

AT A GLANCE: Corporate Power, Public Power, and the Future of Prescription Drug Policy in the United States

Today's pharmaceutical industry is failing most Americans. People in the US take more prescription pills than ever and pay six times more for brand-name drugs than people in other countries (Kounang 2015). Despite this exceptional spending, the US lags in health outcomes—ranking 34th globally in life expectancy, while the industry makes record profits (WHO 2016; US GAO 2017). Transforming this broken system requires using the tools of government in expansive ways—a “one-two punch”—by reining in the industry's extractive practices through stiffer market regulation and deploying the power of government to ensure access to affordable medicines.

The Rules of the Economy Structure Today's Pharmaceutical Industry

Today's pharmaceutical industry arises from the rules that govern it; the structure of laws, regulations, and institutions that shape corporate decision-making and drive runaway profits rather than improve patient health or incentive productive corporate investment in innovation. These rules include:

- **A poorly designed patent system and lax antitrust enforcement that enables monopoly pricing and anti-competitive activities.** Today's patent system grants drug companies decades-long power to set monopoly prices on new treatments. This system is not only inefficient and unnecessary to incent innovation, but it also contributes to patients paying several thousand percent above what would otherwise be market price (Baker 2017). In addition, lax and improper antitrust enforcement has led to more consolidation—60 pharmaceutical companies merged into 10 over the last decade—and less innovation (Open Markets 2018). One study found that “killer acquisitions”—when a company purchases another to suppress the development of rival drugs—prevent 5 percent of drugs a year from coming to market (Cunningham, Ederer, and Ma 2019).
- **Insufficient regulation of predatory financial actors, including hedge funds and private equity firms, contributes to greater financialization and excessive returns to speculative shareholders.** Pharmaceutical companies are increasingly financialized—meaning they spend a larger share of corporate funds rewarding wealthy shareholders, including hedge fund and private equity investors, rather than innovating and producing medicines. Seven of the 10 largest US pharma companies spent over 100 percent of their profits to reward shareholders in 2018, which outpaced firm-reported spending on research and development (R&D) (Milani 2019). Between 2013 and 2015, 20 of the 25 largest drug price increases came from firms with strong ties to the financial sector (Hedge Clippers 2017).

¹ This framework builds off the *New Rules for the 21st Century: Corporate Power, Public Power and the Future of the American economy* (Abernathy, Hamilton and Morgan 2019).

² See *Profit over Patients: How the Rules of Our Economy Encourage the Pharmaceutical Industry's Extractive Behavior* for a detailed account of the economic rules—from tax policy to antitrust and corporation governance—that govern the pharma industry and how these rules create drug companies that value profits more than people (Milani and Duffy 2019).

- **Lower tax rates on corporations and the wealthy encourages the hoarding of corporate resources by the very wealthy.** Today's tax policies—including lower tax rates on capital, corporate profits, and high-income earners—encourage predatory financial behavior, contribute to runaway executive pay, and incentivize tax avoidance. CEOs at biotech and pharmaceutical companies earn, on average, 71 percent more than executives in other industries (Krantz 2016). Drug companies also pioneered and exploit a range of tax avoidance strategies, including shifting profits to offshore tax havens. The four largest US drug companies—Abbott, Johnson & Johnson, Merck, and Pfizer—avoid paying over \$2 billion a year in corporate taxes as a result of corporate tax evasion (Oxfam 2019). And the tax treatment of debt has encouraged the very practices by predatory financial firms that have led to price gouging in the industry (Smith 2017).
- **Ubiquitous capture and corruption of regulatory agencies and policymakers result in the rules being written in the industry's interest.** The pharmaceutical industry is a prime example of capture of our policymaking and democratic institutions. Over the last decade, the pharmaceutical industry spent over \$2 billion lobbying Congress (Chon 2016), and PhRMA—the leading industry lobbying—outpaced all oil and gas, Wall Street, telecommunications, and defense organizations on lobbying in 2017 (Wilson 2017). The industry influences the Food and Drug Administration (FDA) drug approval process by funding seemingly unbiased medical research and the researchers involved in the drug review process. And the active and sizable revolving door between the industry and government officials creates opportunities to influence the policymaking of FDA regulators, congressional staffers, and agency heads. This capture has material effects: threatening patient safety and creating drug risks, limiting innovation, increasing prices for patients, and misallocating resources within the health care system and beyond.
- **The misuse of government resources as a way to further extract profit rather than check the industry's power.** Even efforts by the government to provide lower-cost drugs have increased the industry's runaway profits and further fueled its extractive power. The law that expanded Medicare to cover prescription drugs through a newly created Part D program forbid the agency from using its purchasing power to negotiate for lower drug prices, resulting in billions of dollars a year in overpayments (Morgan and Sterling 2019). The Affordable Care Act expanded the market for prescription drug products while doing little to rein in high drug prices—according to reports, in exchange for the industry to spend money in support of its passage—while including an unrelated provision that gave biologic companies a full 12 years of monopoly pricing power through exclusivity. And this simple fact goes unabated: The government is a major investor in the R&D of new drugs—in both direct spending and various forms of submerged spending through the tax code—that accrues overwhelmingly to the benefit of pharmaceutical industry executives and their wealthy investors.

We must deploy all the tools in our policy toolbox to address today's prescription drug crisis.

