

# Family Practice News

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## Practice Trends

### **Allure of Cosmetic Surgery Tax Attracts States**

**Is it a hated luxury tax or a way to pay for uncompensated care? Depends on where you stand.**

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A tax on cosmetic procedures, already a reality in New Jersey, is causing concern among physicians in Illinois who fear their state may be next.

Late last year, Illinois State Comptroller Dan Hynes proposed a 6% tax on cosmetic procedures; revenues from the tax would be used to fund stem cell research. "Stem cell research promises to revolutionize the practice of medicine and spark treatment advances that could eventually improve the quality and duration of life for millions of Americans," Mr. Hynes said in a statement. "I intend for the medical community of Illinois to be on the front lines of that revolution."

Mr. Hynes noted that the state already faced "great financial difficulties" but added, "I want to be very clear here: What I am proposing is self-funded by this very narrowly defined luxury tax that is applicable to less than 2% of the population."

He estimated that the tax could raise enough money to fund both the initial \$15 million needed for the research as well as debt service on a \$1 billion bond issued for ongoing funding. The comptroller's office is planning to present a full proposal to the state legislature "in the spring," according to a spokesman for Mr. Hynes, who added that it "won't be a problem" to get a legislator to sponsor the bill.

The American Society of Plastic Surgeons blasted the proposal. "This is not the 'luxury tax' that Mr. Hynes would like the public to believe," ASPS President Scott Spear, M.D., said in a statement. "Plastic surgery, as the statistics illustrate, has become more mainstream. It is not just an indulgence of celebrities and rich people. It is a reasonable option for anyone who wants to look or feel better about their appearance."

Elvin Zook, M.D., past president of the ASPS, called the proposal "a grandstand play by the state comptroller, who's politically motivated."

He warned that taxing one kind of surgery could lead to other surgery taxes. "So you have an artificial knee; why not tax that?" asked Dr. Zook, who is professor of plastic surgery at Southern Illinois University, Springfield.

In New Jersey, where a similar tax—also at 6%—went into effect last September, physicians are seeing the results.

"An hour ago I had a patient call in who had seen me in consultation, and wanted to go ahead with significant surgery, but she is going to see someone in New York because she doesn't want to pay the tax," said Richard D'Amico, M.D.,

chief of plastic surgery at Englewood (N.J.) Hospital and Medical Center. "When you're talking about a \$10,000 or \$20,000 surgical bill, that's some real money." For example, a 6% tax on a \$20,000 procedure would amount to an extra \$1,200.

The New Jersey tax includes both less invasive procedures such as Botox injections and facial peels, and more invasive procedures such as liposuction and facelifts. Legislators expect the tax to bring in \$26 million to help cover uncompensated hospital care in the state, but it may not work out that way since many doctors who also have offices in nearby New York or Philadelphia are simply switching their procedures over to those states instead of doing them at New Jersey facilities, Dr. D'Amico said. "It's very ironic that [the hospitals] will be hurt the most by this."

But officials at the New Jersey Hospital Association aren't worried. "I don't think it would put a dent into the \$26 million, unless everybody fled," said NJHA spokesman Ron Czajkowski, in Princeton.

In addition to the cosmetic surgery tax, the state legislature also enacted a 3.5% gross receipts tax on freestanding ambulatory surgery centers (ASCs); that tax is capped at an annual maximum of \$200,000 per facility. Physicians who perform cosmetic procedures and who have an ownership interest in an ASC are affected by both taxes.

The cosmetic procedure tax is fraught with other problems besides lost business, according to Peter Hetzler, M.D., president of the New Jersey Society of Plastic Surgeons. For example, "there are a huge number of procedures that have both functional and cosmetic components to them, and how do you determine what gets taxed and what doesn't?" said Dr. Hetzler, who is in private practice in Little Silver, N.J.

He cited the example of a patient who has significant airway obstruction and gets a rhinoplasty to fix the sinuses, septum, and turbinates; the surgery may also affect the look of the nose. "We have to find a way to divide that up."

Using CPT codes to designate which services will be taxed is not necessarily a solution, Dr. D'Amico said. "The code for a cosmetic breast lift is also the code for [restoring] symmetry in a woman who has had a mastectomy, but one is reconstructive and shouldn't be taxed," he said. "None of that has been worked out."

Dr. Hetzler has formed the Coalition of New Jersey Medical Professionals, a group of medical providers affected by the tax. The coalition is working with state taxation officials to figure out how to implement various aspects of the regulation, including the issue of how to tax procedures that are only partly cosmetic.

The coalition has little hope that the tax will be repealed, especially in the face of the state's large budget deficit, Dr. Hetzler said. But he is pleased that taxation officials have been cooperative and are willing to work with the coalition "to make sure that they don't indiscriminately audit physicians who may be at the mercy of patients paying this tax."

Naomi Lawrence, M.D., a spokeswoman for the American Academy of Dermatology, said that she was concerned that the tax idea may spread to other states.

"Everybody's looking for a way to cover charity care; they are desperate to find some way to do it," said Dr. Lawrence, chief of procedural dermatology at Cooper University Hospital, Marlton, N.J. "It's one of those ideas that's very popular with hospital associations across the country."

Dr. D'Amico agreed, noting that New Jersey's tax, which was passed without any input from affected providers, should serve as a warning to providers in other states. "They should be careful in whatever state they're in that this doesn't come up," he said.