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Can regulation keep up with accumulating knowledge?

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What some doctors say about regulating the treatment of sepsis has a much broader application. Sepsis, an often lethal reaction to infection sometimes called blood poisoning, is the leading cause of death in hospitals, Richard Harris reports for NPR. Understandably, then, some doctors and regulators have a typical reaction: "A 4-year-old regulation in New York state compels doctors and hospitals to follow a certain protocol, involving a big dose of antibiotics and intravenous fluids."

Other doctors aren't so sure about the rush to regulation.

Dr. Jeremy Kahn at the University of Pittsburgh believes that regulations can prod doctors to follow the latest protocol. But "the downside is that a regulatory approach lacks flexibility. It essentially is saying we can take a one-size-fits-all approach to treating a complex disease like sepsis."

Harris continues:

"That's problematic, because doctors haven't found the best way to treat this condition. The scientific evidence is evolving rapidly, Kahn says. 'Almost every day another study is released that shows what we thought to be best practice might not be best practice.'

"Kahn wrote a commentary about the rapid changes earlier this month for the New England Journal of Medicine.

"For a while, medical practice guidelines distributed to doctors called on them to use one particular drug to treat sepsis. It turned out that drug did more harm than good. Another heavily promoted strategy, called goal-directed therapy, also turned out to be ineffective."

These are concerns that economists often raise about regulation: that government mandates may be rigid, inflexible and frozen in time. They don't change easily in response to new information. They may require a specific protocol that may turn out not to be the best practice:

“And a study presented last week at the American Thoracic Society and published electronically in the New England Journal of Medicine finds that one of the steps required in New York may not be beneficial, either.

“The regulations call for a rapid and substantial infusion of intravenous fluids, but that didn’t improve survival in New York state hospitals....

“In fact, some doctors believe that most patients are better off without this aggressive fluid treatment. There’s a study getting underway to answer that question. Dr. Nathan Shapiro at Harvard’s Beth Israel Deaconess Medical Center hopes to enlist more than 2,000 patients at about 50 hospitals to answer this life-or-death question.

“But that study will take years, and in the meantime doctors have to make a judgment call.

“It is possible that at present they are requiring hospitals to adopt protocols for fluid resuscitation that might not be entirely appropriate,” Kahn says.”

Somehow, this reminds me of the phenomenon noted in the 1980s when Canada banned cyclamates and the United States banned saccharin. Presumably one country had banned the less dangerous sugar substitute.

Economists Gerald P. O’Driscoll Jr. and Lee Hoskins wrote about the problems with regulatory mandates in 2006:

“Coercion may bring uniformity of product or conduct, but only at the expense of innovation and flexibility. Merchant law suffered when the hand of the state took it over: ‘Many of the desirable characteristics of the Law Merchant in England had been lost by the nineteenth century, including its universal character, its flexibility and dynamic ability to grow, its informality and speed, and its reliance on commercial custom and practice’ (Benson 1989: 178).

“Markets excel in adapting to changing circumstances, while legislation and government regulation are notoriously rigid. That is perhaps the strongest case for market self-regulation over government-mandated regulation.”

Regulation seems to substitute the judgment of a small group of fallible politicians or bureaucrats for the results of a market process that coordinates the needs and preferences of millions of people. It sets up static, backward-looking rules that can never deal with changing circumstances as well as voluntary decisions by people on the ground, whether entrepreneurs, customers, scientists or doctors.

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