Medical device companies would have to file reports with the government on prices for all implants sold, under a bill (S 2221) introduced Oct 23. The sponsors, Senators Arlen Specter of Pennsylvania and Charles Grassley of Iowa, both Republicans, say their aim is to make transparent the prices manufacturers charge hospitals participating in public programs like Medicare and Medicaid.

“The device makers actually prohibit hospitals from disclosing the price of a medical device to others. So hospitals have no idea what is a fair price,” Senator Grassley said. “This is a major reason why many hospitals pay absurdly more than others for the same medical device.”

Grassley said he is concerned because device costs, which are rising 8% to 15% a year, are taking up more of the Medicare payment, which means hospitals have less to spend on other aspects of care such as staffing. It’s also causing Medicare spending to rise “faster than it should” if hospitals pay more than the fair market price for implants.

Whether hospitals may compare implant prices has led to lawsuits. Last year, the nonprofit ECRI Institute sued Guidant Corporation, whose cardiac rhythm business has since merged with Boston Scientific, over the right to publish price comparisons of Guidant devices, such as pacemakers and internal defibrillators, as part of a service to subscribers.

Guidant countersued, saying ECRI Institute had “tortiously interfered” with its contracts with customers and had misappropriated “trade secrets” in obtaining Guidant prices, which it considers confidential, from hospitals. Court-mandated settlement discussions were underway in early November. If the discussions fall through, the case will proceed to trial.

Earlier in 2006, Aspen Healthcare Metrics, a consulting unit of the group purchasing organization MedAssets, settled a lawsuit by Guidant alleging that Aspen illegally induced hospitals to violate the company’s confidential pricing agreements for use in its consulting engagements.

Senator Specter said he’d received letters from hospitals, consumer groups, employers, and journalists about the secrecy of pricing for products like hip and knee implants and pacemakers.

**A challenge to implement**

A New York hospital wrote him that it spends about $300 million a year on supplies. Though pacemakers and joint implants account for only 3% of the items the hospital buys, these devices account for about 40% of the total spending.

An analyst for Wachovia told investors in October that a Washington, DC, consultant gave the bill about 50% odds of passing, noting that Senator Grassley is powerful and works across party lines. (There is no Democratic cosponsor.)

Though he could not comment on the pending litigation, Jeffrey Lerner, PhD, president and CEO of ECRI Institute, says he thinks the legislation is promising.

“For almost any other major purchase, like a house, customers are able to compare prices to help them make a decision. It would be very beneficial to bring that same shopping power into health care purchasing.”

If passed, the bill would be challenging to implement. Implants have many components, with different parts used for individual patients, making it difficult...
to compare prices for constructs. The government would need to determine how to classify the parts.

Under the bill, pricing would be posted on the Internet. Manufacturers who failed to report or misrepresented price data would be assessed penalties of $10,000 to $100,000.