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## The Annual Federal Register Circus

The annual hospital DRG payment updates have been published on an ongoing basis since September 1st, 1983, the year after the first DRG payment system was implemented. It was 136 pages long and printed on paper. It was largely ignored by most hospitals and industry when it first appeared. This year's Federal Register was 1,468 pages long (albeit in Word format) available on the web. It was preceded by a "proposed rule" in May of a similar size.

I went looking for the Federal Register on August 1st, the date of publication, but couldn't find it. However, on August 2nd, the next morning at 8:30, I not only had two links to the Federal Register sent to me, but two investment analysts (Wachovia Securities and Prudential Bache) had already digested it, and published their opinions and what the investor impact would be for the medical device industry. Their conclusion was that "things wouldn't be as bad as anticipated" and sure enough, Wall Street reacted favorably on August 2nd by increasing the share prices of the most widely impacted medical-device companies—Medtronic, Stryker, Biomet, Zimmer, Kyphon, St. Jude, and Boston Scientific.

Hospitals have long looked at medical-device intensive DRGs as a way to generate sufficient income to subsidize cases and DRGs that are less profitable. This has led to windfalls for hospitals who have been able to negotiate "good deals" on medical devices, while hospitals who pay "list price" are often saddled with an unprofitable business line that itself needs to be subsidized.

I think that folks who manage the Medicare program are starting to see the distortion of this approach. The first hint was their desire to develop "cost-based" DRG payments rather than "charged-based" payments. The May proposed rule indicated that payments would be decreased by as much as 35% for drug-eluting stents under this formula. Because of the huge swing in payment that this would bring, they decided to phase in this method over the next three years, reported in the final rule.

Another hint is the lawsuit pending in Philadelphia that ECRI filed against Guidant. Guidant filed a lawsuit against Aspen Healthcare Metrics in August of 2004 for divulging their "trade secrets" (i.e. their prices), and for "tortiously interfering with their contracts" (i.e. helping the hospitals get a better deal). That lawsuit was ultimately settled in May of this year. However, ECRI proactively filed a lawsuit against Guidant because Guidant had sent them a "cease and desist" letter on the publication of their "PriceGuide." ECRI has published the PriceGuide since 1996 and it reports defibrillator prices, among other devices. ECRI's defense is a little different than Aspen's in this case—they claim that as a publisher, they have a free-speech first amendment right to publish prices of these devices. [Public documents related to this and the Aspen litigation are available on our web-site: [www.orthopedicnetworknews.com](http://www.orthopedicnetworknews.com).]

Finally, buried in the August Federal Register on page 110, was a general policy statement that seems to get at the core of the ECRI-Guidant lawsuit, although it probably wasn't written with the ECRI-Guidant lawsuit in mind: "Transparency of device pricing is a key aspect of consumer understanding of the cost of health care. We believe that the enhanced understanding of device pricing .... will help accelerate the public release, in a consumer friendly fashion, of pricing information of medical devices. The public release of device pricing will help augment our overall efforts to empower consumers with better information on the health care they require."

Hospital and physician payments from Medicare have largely been public for decades and they have learned to live with it. Therefore, the time of "secret deals" and "secret pricing" of medical devices may be coming to a close. This may make them less lucrative both as investments and as hospital service lines. ■

### Medical Device Intensive DRGs, device cost, Medicare payment

DRG	Description	Est. Medicare FY 2007 payment	Device costs	Device cost as % of payment	% Medicare
544	Hip/knee implant	\$10,544	\$5,327	51%	60%
545	Revision of hip/knee	\$13,544	\$6,098	45%	60%
551-552	Pacemaker	\$11-16K	\$5,000	31-45%	85%
515	Defibrillator	\$28K	\$25,000	89%	60%
535-536	Defib w/cath	\$35-\$39K	\$25,000	64-71%	55%
557-558	Coronary stent	\$11-\$15K	\$3,500	23-32%	40%
233-234	Kyphoplasty/vertebroplasty	\$6-\$10K	\$4,300	43-72%	85%
497-498	Spinal fusion lumbar	\$15-\$20K	\$13,303	66-89%	19%
519-520	Spinal fusion cervical	\$9-\$13K	\$4,087	31-45%	19%
104-105	Heart valve	\$32-\$44K	\$5,000	11-16%	55%

*Sources and methods used:*  
 Estimated payment: Orthopedic Network News, July 2006 for orthopedic DRGs, and August 1st Federal Register for other DRGs  
 Device costs: Orthopedic device costs from Orthopedic Network News and Spine-Market.com. Orthopedic Network News sources for cardiovascular device costs.  
 Device cost as % of payment: Device costs / Estimated Medicare payment.  
 % Medicare: Percentage of cases paid by Medicare, Industry sources and Orthopedic Network News estimates.