

# The "Break Up Big Medicine Act" Treats the Symptoms, Not the Disease

In which Warren and Hawley apply regulatory band-aides



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Senators Warren and Haley have introduced legislation in Congress to [break up 'big' medicine](#). If passed, it will mean that your health insurance company can no longer be owned by the same parent company that owns the pharmacy wholesaler, the pharmacy benefit manager (PBM) <sup>1</sup>, the brick and mortar pharmacy, and your specialist's office management service organization (MSO). <sup>2</sup>

It's easy to see how each of these smaller organizations, when vertically integrated, could take advantage of such a situation to make sure you only see the in-network doctor who only prescribes the specialty drug that the PBM secured the best rebate on to make them the most money. Plus, they'll only allow you to go to the one in-network covered pharmacy, so you can't shop around for a better price. And of course, all of the money trails right back to the corporate parent company. This situation feels like a trap, like you're the fly being invited into the parlor.

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But is vertical integration really the problem?

There are ways in which vertical integration outside healthcare has improved our lives. For example, Costco has vertically integrated its chicken production by contracting with a company that manages a network of chicken farmers to produce chicken to its specifications. This allows Costco to control cost *and* quality. And everyone knows [Costco rotisserie chicken is the best](#). Whether you love them or hate them, companies like Costco, Walmart, Amazon, and Shein have improved our standard of living by making food and goods less expensive and easier to obtain.

But there are also those who disdain these 'big box' stores for various reasons. Allegedly, they drive out small businesses, may not pay employees well, and offer low-quality or unreliable products. While there was a time when small businesses were failing in part because of competition from these vertically integrated 'big box' chains, enough people have come to see the value of small businesses that provide unique,

“sustainably” produced, high-quality goods, and bespoke, personalized service that we have seen a resurgence of such offerings over the last several years. The marketplace has adjusted, and we have more options.

If vertical integration has its niche and can provide valuable and low-cost options, why is it failing to do so in healthcare? What is different about vertically integrated ‘big’ medicine that makes it so negative?

Maybe there is a deeper underlying disease that artificially protects ‘big’ medicine from competitive and consumer forces seen in other markets.

Unlike corporations in the relatively free sectors of the economy outside medicine, medical corporations operate in a sector heavily influenced by government regulation. Bans on the corporate practice of medicine and certificate-of-need requirements have curtailed free-market competition. Government-created incentives unfairly bolster large hospital systems through disproportionate share payments and 340B programs. Large companies exploit tax incentives, the regulatory landscape, and the relative impotence of consumers to extract every drop from the system while providing only a minimally acceptable service. This regulatory landscape rewards consolidation and integration, at times irrespective of any value created for consumers, and makes it impossible for independent providers to compete.

As a result, the government essentially created and ensures the survival of our reviled vertically integrated companies that provide the checklist-driven, rapid-churning, lowest-common-denominator medical care that most of us are dissatisfied with.

If all we do is break up big medicine, we would also lose many of the valuable aspects of care that vertical integration can provide: improved bargaining power, resource stewardship, and easier access to and navigation of the medical system.

We’ve also all faced frustrating, fragmented versions of healthcare. Consider that time when your doctor and specialist didn’t connect, your pharmacist tried to recommend a cheaper medication but couldn’t reach your doctor to get the prescription changed, or the hospital you went to couldn’t access medical records, so you got a second expensive echocardiogram in the same month.

Worse, more government regulation through enforced breakups merely paves the way for more gaming of the system. Smaller medical providers and practice groups aren't immune to taking advantage of poorly aligned government incentive systems — one doctor's office can upcode just as effectively as a Medicare Advantage plan or a hospital's billing department (and might be more likely to get away with it).

Instead, we need to make these corporations compete for their success by placing them in the same environment as grocery companies: a free market. Just as 'big box' stores have had to compete by bringing in local products, offering a range of quality goods and prices, improving supply chain transparency, and improving benefits to their workers, 'big' medicine would be forced to take similar steps if it faced more locally based competition.

To give them this competition, we must free producers, competitors, and consumers. We must end the regulations and policies that prevent healthcare producers from growing, innovating, and offering a range of options. We must free consumers to shop with their own money and to choose the care models that are most valuable to them. For any particular sector or company, the government should not decide the 'right' business model. Regulations impede medical providers' ability to determine how best to meet their patients' needs (whether through vertical integration or another more creative model) and impede patients' ability to signal their values through their choices.

Here are some steps we could take to begin deregulating healthcare and increasing competition for 'big' medicine:

1. Promote site-neutral payments. Instead of paying hospital systems large supplemental payments for Medicare and Medicaid patients, use the money to increase Medicare and Medicaid reimbursement rates for all providers. This will level the playing field and make enrollment in these programs more financially viable for independent providers.
2. Repeal certificate of need laws on a federal level. When we impose resource scarcity, costs go up. Worse, these laws give large healthcare corporations the

power to veto competitive incumbents. No company should have the power to shut down its competitors.

3. Repeal limits on physician-owned hospitals. These hospitals would increase choice and competition, allowing physicians and patients to engage in a variety of care models and innovative approaches.
4. Increase health insurance options, plan term durations, and portability. Allow health insurance companies to offer non-ACA marketplace plans without marketplace restrictions. Allow patients to sign up for longer than one-year terms and to more easily keep plans separate from employment. Increase choice.
5. Make health savings accounts available to everyone and funded by pre-tax payroll deductions on the condition that they purchase health insurance. Health insurance premiums should be considered an allowable HSA expense. This will free the consumer, while also incentivizing enrollment in health insurance.

The Break Up Big Medicine Act is equivalent to putting a Band-Aid on a cold sore without treating the virus that caused it to begin with. The most effective way to break up the harmful aspects of 'big' medicine is to stop rewarding them, require producers to compete to prove their worth, free consumers to choose, and free everyone to engage in new models of care.

What changes would you make to help temper the negative aspects of vertical integration in healthcare while keeping the good and useful aspects?

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- 1 Pharmacy benefit managers are organizations that work with insurance companies, pharmaceutical wholesalers, pharmacies, and pharmaceutical companies to negotiate drug prices and determine formularies (lists of drugs to be covered) for insurance companies.
  - 2 Management service organizations provide non-medical services to healthcare companies, both large and small. These services include human resources, billing, IT, administrative, compliance, legal, and operational support.
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## Discussion about this post

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**Anthony Michael Perry**  Anthony's Substack · 5d ...

Too busy this week to really comment. However, to my mind the general principle is to ask the question as to why we should be paying for ordinary medical care through insurance in the first place. The whole point of insurance is for protection against unexpected unaffordable events. Using it for everyday items makes everything way more expensive and complicated. Of course, we're into it now so climbing back out of the morass would be difficult, even if we recognized the error of our ways. But any Republican efforts should be in the direction of the free market and not in wasting time with trying to regulate a grossly flawed system.

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1 reply by **Colleen Smith, MD**

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