THE TRUE DRIVERS OF HEALTH COSTS IN THE U.S.

Part I: America's Anger at Drug Makers Is Misplaced: Health Insurers Are Hiding Profits To Justify Raising Prices

The Alliance for the Adoption of Innovations in Medicine (Aimed Alliance)

November 2015

Stacey L. Worthy, Esq.
Shruti Kulkarni, J.D.

Two bad actors have caused a new national uproar over drug pricing, leading to calls for federal drug price controls. Meanwhile, no one is talking about the exploitative and profiteering practices of the health insurance industry.

Consumers shopping for plans in the health care marketplace or renewing their employer-run plans are now finding out that insurance premiums are set to increase by up to 45 percent in 2016.[1] Insurers have obtained government approval for these cost increases by using deceptive practices to hide their profits. These predatory practices must stop. It is time to hold the health insurance industry accountable.

"[I]nsurance premiums are set to increase by up to 45 percent next year."

Controls Are in Place To Address Bad Actors in the Pharmaceutical Industry

In November 2015, the Obama Administration announced it would hold a forum to discuss "high and growing costs of drugs."[2] The forum comes in response to the actions of two drug manufacturers. In September, Turing Pharmaceuticals raised the cost of a 62-year-old lifesaving drug from $13.50 a pill to $750 a pill, a 5,000 percent increase, sparking a justifiable national outrage.[3] Similarly, Valeant Pharmaceuticals dramatically increased the prices of several drugs long on the market, levying a 525 percent hike in the price of a heart drug.[4] When prompted, neither company's CEO could provide a viable reason for the increase. Although Turing CEO Martin Shkreli initially responded to public outcry by announcing that he would lower the price of the $750 pill in early October, he has not yet made good on his promise.[5]

While these two companies have operated under business models that increase prices without adding value for consumers, states currently have enforcement mechanisms in place to punish exploitative behavior. For instance, New York Attorney General Eric Schneiderman has initiated an antitrust investigation of Turing,[6] and Valeant received subpoenas from federal prosecutors regarding its pricing practices.[7] Additionally, state price gouging laws could be used to protect each state's citizens from abusive practices. In light of these consumer protections, the recent call for federal legislation that would place price controls on the entire pharmaceutical industry[8] is unjustified and would, in fact, harm consumers by stifling pharmaceutical research and development. Instead, more attention must be paid to the underhanded practices of the insurance industry.

"[M]ore attention must be paid to the insurance industry."

The Health Insurance Industry Hides Its Profits To Justify Raising Prices

Since the Affordable Care Act ("ACA") was signed into law in 2010, health insurers have found ways to hide their profits in order to justify significant consumer premium and cost-sharing increases. These strategies include moving funds to financial reserves (*i.e.*, funds set aside to cover both anticipated and unanticipated health care costs) and providing executives with outrageous compensation packages, among other strategies.

For example, while the not-for-profit insurer Blue Shield of California ("BS/CA") reported a net income of $162 million in 2014,[9] a confidential state audit revealed that

the company, in fact, amassed obscene profits and disguised them as financial reserves. BS/CA held $4.2 billion in reserves—an estimated 1,500 percent more than the amount required by regulators or recommended by its industry association.[10] Additionally, BS/CA failed to disclose in its regulatory filings that it increased its executive compensation by $24 million in 2012—a 64 percent jump from the previous year.[11] BS/CA has refused to reveal how the $24 million in compensation was distributed and has not yet disclosed its 2014 executive compensation to regulators.[12] Nevertheless, BS/CA increased its premiums by 32.3 percent between 2012 and 2014.[13] It was then forced to issue $82.8 million in rebates to beneficiaries because it failed to spend 80 percent of those premiums on medical care, as the ACA requires.[14] In fact, state officials revoked BS/CA's tax-exempt status in 2015, stating the obvious: The organization acts more like a for-profit than a nonprofit company.[15]

"BS/CA increased its premiums by 32.3 percent between 2012 and 2014."

