LETTERS

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Malpractice Reform And Health Reform

William Sage and David Hyman (Jan 2014) argued that because of the passage of the Affordable Care Act, "a short window of opportunity has opened for major changes to health care delivery." Their article's title succinctly captures their idea: "Let's Make a Deal: Trading Malpractice Reform for Health Reform." It would be a "simple exchange," in which "physicians receive MICRA [California's Medical Injury Compensation Reform Act of 1975]-style tort reform at the federal level" in return for accepting health care changes "that are likely to reduce waste, increase efficiency, and promote access to care."

Even if that window of opportunity exists, the authors' proposed deal is both premature and wrong in substance. Assuming the "window" exists, the need to act cannot be based on the facts that physicians "focus on the liability risks of altering their behavior" and that malpractice insurance crises "have a way of panicking physicians and distracting policy makers."

Even if the authors can establish the need for a deal now, why must it be at the federal level? Malpractice law has traditionally been a part of state tort law. States have different needs and have reacted in a variety of ways to a perceived need for change.

Even if the Supreme Court finds that there is federal jurisdiction, we know that states often experiment with legislation that influences other states. Is the need here so great that we must force tort law into a single mandate, in which one size is presumed to fit all?

And even if everyone agrees that Congress should act, MICRA is the wrong reform. This year, California may drastically change MICRA. Part of the disenchantment with the act was triggered by studies showing that MICRA's cap on noneconomic harm disproportionately affects women, students, and senior citizens.

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