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November 20, 2009

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Leader Reid:

I write to express my opinion on the 5 percent tax on cosmetic medical procedures, included in the Senate health reform bill introduced on November 18, 2009.

By way of background, I serve as the chairman of the New Jersey Democratic State Committee, and was elected in 2002 to the Assembly, representing District 20. I served as chairman of the Assembly Human Services Committee, vice chairman of the Assembly Appropriations Committee, and I am a member of the Assembly Budget Committee.

It was in this capacity and my involvement with the New Jersey budget process, that I was asked to sponsor legislation (Assembly Bill A-3125; P.L. 2004 c. 53) which established a 6% gross receipts tax on cosmetic medical procedures. The tax was created to help fund "charity care"--- the pool of money that hospitals receive for giving care to indigent and uninsured patients. The fiscal note that accompanied the tax was for an estimated \$24 million annually. The tax was discussed and passed within a few weeks at the end of the budget cycle. There was minimal discussion about the ramifications of such a tax. New Jersey did not conduct a cost-benefit analysis to determine the true impact of the plastic surgery tax.

Immediately after passage, I met with health care providers and began to understand the nuances and problems with this tax. For example, the tax is confusing—there is a fine line between "reconstructive" and "cosmetic." Different insurance companies have varying coverage criteria for medical necessity/function. Physicians and insurers often disagree on medical necessity. The law provides no guidance on whether the patient,

physician, or insurer will ultimately determine medical necessity. Some procedures are partially cosmetic and partially functional, which raises questions where the tax will apply only to the portion that is cosmetic.

New Jersey was the first state in the union to pass a tax on cosmetic medical procedures. At least ten other states have considered a similar tax—and based on the New Jersey experience have rejected the idea. I have personally spoken with legislative colleagues in these states and encouraged them to reject the initiative.

The New Jersey tax was sold on the idea that it would be largely limited to wealthy women, who could easily foot the bill for the additional tax. In reality, 86% of plastic surgery patients are working women. Research by the American Society of Plastic Surgeons (ASPS) targeting those who plan to have cosmetic surgery within the next two years reveals that 60 percent of the respondents report an annual household income of \$30,000-\$90,000. Most importantly, 40 percent of those report income of \$30,000-\$60,000. Only 10 percent of the respondents report household income of more than \$90,000. These data clearly refute the suggestion that elective surgery taxes are ‘luxury’ or ‘sin’ taxes affecting only a privileged few.

Ask the New Jersey Division of Taxation about this tax. They will tell you it’s a hassle to collect—to determine what’s taxable and what’s not. Physicians are not used to collecting “sales tax” in their offices. The collections aren’t even close to the projected \$26 million—a mere \$7 million was collected in year one. Overall, the tax has been expensive to administer and generated only minimal revenue.

Independent studies have proven that, after two years, for every \$1.00 collected in cosmetic tax, New Jersey has lost \$3.39 in total state revenue.

Those were compelling arguments—so compelling, in fact, that I agreed to sponsor legislation that would repeal this tax. A-2282/S-1783 passed unanimously in the Senate and Assembly at the end of 2006. Unfortunately, Gov. Corzine vetoed the bill fearing that floodgates would open and other tax repeal efforts would be attempted.

I am available to discuss this with you should you have any questions or comments. Thank you for your consideration of my opinion and expertise with this legislation.

Sincerely,

Joseph Cryan
Assemblyman, District 20