

“Should we demand improved public health outcomes from industry
with more regulation? Yes”

Head to Head Debate for the BMJ

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Let businesses figure out how to improve public health outcomes. Through a promising new regulatory approach – performance-based regulation (PBR) – the best innovative and nimble aspects of private enterprises can be called in to help solve some of our most pressing public health problems. Current approaches – voluntary cooperation with business and requiring companies to make specific changes in how they operate – are not moving us effectively or efficiently in the socially desired direction. Through PBR, the government tells businesses what outcomes it wants from them and then leaves it to them to work out the best ways of attaining those regulatory targets.

Old-fashioned public health regulation of business orders firms to do things like put intentionally revolting pictures of illness on cigarette packs, post calorie counts on fast food menu-boards, install air bags in autos, and train pub workers not to sell drinks to those who are likely to drink and drive. All of these measures are input controls designed to achieve improved public health outcomes. Although these might be good ideas, they may not be the best ways to bring about the social objective.

PBR focuses directly on outcomes. For example, government would tell junk food sellers that they must see to it that fewer school children become obese, auto makers that they must reduce the number of fatal highway accidents, and tobacco companies that they must reduce the society’s smoking prevalence rate. Sellers of products that in many countries are responsible for a huge share of deaths, illness and accidents will be faced with legal obligations that will align their profit motive with the public health. If they do not achieve their public health goals, the PBR scheme will impose substantial charges on

them. Those charges are perhaps best understood as taxes that internalize the public health costs of non-compliant producers into the price of their products.

Businesses might decide to employ the very inputs described earlier as ways of achieving their harm reduction goals. But they might use other means instead. Maybe auto companies will put breathalyzer machines in all new vehicles. Maybe tobacco companies will subsidize smoking cessation programs or simply raise the price of cigarettes. Maybe junk food companies will embark on campaigns to assure that pre-schools provide healthy food and vigorous exercise for 3 and 4 year olds. Probably, the firms subject to PBR will invent new interventions that are currently undreamt of.

Voluntary agreements with industry are insufficient. Firms are not going to sacrifice profits if they are not required to do so. They are not going to promise and deliver substantial public health gains that they don't already provide in response to market demands. For example, recent agreements with sweetened beverage makers, touted in the press as a voluntary decision to remove their products from schools, turn out to be much less promising on more careful study. Typically, firms can substitute high calorie "sports" drink for colas, and they can introduce new "light juices" that have nearly as many calories as those products they promise to remove.

To be sure, it might be possible to achieve tougher "voluntary" agreements when firms realize that they risk stringent governmental controls unless they agree to change their ways. But even then, agreements that order specific changes in business practices may fail to achieve their goals given the skill of corporate leaders and their lawyers. For example, in the U.S., the Master Settlement Agreement with the cigarette companies did force them to abandon things like billboard advertising and advertising in magazines aimed at children. But this merely shifted the industry's marketing budget to other strategies like point of sale promotions in retail establishments and high tech advertising through the Internet.

It is like the fight against global warming. Some firms will reduce carbon emissions because they have figured out a way to make “green” pay. Others will tout all of their investment in research on new technologies. Yet, the firms most responsible for the problem will continue to pump greenhouse gases into the environment until they are required to do otherwise.

Many nations are moving towards dealing with global warming through PBR. Governments are beginning to tell power plants, auto makers and the like that their activities and products must have reduced carbon footprints, and the regulated companies will figure out the best way to do that. This seems an effective way to harness business creativity in pursuit of the public good.

Public health leaders who now distrust industry should accept that public health needs business as an ally. But public health leaders who now promote self-regulation by business should accept that voluntary cooperation will never achieve enough. PBR occupies the middle ground – a third way. Let society set legally enforceable goals, and then let enterprises loose to accomplish them.