BS/CA is not alone. Tennessee's and Arizona's Blue plans stockpiled $1.7 billion and $1.03 billion in reserves in 2014.[16] Moreover, each year since 2012, top-paid health insurance executives have seen a 29.6 percent increase in their salary, bonus, and incentive incomes.[17] Mark Bertolini, CEO of Aetna, the third largest health insurer in the U.S., earned $30.7 million in 2013, which was 131 percent higher than his 2012 salary.[18] Aetna also made $2 billion in profits in 2014, garnering an increase of 6.6 percent from 2013, and the highest in company history.[19] Nevertheless, Aetna raised premium rates on California's small businesses and their employees by 27.4 percent, marking the sixth time it increased these rates since 2013.[20]

Likewise, in 2014, Stephen Hemsley, the CEO of UnitedHealth Group, made $66 million in total compensation.[21] Compensation packages like this are juxtaposed with the company's third-quarter claims that it had a one percent decrease in profits, despite a 27 percent increase in revenues ($41.5 billion).[22] It used the profit decrease to justify its increased health marketplace premium rates in 2016 as it expands to 11 new markets.[23]

Anthem, the country's second largest health insurer, boasted a $2.5 billion profit on $73 billion in revenues in 2014.[24] While Anthem reported third-quarter profit increases of four percent, Anthem's premiums on Indiana exchange plans increased by 19 percent.[25] In fact, Anthem lost nearly 70,000 members from individual exchange plans nationwide in its third quarter alone due to its price increases.[26] Anthem attributes its profits to Medicaid expansion.[27] As America's poorest continue to enroll, Anthem's profits continue to increase.

"[A]nthem lost nearly 70,000 members from individual exchange plans nationwide in its third quarter alone due to its cost increases."

Premiums and Deductibles Are Skyrocketing While Insurers Ask for Billions in Federal Aid

In 2016, many consumers will pay more for their health care than their mortgages or rent. Blue Cross and Blue Shield plans sought to increase premiums in 2016 by an average of 54 percent in Minnesota, 51 percent in New Mexico, 36 percent in Tennessee, and 31 percent in Oklahoma, claiming that new customers who have received access to health

insurance under the ACA are sicker than expected.[28]

"Blue Cross and Blue Shield plans sought to increase premiums in 2016 by an average of 54 percent in Minnesota. . . ."

It is not just premiums that are skyrocketing. According to research conducted by Kaiser Family Foundation, insurance deductibles have risen more than six times faster than workers' earnings since 2010.[29] Workers who received insurance through a large employer have seen deductibles climb from a yearly average of $900 in 2010 for an individual plan to above $1,300 in 2015, while employees working for small businesses have an even higher average of $1,800 a year. As a result, nearly 25 percent of Americans covered through employer-sponsored plans are underinsured, meaning that their out-of-pocket costs or deductibles are so high relative to their incomes that they cannot afford to get the care they need.[30] In Colorado, over 13 percent of people skipped seeing a doctor due to cost in 2015.[31]

In any other industry, these cost increases would be considered price gouging. Yet, despite these increases, there has been very little consumer, media, or government scrutiny of insurers to demand that they treat consumers fairly. Thirty-five states have granted authority to state insurance regulators to approve or block rate increases for individual and small-group plans; nevertheless, insurers' lack of transparency with respect to profits has led many regulators to approve these increases. Other states lack the authority to prevent unreasonable increases altogether. President Obama himself has called on consumers to put pressure on state insurance regulators to scrutinize the proposed rate increases.[32]
While the ACA includes provisions to prevent excessive rate hikes, including a rate-review process in which the U.S. Department of Health and Human Services (HHS) and states are able to review all rate increases of 10 percent or more for individual and small-group plans, insurers sometimes exploit loopholes by increasing rates throughout the year,[33] a practice that resulted in a breach of contract lawsuit against Anthem Blue Cross.[34] Last month, Anthem Blue Cross agreed to refund $8.3 million to approximately 50,000 members and forgo mid-year deductible increases to settle the lawsuit.[35] The insurer had raised annual deductibles, prescription drug deductibles, and out-of-pocket limits mid-year, allegedly in violation of the insurer's contract.[36]

In addition to the added funding they receive from premium increases, insurers have also asked the federal government for billions of dollars in assistance. Last year, insurers requested $2.8 billion in federal assistance, claiming their profits had fallen.

"[T]here has been very little consumer, media, or government scrutiny of insurers to demand that they treat consumers fairly."

