

Health Care Reform Produces Both Heat and Light With the Indoor Tanning Tax

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Practice Points

- Counsel patients who commercially tan that the federal government has imposed a tax on indoor tanning services to offset the increased health care costs of treating skin cancers.
- Remind patients that the indoor tanning tax is analogous to the tax on cigarettes.
- Speak to your federal legislator about applying the revenue from the indoor tanning tax directly to funding skin cancer research.

It is fairly safe to say that most dermatologists are on the same page about indoor tanning. More research has become available on the correlation of exposure to UV light from indoor tanning beds and the risk for melanoma and nonmelanoma skin cancers.¹ One provision of the Patient Protection and Affordable Care Act (PPACA) is a 10% excise tax on indoor tanning services involving UV light.² The goal of this tax is to discourage consumers from using indoor tanning facilities as well as generate revenue to help offset the enormous price tag on health care reform. This consumer tax is a clear signal from the federal government that indoor tanning is a dangerous and potentially lethal activity that Americans should avoid.

In November 2009, Senate Majority Leader Harry Reid proposed a tax on discretionary cosmetic surgery (the cosmetic services excise tax), which quickly was coined as the “Botax,” in an attempt to fund the PPACA. It was estimated that the tax would generate \$5.8 billion in revenue. The proposed policy had

a number of imperfections, such as difficulty defining cosmetic procedures, patient privacy violations, and discrimination against women as prime targets of the tax. On December 19, 2009, it was replaced with the indoor tanning services excise tax, which took effect on July 1, 2010.^{3,4}

Essentially, the PPACA charges the Internal Revenue Service with collecting a 10% excise tax from commercial tanning salons.⁵ Providers of indoor tanning services collect the tax when customers pay for the services and then pay it over to the government on a quarterly basis, along with a Quarterly Federal Excise Tax Return (Form 720). The tax does not apply to spray-on tanning services, creams and lotions, or phototherapy services performed by a licensed medical professional on his/her premises. One potential loophole is that the regulations also provide an exception for qualified physical fitness facilities that offer tanning as an incidental service to members without charging a separate fee. In this way, health clubs with commercial tanning facilities can avoid paying the tax by including tanning services in a global fee. Another potential loophole is that salon owners are allowed to pay the tax without collecting it from their clients, which has the potential to negate the deterrent effect of an increased cost to customers. Lastly, if a tax-exempt institution (eg, a university) includes indoor tanning services as part of a facility fee, it is exempt from paying the tax.⁵

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One of the goals of the tanning tax is to discourage unhealthy behavior. The tax is modeled after the national tax on tobacco. However, it still is unknown if the tax is having its desired effect across the nation. In one survey study of 308 indoor tanning salons in Illinois, only 26% reported having fewer clients after implementation of the tax, and 80% reported collecting the tax from customers.⁶ These results may indicate the demand for indoor tanning services is somewhat inelastic and perhaps insensitive to a 10% tax.

The revenue generated by the tax has fallen short of the initial projections. In comparison to the other new taxes imposed from the PPACA, the tanning tax constitutes a small percentage of the high price tag attached to the PPACA. Most of the revenue to fund health care reform is expected to be generated from the 3.8% payroll tax on high-income earners; the 40% excise tax on premium health plans; and the annual fees of \$27 billion on pharmaceutical companies and \$20 billion on medical device companies.⁷

The third anniversary of the tanning tax is July 1, 2013. At the time the PPACA was passed, the target was to generate \$2.7 billion in its first 10 years of implementation. The tax was projected to bring in \$200 million in the 2011 fiscal year, which started on October 1, 2010, but through the first half of the year, the tax raised only \$36.6 million.⁸ According to the US Treasury Inspector General for Tax Administration, by the fall of 2011 the number of returns from the tanning industry was lower than expected.⁹ Reasons for the low rate of return included the weak economy and lack of information about the tax for salon owners.

Although many dermatologists and others in the house of medicine are working feverishly to repeal, amend, or otherwise influence the implementation of the PPACA, they generally are not working to repeal the tax on indoor tanning; however, there were 2 companion bills in the last 2 legislative sessions of the Senate and House of Representatives to repeal the 10% excise tax on tanning, which were supported by the Indoor Tanning Association, the National Federation of Independent Business, and Americans for Tax Reform. Both bills stalled in their respective committees, mostly due to the efforts of grassroots dermatologic organizations, the American Academy of Dermatology, and more than 80 national and state organizations. At this point, the 113th Congress has not seen a repeal bill to the tanning tax.

There are a myriad of efforts unrelated to the PPACA at the federal and state levels to impose safety restrictions on commercial tanning salons.

For example, in 2013 many states have introduced legislation to ban tanning in individuals younger than 18 years. The Tanning Bed Cancer Control Act is a bipartisan federal legislation calling on the US Food and Drug Administration (FDA) to reexamine the current classification of indoor tanning beds and urges more stringent control of these devices.¹⁰ Despite the 2010 FDA advisory panel unanimously concluding that the current device classification for indoor tanning beds does not accurately demonstrate the risk for skin cancer, the FDA has not yet moved forward with reclassification. Also in 2010, the Federal Trade Commission limited the Indoor Tanning Association's ability to make false health and safety claims about indoor tanning.¹¹ In 2013, there are 18 states with bills in play that would restrict youth access to indoor tanning.

Only time will tell just how much impact the indoor tanning excise tax will have on the use of indoor tanning salons. For now, dermatologists in conjunction with the American Academy of Dermatology Association and other organizations can work with Congress to direct the funds from the tax to skin cancer research.

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QUICK POLL QUESTION



Do you think the tanning tax will have an impact on decreasing indoor tanning rates?

- a. Yes, it will discourage unhealthy behavior
- b. No, people will go tanning no matter what
- c. Maybe, we will have to wait and see

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