

## HEALTH CARE REFORM BILL (II): MEDICAL DEVICE TAX - CONTROLLING COSTS V. STIFLING INNOVATION

There were not any easy choices in the Patient Protection and Affordable Care Act ("PPACA") as amended by the Health Care and Education Affordability Reconciliation Act ("HCEAR"), except perhaps the opportunity to stick it to the perpetually tanned Rep. John Boehner (R.Ohio), by imposing a 10 percent excise tax on tanning salons using ultraviolet lamps. The Congress did impose a 2.9 percent excise tax on the sales of medical devices which is expected to raise \$20B in revenues to fund the expanded coverage of health care reform. (The original proposal was for \$40B.) (See section 9009 of the PPACA and section 1405 of the HCEAR) In addition new rules on proof of safety first and the implementation of "effective research" requirements are expected to further raise the cost of doing business in the Medical Device field.

One of the hallmarks of American health care has been the speed at which innovation in medicine reach the market. Americans are early adaptors of new technology. The hunger for new cures and new technology has been a significant driver of health care costs as well as a spur to faster, better and safer interventional products. The Edwards Laboratory heart valve replacement through catheterization being tested by the FDA is such a transforming device.

The imposition of greater regulatory oversight and the imposition of an excise tax that is expected to reduce manufacturer profits by a sixth could substantially restrict start up medical device company access to capital and substantially consolidate and compress the industry, not to mention limit public access to medical innovation. The tax will go into effect in 2013 and will be imposed on everything from defibrillators to bed pans.

Fortunately some medical products have been spared. Condoms, eyeglasses, contact lenses, tampons and hearing aids are spared, but stents, valves, insulin pumps and the like will be impacted. The industry will reap the benefit of greater coverage and therefore greater sales, but it is staring at its own looming excise tax "donut hole" in its profits as American health care undergoes its overhaul. Expect a lot of lobbying to kill off this tax before 2013.

[http://dpc.senate.gov/dpcdoc-sen\\_health\\_care\\_bill.cfm](http://dpc.senate.gov/dpcdoc-sen_health_care_bill.cfm)