EDITORIAL

Health care isn't about producing plastic cards

For decades health care policymakers have been trapped inside a box of their own making. As health care costs continue to rise well in excess of the cost of living, while access to quality health care

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for everyone remains a stubborn problem, reformers focus on producing plastic cards that symbolize "coverage" of health care costs by a third party payer—be it the government or a government-regulated insurance company. But focus is on the wrong target. The goal should not be "coverage." It should be: Better Health Care For More People At Lower Prices Year After Year. This will never happen as long as we remain within our outdated box.

Our box took years to construct. It began back in the 19th Century, when America's "regular" doctors created the American Medical Association (AMA), with the express mission of lobbying state legislatures to license physicians. The idea of occupational licensure was alien to the young republic, and the AMA at first met resistance. But by the dawn of the Progressive Era, licensure became rather common for various occupations. State medical licensing boards originally consisted of the state-based medical societies, but then expanded to include lay people. The AMA later directly involved itself in the accreditation of medical schools, and, after it funded the Carnegie Foundation's famous Flexner Report, was able to place strict limits on the production of new physicians. This also led to marked increases in the costs of medical education.

With the advent of the Great Depression, hospitals united to create Blue Cross, and later partnered with state medical societies to create Blue Shield,

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which were the precursors of first-dollar coverage via third party health plans, and led to a jump in health care utilization by the general public. In the 1930s, 1940s and 1950s, politicians got into the act, offering large publically funded grants that went toward the expansion of hospitals, research centers, and medical schools. The McCarran-Ferguson Act allowed each state to establish its own cartel of health insurance companies, barring the sale of health insurance from other states. These health insurance cartels complemented the medical professional cartels already in existence in each state. Meanwhile, Congress passed a law in the early 1950s that made employer-provided health insurance a tax-excluded benefit, leading to a massive expansion in the third party system. Individually purchased health insurance does not receive that exclusion. By the 1970s, 90% of people who had health insurance received it through their job—this insurance was chosen by the employer, and was not portable to another job.

Medicare and Medicaid added large chunks of the population to the third party payment system—in this case a single third party: the government. This led to ever-increasing demand and resulting higher prices.

Government regulations came into play, in attempts to rein

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in costs by placing controls mostly on the supply side, rather than the demand side.

The Nixon Administration created subsidized HMOs, and incentivized states to set up "Certificate of Need" programs, still in existence today in 35 states and the District of Columbia, whereby expansions of hospitals and health care facilities or even additions of equipment require government approval, often after input from the incumbent competitors.

As in the case of most government-regulated cartels, the medical cartel, hospital cartel, and insurance cartel all achieved what economists call "regulatory capture." This is when a regulatory agency, created to act in the public interest, instead advances the commercial or special concerns of interest groups that dominate the industry or sector it is charged with regulating. The cartel incumbents, particularly the larger ones, adapt well to the regulatory environment and take advantage of the high costs of regulatory compliance to keep out new, less well capitalized entrants. This, for example, is a reason why hospital associations are often opponents of repeal of Certificate of Need Laws.

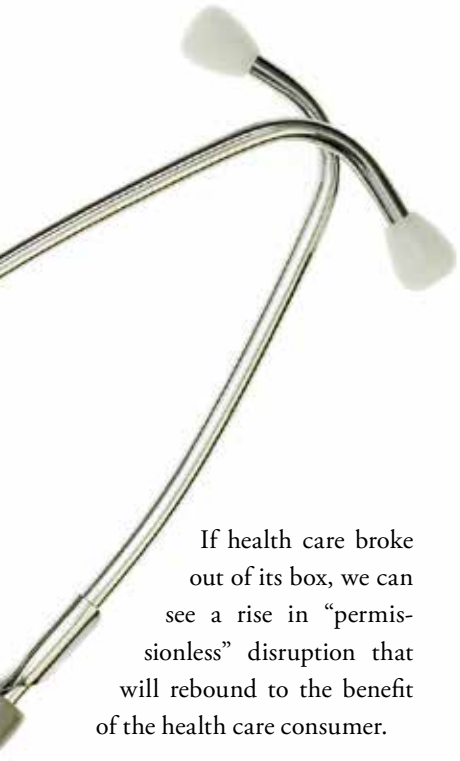
So today we have skyrocketing health care costs, a web of regulations growing denser by the moment, and compliance costs that are stimulating the flight of physicians from private practice along with the consolidation of hospitals, medical clinics, insurance companies, and pharmaceutical companies. Economists tell us that consolidation leads to higher prices and fewer choices.

Yet policymakers apply the same remedies, year after year, to the unintended consequences of their earlier interventions: expansion of the third party payment system and new layers of regulations.

The third party payment system prevents normal market forces from working. The health care providers and hospitals are negotiating their prices with the third party rather than the consumer. The third party payer has a completely different set of interests and priorities than does the consumer/end user. The consumer is never offered a direct, transparent price. The consumer is actually out of the loop! Without transparent prices negotiated between the consumer and the producer (provider), market forces are unable to work. There is no realistic feedback between production and consumption using the pricing mechanism. Innovation is, likewise, not consumer-driven, but rather driven by the interests of the third party.

To get us better health care for more people at lower prices year after year, reforms need to be focused on minimizing the third party payment system. Health insurance should be used only for unforeseen, unpredictable, catastrophic events. It should not be used for health maintenance or planned events—just like people do not use homeowners insurance to paint their house or replace their insulation.

The best example we have today of an essentially unfettered free market is the Internet. Economists have spoken about the "permissionless innovation" that the unregulated Internet has fostered. These innovations need no permission from a regulatory agency. Some of these innovations have been "disrupters." The advents of *Uber* and *Lyft* have disrupted the taxi cartels in the various cities, and the cartels have looked to their captive regulators to try to fend off the threat. The same thing is occurring with companies such as *AirBNB*, and other pioneers of the new "gig" economy. These disrupters also threaten the political class because they challenge the regulators' ability to oversee and tax the new independent contractors. The various cartels don't like these new disrupters. But the consumers are voting for them with their wallets.



If health care broke out of its box, we can see a rise in "permissionless" disruption that will rebound to the benefit of the health care consumer.

We see it already starting to happen. More and more providers are opting out—partly or completely—from the third party payment system. Surgical and other specialty hospitals, clinics, and practitioners are proliferating that take no Medicare, Medicaid, or insurance. They are offering quality care at transparent prices, often much lower than those offered in the third party payment system. And they are competing for consumers' business.

Some states are enacting "pricing transparency" laws to facilitate the growth of "Direct Care" or "Third Party Free Practice' (TPFP). Websites like *Medibid.com*, provide platforms for consumers and providers to negotiate cash prices for medical services.

Innovations such as telemedicine, enhanced by amazing advances in communication technology, are challenging state licensing laws, as people are able to get advice and/or treatment from practitioners who are out-of-state or even offshore.

Offshore clinics are blossoming, as is the phenomenon of "medical tourism," where people get health care at low prices by private clinics in other countries.

These reforms will continue to get pushback from the old, rusty cartels. But it appears that, no matter how resistant the old guard and their friends in the ruling class continue to be, the walls of the box are starting to buckle, and an ever-growing number of patients will be getting their care from providers outside of the old system. When the box completely breaks apart, we will see better health care for more people at a lower price year after year. Until that time comes, the cartels and their captive regulators will keep making plastic cards. **AM**

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