

# Derms Oppose Cosmetic Taxes

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ording 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., presi-

dent 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, a plastic surgeon 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."

She added that taxes like this will affect dermatologists more and more as time goes on. "In dermatology, cosmetic procedures [are] becoming a larger and larger percent of the business," Dr. Lawrence said. "Dermatology is becoming more surgical and procedure-oriented in general, and a lot of newer, less invasive technology is being done by dermatologists. And the biggest increase in cosmetic surgery is not in invasive procedures; it's noninvasive procedures like hair transplants and Botox and Restylane."

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. ■

## POLICY & PRACTICE

### Office-Based Surgery

A recent study points to the use of general anesthesia as being a more significant factor in patient injury in cosmetic surgeries than whether the procedure is performed in a physician's office or a surgical facility, according to the American Society for Dermatologic Surgery. The study, published in the December 2004 issue of *Dermatologic Surgery*, finds that patients who undergo cosmetic procedures under general anesthesia are at a greater risk of complication and death than those who had procedures with local anesthesia. The study is based on analysis of 3 years of data from Florida, a state that has the highest reporting of adverse incidents from in-office surgical procedures in the country. These findings conflict with a 2003 study published in the *Archives of Surgery* that found that deaths and adverse events are more likely in the physician's office than in an ambulatory surgery center. "Office-based surgery is safe and effective when performed by a properly trained physician with the appropriate procedure and level of anesthesia," Gary Monheit, M.D., president-elect of the American Society for Dermatologic Surgery said in a statement. "The real concern is that patients who undergo cosmetic procedures are often unaware of all the risks involved, including where to have the surgery and which types of anesthesia are available."

### Medical Spa Trend

Medical spas, a phenomenon that was popular in 2004, will continue to thrive this year, according to an analysis from Spa Finder, a spa marketing and publishing company. The group lists the medical spa as one of the Top 10 spa trends to watch in 2005. These spas are becoming popular places for executive physicals, health and wellness programs, and cosmetic dermatology and dentistry treatments. Spa Finder predicts that these facilities will continue to earn the respect of the medical community as physicians embrace alternative therapies and cosmetic procedures.

### Smallpox Vaccine Stockpile

The United States has pledged 20 million doses of smallpox vaccine toward the global stockpile managed by the World Health Organization (WHO). The vaccine doses will physically remain in the U.S. Strategic National Stockpile but will be available for use by the WHO in the event of an emergency. The global stockpile is designed to help those countries, especially those in the developing world, that have no smallpox vaccine and are not prepared to respond to an outbreak of the disease. The global stockpile will only be used if at least one case of smallpox is confirmed in the human population. U.S. government officials have been urging the creation of a WHO Smallpox Vaccine Bank, which would create a physical stockpile of vaccine in Geneva and a virtual global stockpile of pledged vaccine stocks around the world.

### Computer Entries Lead to Errors

Automation isn't necessarily a foolproof way to improve patient safety and reduce medical errors, a report from the United States Pharmacopeia (USP) found. Computer entry errors were the fourth leading cause of medication errors according to MEDMARX, USP's national medication error reporting system. These errors have steadily increased and represent about 12% of all MEDMARX records from 1999 through 2003. Performance deficits—wherein an otherwise qualified physician makes a mistake—were the most frequently reported cause of errors. Distractions were the leading contributing factor, accounting for almost 57% of errors associated with computer entry. The report provided an analysis of 235,159 medication errors voluntarily reported by 570 hospitals and health care facilities nationwide.

### Improper Payments Increase

Medicare made approximately \$20 billion in improper payments in fiscal year 2004, a report from the Centers for Medicare and Medicaid Services has found. The sum included \$900 million in underpayments to providers due to errors made by insurers and \$20.8 billion in overpayments made to providers. Medicare hopes to cut the rate of erroneous payments by more than half, to 4%, in 2008 by conducting more extensive payment reviews and by implementing other quality control measures. "We have made significant strides in how we measure the error rate in Medicare payments, and that will enable us to do even more to bring it down," commented Mark McClellan, M.D., CMS administrator. "We have much better data that will help us pinpoint problems and allow us to work with the Medicare contractors and providers to make sure claims are submitted and paid properly."

### Patients Turn to CAM

Discouraged by the high cost of conventional treatments, 6 million Americans turned to alternative medicines in the past year to treat conditions such as depression and chronic pain, the Center for Studying Health System Change reported. People using these approaches to save money are often uninsured and usually lack a medical home. While the price is right, these alternative treatments "may be of questionable value," said HSC President Paul Ginsburg, Ph.D. About 63% of the respondents said they used herbal remedies, yet two of the most popular remedies—St. John's wort and kava—have been known to cause serious side effects. In more than half these cases, a conventional medical professional was unaware of a patient using an alternative treatment. The study was based on the 2002 National Health Interview Survey, a government survey that includes information on 31,000 adults.

—Mary Ellen Schneider