

An Obesity Tax Is Legalized Discrimination



By David Seres — February 24, 2016



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Dr. David Seres, an ACSH advisor, has published the following essay in [The Hill](#) [2], where he is also a contributor. He explores how the EEOC's consideration of allowing penalties on insurance for being obese raises serious ethical issues.

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A [study](#) [3] published earlier this month in the *International Journal of Obesity* has found that our common wisdom about the relationship between obesity and the risk for cardiovascular disease is possibly overstated. Meanwhile, the U.S. Equal Employment Opportunity Commission (EEOC) has been considering [rules](#) [4] that would, in effect, allow health insurers to charge obese people [more for coverage](#) [5] if they fail to lose weight.

This recent study strengthens the argument against the obesity penalty.

But whether the risks of obesity are, or are not, overstated is the least of the issues raised by the EEOC considering allowing weight to determine insurance rates. Penalizing obese people for a medical condition and charging them more for medical coverage is contrary to two of the prime tenets of the Affordable Care Act: The coverage of preexisting conditions and equal, affordable access to all. Even more than being contrary to ACA core values, it is contrary to American values by institutionalizing prejudice and blaming the victim.

There has been vast media coverage on the obesity epidemic [it truly is an epidemic](#) [6] and there are a number of credible theories to explain it. While watching the incidence of obesity rise to over half of the U.S. population, we have heard that it is due to [sugary soft drinks](#) [7]; [antibiotic over-prescription](#) [8]; [antibiotics given to livestock](#) [9]; [government subsidies for calorie-dense crops](#) [10] like soy and corn; the [advertising industry](#) [11]; [television watching](#) [12]; a [decrease in physical education funding](#) [13]; [food deserts](#) [14]; or all the above. But nowhere in all of this theorizing have we found much in the way of actionable fact. We honestly do not know what is causing the problem, even if we feel fiercely certain about our theories.

Obesity is without question a complex [medical condition](#) [15], but our knowledge as to effective treatment is in its infancy. The multitude of mechanisms the body brings to bear to create an

overweight condition are deeply rooted in species survival adaptations. For most overweight people, our prodigious intellects cannot overcome the drives to eat at times, any more than we can will ourselves to stop breathing.

It makes sense that the presence of food is one of the most powerful stimuli to eat. Whether you believe in evolution or creation, our genome arrived here on earth before the invention of refrigerators. Our collective metabolism has not evolved to adjust to the fact that food is always available to most of us, and we're hardwired to overeat whenever we are able. While many have learned to compensate, behavioral science and pharmacology are only now starting to nibble around the edges of staving off these drives. We are far from having a cure.

Racism has long been outlawed in this country. But the obese are subject to the most severe forms of discrimination, which we previously worked so hard to abolish. Statistics show [hiring discrimination](#) ^[16] is rampant. In study after study, the obese are assumed to have such attributes as stupidity and laziness, and [these attributes](#) ^[17] are used to blame them for causing their own obesity. This is where the obesity penalty really fails the reality test.

Some of the most driven, self-controlled and self-motivated people I know feel hopelessly trapped in obese bodies despite years of actively and aggressively struggling with their weight. Moreover, obesity is much more likely the lower one lives on the socioeconomic ladder. Increasing costs based on weight penalizes those who can afford it least, and may deprive them of health insurance.

Treatments for obesity are improving, but many are often either minimally effective or draconian. Success in an obesity study may be defined as a loss of body weight in the range of 5 percent. Many behavioral and pharmacological interventions only work during the intervention, and the end of the study means regaining the lost weight for a large proportion of participants. Bariatric surgery continues to improve in safety, and for those in whom it is successful, it is nothing short of miraculous. But having cared for those in whom problems have ensued, I can report that the risks are not inconsequential, and the complications devastating.

If we aren't certain as to the cause of obesity, and we know it is not simply a matter of lacking motivation, and we have no reliable cure, how is it that we can justify penalizing the obese for a poorly treatable preexisting condition? Beyond the fact that obesity may not be as high a risk as previously thought, how do we justify this kind of institutionalized prejudice and the blaming of the victims? An obesity penalty is a nonstarter. The overweight suffer enough without legalizing acting on our biases.

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[3] <http://www.nature.com/ijo/journal/vaop/naam/abs/ijo201617a.html>

- [4] <https://www.federalregister.gov/articles/2015/04/20/2015-08827/amendments-to-regulations-under-the-americans-with-disabilities-act>
- [5] <http://www.npr.org/sections/health-shots/2016/02/04/465569465/if-bmi-is-the-test-of-health-many-pro-athletes-would-flunk>
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