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## Pricing transparency update

In July's issue of this newsletter, I had planned on writing a survey about what "pricing transparency" might mean to the manufacturers of medical devices. The answer I got from them was a collective "huh?" so I wrote about something else instead.

The pricing transparency issue may be thrust into the forefront of the manufacturers sooner than they might have expected or hoped for. After dealing with the October 31st release of information on payments to physicians as part of the Department of Justice settlement, medical device manufacturers were suddenly faced with Senate Bill 2221, "The Medical Device Pricing Transparency Act of 2007", introduced jointly by Senators Arlen Specter of Pennsylvania and Charles Grassley of Iowa. Basically the bill would require manufacturers to report the average selling price of all of their implantable devices each quarter to CMS where it would be accessible to the public on their web site.

While the notion of publicly disclosing the prices that hospitals pay for pacemakers, defibrillators, and orthopedic implants may be an anathema to many companies, manufacturers should realize that this is probably the direct result of litigation and policies that one of their own started several years ago.

Guidant (now part of Boston Scientific) sued Aspen Healthcare Metrics (a division of Medassets) for, among other things, disclosing their "trade secrets" (i.e. the prices that hospitals pay for their defibrillators), and interfering with their contracts. In litigation which cost \$15 million and lasting almost two years, the judge provided a partial summary judgement to Guidant on the complaint about interfering with Guidant's contracts.

The same weekend that Guidant received that judgement, ECRI of Pennsylvania, a not-for-profit research institute, sued Guidant to have a declaratory judgement that their PriceGuide, which contains the prices that Guidant charges to hospitals, is protected under the free-speech first amendment. The litigation with ECRI, begun in May of 2006, is scheduled to go to trial in December of 2007. Senator Arlen Specter (R PA), who

was initially interested in the public policy issues raised by this litigation, teamed up with Senator Charles Grassley (R IA), and they jointly introduced the bill on October 23rd.

When people I talk to first hear of Guidant's litigation about keeping prices secret, they are incredulous, and then outraged. However, Guidant, with deeper pockets and more lawyers than their opposition, has thus far been able to prevail in the courts. However, with the introduction of the Grassley bill, it may seem like their attempts to keep their prices "trade secrets" may fly in the face of the prevailing legislation and mood of the country.

It should be noted that 99% of bills introduced into Congress never become laws. If hospitals are interested in seeing this bill enacted, it would behoove them to contact their senators and urge their support.

However, before hospitals and other interested parties prematurely celebrate the removal of gag orders on their contracts with suppliers, it would serve them well to reflect on a few issues, including the law of "unintended consequences."

- **Manufacturers and other parties may be more accountable.** Many hospitals have felt frustrated by not only the "gag" orders on contracts that prevented them from comparing prices for products with similar institutions, but also sharing with data aggregators. This bill may eliminate that intimidation.

- **"He who lives by the markup, dies by the markup."** One thing that many manufacturers have complained about is the fact that they may sell a device to a hospital for "X", but the hospital marks it up and bills the insurance company for "Y", and they get the blame for the high cost. In the last survey I did on hospital markups for orthopedic implants, the markups ranged from 20% to 238%. Insurers will now have one-stop shopping to determine if a hospital is marking up the price they are paying for a device more than they deem reasonable. Hospitals should determine how much of their income is derived from this policy, which will be at risk if this bill passes. Patients may see how much their devices cost on CMS' web-site and how much the hospitals charge. Hospital bills, notoriously inaccurate to begin with, may be required to provide part numbers of implanted devices in order to match against the CMS prices by either patients or organizations working for their them.

- **GPOs (Group Purchasing organizations) may need to justify their existence more than in the past.** Generally GPOs have been recognized as being effective in getting good prices for commodity products, such as gowns, catheters, sutures, etc. They have had less success with "PPI" (Physician preference items) which are by and large, implantable. These are specifically the products targeted by this bill. The GPOs may find their clout diminished by the public disclosure of this information, and manufacturers may use this as an excuse to sever contracts with them. ■