To shift the balance of power in our economy and rein in high-cost medicines, we need structural solutions—a “one-two punch”—that curb extraction through stiffer market regulation and deploy the power of government through direct public provisioning.

Restructure Markets and Rewrite the Rules to Prevent Extraction and Improve Drug Quality, Cost, and Access. The first “punch” needed is to rewrite the laws and policies that structure power relationships within and among firms. We can do this by:

- **Ending monopoly pricing and adopt serious reforms to antitrust laws that can reduce firms’ ability to use market power to exploit sick people.** Reforming the patent system is a necessary and important step. In addition, the government should end specific anti-competitive practices used by the industry, including “pay-for-delay” arrangements in which a patent holder pays a generic a portion of their profits to delay the generic’s market entry. We should also reform antitrust laws by replacing the narrow “consumer welfare standard” with a more holistic approach to evaluate anti-competitiveness when reviewing mergers and other monopolistic market activities, and far more aggressively deploy the antitrust laws currently available.
- **Adopting progressive tax policy to deter extraction and wealth hoarding.** To curb the industry’s tax avoidance, the government should modernize our global tax system with sales factor apportionment to eliminate the incentives to evade taxes (Clausing 2016a; Clausing 2016b). Policymakers should end the tax-deductibility of interest payments for businesses to curb the incentives of predatory private equity and hedge fund investors. This also entails raising tax rates on the wealthy and corporations, including rolling back the Trump administration’s corporate tax cuts; increasing the top marginal tax rate to reduce the incentive for the highest earners, like CEOs, to accumulate profits at the expense of productive investments; and raising capital gains rate (the profit from the sale of property, such as stock or real estate) and capital income (dividends and interest payments) tax rates to reduce the incentives for today’s more financialized economy.
- **Regulating predatory financial activities by hedge funds and private equity.** The rise of predatory financial investors, including hedge funds and private equity, must be addressed to stem the extractive corporate practices throughout our economy and within our healthcare system. The government should start by prohibiting the use of debt-leveraged funds by hedge fund and private equity in order to mitigate the potential for systemic effects and to ensure “skin in the game” for the changes they are making to these companies.
- **Reforming how corporations are internally governed.** Corporate boards should be required to represent the interests of all corporate stakeholders, such as workers and consumers, not just the interests of its shareholders and executives (Palladino 2019). The government could expand the “fiduciary duty”—the legal standards of care and loyalty that directors owe—beyond shareholders, instead requiring them to weigh the interests of all other corporate stakeholders, including employees, customers, and the public at large.
- **Mitigating agency capture and government corruption.** Reining in the power and influence of the pharmaceutical industry over the policymaking process requires a range of reforms, such as establishing an anti-corruption agency to protect the public against blatant conflicts of interest, enacting lifetime bans on lobbying for senior executive branch officials, and banning golden parachutes to slow the revolving door (Morgan and Duffy 2019). This also includes giving consumer and public interest organizations standing to challenge agency rulemaking, and imposing greater transparency and disclosure obligations on certain patient advocacy organizations and their sources of funding.

Deploy Government Power to Restructure Pharmaceutical Markets and Drug Innovation Systems.

Market regulation alone is insufficient to achieve the quality, efficiency, and universality to which we aspire for the pharmaceutical industry. The second “punch” needed is direct public provisioning, in the form of public options, and more substantial government intervention, in the form of industrial policy, to provide the kind of coordination that markets cannot and will not do on their own. Several ideas to deploy government power include:

- **Adopting a robust industrial policy that prioritizes and deploys government resources to achieve public health goals.** Leading thinkers, such as Mariana Mazzucato and Dean Baker, argue that the government can play a role in developing groundbreaking innovation while enduring the uncertainty and risks inherent in the innovation process through a mission-oriented government entity. The government could start by creating a “NASA for drug development” in which the government contracts with universities and firms for research and clinical testing and then maintains ownership of the resulting products (Chandra 2017).
- **Creating a public option for the development and manufacturing of certain prescription drugs.** Government should directly develop, produce, and manufacture certain prescription drugs that the market is not currently producing. For example, the government could create a public entity that produces pharmaceuticals based on need and provides them to patients at accessible prices (Brown 2019).
- **Using the government’s bargaining power as a purchaser to negotiate lower drug prices.** The US government does not operate a centralized system for procuring drugs and setting drug prices as is the case in many countries. Unlike the Veterans Administration, Medicare Part D—the federal prescription insurance program for individuals enrolled in Medicare—cannot directly negotiate drug prices and instead relies on a market-based approach in which insurers negotiate with manufacturers for various forms of price concessions. The government must address this limitation by amending the “non-interference clause” to allow or require the Medicare program to negotiate drug prices. It should also create a single government entity that negotiates drug prices across federal government programs.

Achieving real structural reforms requires both sides of the equation, which means curbing extractive corporate power and deploying public power in expansive and newly designed ways. As political will continues to build, the key here is this: Realigning incentives and restoring public accountability in our nation’s drug system will require deploying far more of the tools in our policy toolkit in order to provide access to the medicines that patients need and to the system that our country deserves.

For the full issue brief, see [**“New Rules for the 21st Century: Corporate Power, Public Power, and the Future of Prescription Drug Policy in the United States.”**](#)

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