it in place.

Making matters worse, in 2003 the Department of Health and Human Services advised drug makers that the safe harbor would protect rebates paid to pharmacy benefit managers. This has created an upward spiral in the cost of drugs sold through those middlemen, as drugmakers compete for placement on PBM formularies by offering ever-larger rebates.

Without Amazon, the best hope for ending this travesty remains congressional repeal of the safe harbor. That goal has long eluded the bipartisan handful of lawmakers who have endorsed the idea, but thankfully outrage is mounting. The 36,000-member American College of Emergency Physicians adopted a resolution last year calling for repeal. Just last week, the commissioner of the Food and Drug Administration, Scott Gottlieb, suggested re-examining the safe harbor as a way to disrupt the system of drug rebates "that's driving higher and higher list prices."

If Washington is truly interested in lowering medical costs, here's a straightforward idea: cancel the safe harbor and force the middlemen feeding at the health-care trough to compete on the merits.

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GPOs didn’t always operate this way. The first was founded in 1910 when several New York City hospitals banded together to buy supplies in bulk. Members paid dues to cover administrative expenses. This nonprofit “co-op” model worked for decades. What perverted the system was a rule that began to allow cash to flow from manufacturers to the GPOs. In the mid-1980s, Congress gave GPOs a “safe harbor” by exempting them from the laws against taking kickbacks from suppliers.

A 2010 report by the Senate Finance Committee found no independent empirical evidence that GPOs save hospitals money. In 2002, however, the Government Accountability Office studied purchases of safety needles and pacemakers in one metropolitan area and found hospitals that negotiated on their own often obtained lower prices. Our estimate, based on accumulated evidence including interviews with former GPO