While Consumers Pay More, They Get Less

Despite profits held in reserves, high CEO compensation packages, skyrocketing premiums and deductibles, and federal subsidies, the value of health insurance plans is decreasing. For example, in 2014, Anthem denied 90 percent of mental health claims.[37] Other health insurers place inordinate out-of-pocket costs on necessary medications, making them unaffordable for most patients. Recently, the AIDS Institute examined silver-level health plans offered through the insurance marketplace in Florida and found that Aetna placed all of its hepatitis C drugs

on the most expensive tiers with coinsurance rates of up to 50 percent, while Humana had a $1,500 prescription drug deductible for such medications.[38] Patients are forced to choose between paying for a lifesaving medication and being able to afford basic necessities, like food and shelter.[39]

In Houston, Texas, hundreds of thousands of people have been forced to switch plans or health care providers in 2016 because all insurers in the health insurance marketplace have dropped their preferred provider plans (PPOs)—plans known for greater choice of practitioners.[40] While there were 38 PPOs in 2015, there are none in 2016.[41] This means thousands of people will no longer be able to see the health care professionals who have treated them for years, if not decades.[42]

These restrictions on access lead to treatment delays, adherence challenges, and other burdens for patients with chronic illnesses, such as cancer, HIV, hepatitis C, and rheumatoid arthritis.[43] When entire patient populations cannot access their medications, insurers have essentially exploited loopholes in the ACA to resurrect discrimination based on preexisting conditions.

"[R]estrictions on access lead to treatment delays, adherence challenges, and other burdens for patients with chronic illnesses."

State Attorneys General Must Intervene

Recently, presidential candidates from both parties, the Obama Administration, and other federal policy-makers have called for price controls of the pharmaceutical industry.[44] Yet, protections are already in place to deal with unconscionable drug prices. Industry-wide price controls on the pharmaceutical industry are unnecessary and detrimental.

State attorneys general must investigate the widespread profiteering practices of insurers, which violate existing consumer protection laws, including antitrust and anti-price gouging laws. State insurance regulators must carefully scrutinize insurers' premium increases with an eye for hidden profits, and officials in every state must be given the proper authority to reject unreasonable changes.

Additionally, federal and state laws must be enacted and enforced to rein in the inequitable practices of the insurance industry, such as discrimination against people with complex health conditions. Consumer protection laws should prevent insurers from placing all drugs that treat a particular illness in an unaffordable specialty tier, cap out-of-pocket cost-sharing passed on to consumers at a reasonable rate, prevent mid-year changes to insurance plans, give health care practitioners the authority to override unreasonable denials of treatment, and ensure greater transparency of health insurance overall. American consumers must call the insurance industry to task for failing to provide the affordable care that Americans were promised.

"Insurers must be called to task for failing to provide the affordable care that Americans were promised."

The Alliance for the Adoption of Innovations in Medicine (Aimed Alliance) is a tax-exempt, not-for-profit organization that seeks to improve health care in the United States by supporting the development and utilization of novel, evidence-based treatments. For more information, visit AimedAlliance.org and follow @AdoptInnovation on Twitter.

[1] Caroline Connolly, *Health Insurance Premiums Increase in Utah*, FOX NEWS (Oct. 21, 2015), http://fox13now.com/2015/10/21/health-insurance-premiums-increase-in-utah/.
[2] *HHS Pharmaceutical Forum: Innovation, Access, Affordability and Better Health*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, http://www.hhs.gov/hhspharmaceuticalforum (last updated Nov. 10, 2015).
[3] Andrew Pollack, *Drug Goes From $13.50 a Tablet to $750, Overnight*, THE NEW YORK TIMES, (Sept. 20, 2015), http://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html?_r=0.
[4] Caroline Chen, *Valeant's Pharma Formula: Deals, Drugs and Lots of Questions*, BLOOMBERG BUSINESS (Oct. 21, 2015), http://www.bloomberg.com/news/articles/2015-10-21/valeant-s-pharma-formula-deals-drugs-and-lots-of-questions.
[5] Lydia Ramsey, *2 Weeks After Controversial Pharma CEO Martin Shkreli Announced He Would Lower the Price of Daraprim, It's the Exact Same Price*, TECH INSIDER (Oct. 8, 2015), http://www.techinsider.io/martin-shkreli-update-on-daraprim-price-2015-10.
[6] *Company that Hiked Drug Price 5,000% Now Under Antitrust Probe*, CNN WIRE (Oct. 13, 2015), http://wtkr.com/2015/10/13/company-that-hiked-drug-price-5000-now-under-antitrust-probe/.
[7] Laura Lorenzetti, *Valeant Under Federal Investigation for How It Prices Drugs*, FORTUNE (Oct. 15, 2015), http://fortune.com/2015/10/15/valeant-investigation-drug-pricing/.
[8] Robert Pear, *Obama Administration Plans Forum on High Drug Prices*, THE NEW YORK TIMES (Nov. 3, 2015), http://www.nytimes.com/2015/11/04/us/politics/obama-administration-plans-forum-on-high-drug-prices.html.
[9] *Financials*, BLUE OF CALIFORNIA, https://www.blueshieldca.com/bsca/about-blue-shield/corporate/financials.sp (last visited Nov. 3, 2015).
[10] Chad Terhune, *With Billions in the Bank, Blue Shield of California Loses its State Tax-Exempt Status*, LA TIMES (Mar. 18, 2015), http://www.latimes.com/business/la-fi-blue-shield-california-20150318-story.html
[11] *Audit: Blue Shield of California Executive Pay Jumped 64% in 2012*, CALIFORNIA HEALTHLINE (Sept. 2, 2015), http://www.californiahealthline.org/articles/2015/9/2/audit-blue-shield-of-california-executive-pay-jumped-64-in-2012
[12] Chad Terhune, *Big Hike in Executive Pay at Nonprofit Blue Shield Draws State Scrutiny*, LA TIMES (Sept. 1, 2015), http://www.latimes.com/business/la-fi-blue-shield-pay-20150901-story.html
[13] Melissa Culross, *Calif. Insurance Commissioner Slams Blue Shield Rate Hike*, CBS SF BAY AREA (Jan. 7, 2014), http://sanfrancisco.cbslocal.com/2014/01/07/calif-insurance-commissioner-slams-blue-shield-rate-hike/.
[14] Dori Zweig, *Blue Shield of California to Issue Rebates of $82.8 Million*, FIERCEHEALTHPAYER (Aug. 5, 2015), http://www.fiercehealthpayer.com/story/blue-shield-california-issue-rebates-828-million/2015-08-05.
[15] Bruce Japsen, *Wagons Circle on Blue Cross and Blue Shield Tax Exemptions*, FORBES (Apr. 6, 2015), http://www.forbes.com/sites/brucejapsen/2015/04/06/wagons-circle-on-nonprofit-blues-health-plan-tax-exemptions/; Amy Yurkanin, *Could Blue Cross Blue Shield of Alabama Ever Lose Its Tax Exempt Status*, (Mar. 20, 2015), AL.COM, http://www.al.com/news/index.ssf/2015/03/could_blue_cross_blue_shield_o.html.
[16] *A Hidden Reason Your Health Care Costs Are Going Up*, CONSUMER REPORTS (June 22, 2015), http://www.consumerreports.org/cro/news/2015/06/a-hidden-reason-your-health-care-costs-are-going-up/index.htm
[17] Michael Sandler, *CEO Pay Soars at Top Not-for-Profits*, MODERN HEALTHCARE (Aug. 8, 2015), http://www.modernhealthcare.com/article/20150808/MAGAZINE/308089988.
[18] Wendell Potter, *Skyrocketing Salaries for Health Insurance CEOs*, THE CENTER FOR PUBLIC INTEGRITY (June 9, 2014), http://www.publicintegrity.org/2014/06/09/14912/skyrocketing-salaries-health-insurance-ceos
[19] *Aetna Closes 2014 with Record Profit, Up 6.6% for the Year*, MODERN HEALTHCARE http://www.modernhealthcare.com/article/20150203/NEWS/302039967/aetna-closes-2014-with-record-profit-up-6-6-for-the-year (last visited Nov. 3, 2015);
[20] *Regulators Find 6th Unreasonable Health Insurance Premium Hike By Aetna This Year*, INSURANCENEWSNET.COM (Oct. 22, 2015), https://insurancenewsnet.com/oarticle/2015/10/22/regulators-find-6th-unreasonable-health-insurance-premium-hike-by-aetna-this-year-usually-a-leader-california-lags-the-nation-in-health-insurance.html.
[21] Elizabeth Whitman, *Rising Costs of Medical Care, Health Insurance: Median Pay for CEOs In Health Care Companies Higher Than Any Other Industry, Analysis Finds*, IBT (May 26, 2015), http://www.ibtimes.com/rising-costs-medical-care-health-insurance-median-pay-ceos-health-care-companies-1938699.
[22] Christopher Snowbeck, *UnitedHealth Will Expand to 11 New Markets in 2016 as It Adapts to ACA*, STAR TRIBUTE (Oct. 15, 2015), http://www.startribune.com/unitedhealth-earnings-flat-as-optum-grows/333022101/
[23] *Id.*

[24] LeeAnn Hall & Wendell Potter, *Let's Block Too-Big-to-Fail Health Insurance Companies*, ROLL CALL (Oct. 6, 2015), http://www.rollcall.com/news/lets_block_too_big_to_fail_health_insurance_companies_commentary-244060-1.html.
[25] Maureen Groppe, *Average Benchmark Obamacare Premium Falling in Indiana*, INDYSTAR (Oct. 27, 2015), http://www.indystar.com/story/news/2015/10/27/average-benchmark-obamacare-premium-falling-indiana/74697146/.
[26] *Anthem Sees Exodus of Exchange Members in Third Quarter*, MODERN HEALTHCARE, http://www.modernhealthcare.com/article/20151028/NEWS/151029890 (last visited Nov. 3, 2015).
[27] Bruce Japsen, *Obamacare's Medicaid Expansion Boosts Anthem As Individual Enrollment Slows*, FORBES (Oct. 28, 20150, http://www.forbes.com/sites/brucejapsen/2015/10/28/obamacares-medicaid-expansion-boosts-anthem-as-individual-enrollment-slows/.
[28] Robert Pear, *Health Insurance Companies Seek Big Rate Increases for 2016*, THE NEW YORK TIMES (July 3, 2015), http://www.nytimes.com/2015/07/04/us/health-insurance-companies-seek-big-rate-increases-for-2016.html.
[29] Reed Abelson, *Health Insurance Deductibles Outpacing Wage Increases, Study Finds*, THE NEW YORK TIMES (Sept. 22, 2015) http://www.nytimes.com/2015/09/23/business/health-insurance-deductibles-outpacing-wage-increases-study-finds.html.
[30] *The Problem of Underinsurance and How Rising Deductibles Will Make It Worse*, THE COMMONWEALTH FUND (May 20, 2105), http://www.commonwealthfund.org/publications/issue-briefs/2015/may/problem-of-underinsurance.
[31] Nick Coltrain, *Insured Rate is Up, but Health Care Access a Question*, COLORADOAN (Oct. 4, 2015), http://www.coloradoan.com/story/news/2015/10/03/health-care-access-larimer-ginal/73290844/.
[32] Robert Pear, *supra* note 28.
[33] *Id*; *Review of Insurance Rates*, THE CENTERS FOR MEDICARE & MEDICAID SERVICES, https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Review-of-Insurance-Rates.html (last visited Nov. 3, 2015).
[34] Rebecca Plevin, *Anthem Blue Cross Will Repay $8.3 Million to 50,000 California Customers*, KOED NEWS (Oct. 28, 2015), http://ww2.kqed.org/stateofhealth/2015/10/28/anthem-blue-cross-will-repay-8-3-million-to-50000-california-customers/.
[35] *Id.*
[36] *Id.*
[37] Dina Overland, *'60 Minutes' Accuses Insurers of Denying Mental Health Claims*, FIERCE HEALTH PAYER (Dec. 15, 2014), http://www.fiercehealthpayer.com/story/60-minutes-accuses-insurers-denying-mental-health-claims/2014-12-15.
[38] *Health Plan Tiers Raise Drug Costs for Hepatitis Patients*, MODERN HEALTHCARE, http://www.modernhealthcare.com/article/20151005/NEWS/151009972 (last visited Nov. 3, 2015).
[39] Nick Coltrain, *Insured Rate Is Up, But Health Care Access A Question*, COLORADOAN (Oct. 4, 2015), http://www.coloradoan.com/story/news/2015/10/03/health-care-access-larimer-ginal/73290844/.
[40] Jenny Deam, *Insurer Limit Plan Types for 2016 ACA Exchange*, HOUSTON CHRONICLE (Oct. 27, 2015), http://www.houstonchronicle.com/business/medical/article/Insurers-limit-plan-types-for-2016-ACA-exchange-6594447.php.
[41] *Id.*
[42] *Id.*
[43] Sonya Blesser Stretter, et al., *Patient and Plan Characteristics Affecting Abandonment of Oral Oncolytic Prescriptions*, 7(3S) J. ONCOLOGY PRACTICE 46S (2011), http://peac.myeloma.org/wp-content/uploads/2013/08/Abandonment-of-Oral-Oncolytic.pdf; *Standardization of Prior Authorization Process for Medical Services White Paper*, AMERICAN MEDICAL ASSOCIATION (June 2011), http://massneuro.org/Resources/Transfer%20from%20old%20sit/AMA%20White%20Paper%20on%20Standardizing%20Prior%20Authorization.pdf.
[44] Robert Pear, *supra* note 8; Joseph Walker & Heather Haddon, *Marco Rubio Latest to Speak Out on Prescription Drug Prices*, THE WALL STREET JOURNAL (Oct. 19, 2015), http://www.wsj.com/articles/marco-rubio-latest-to-speak-out-on-prescription-drug-prices-1445299557.