

# *United States Senate*

For Immediate Release

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## Grassley, Specter Introduce Transparency in Medical Device Pricing Act

WASHINGTON – Sen. Chuck Grassley, ranking member of the Committee on Finance, and Sen. Arlen Specter, ranking member of the Judiciary Committee, today introduced legislation to inject some much-needed transparency into the prices medical device suppliers charge hospitals participating in federal health care programs. The bill is meant to ensure that hospitals can provide care efficiently and economically and prevent the taxpayers from being overcharged for implantable medical devices paid for through Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP).

“Without any available information on fair prices for medical devices, hospitals are involved in one-sided negotiations with device manufacturers,” Grassley said. “As a result, hospitals are at the mercy of medical device makers who have the upper hand. Some hospitals are now paying a lot more than others for the same medical device. That means health care dollars aren’t being spent wisely. Taxpayers need confidence that they’re getting the most bang for their buck. More transparency will allow market forces to work for the taxpayers’ and patients’ benefit.”

Specter said, “This bill will improve the overall quality and efficiency of our health care system. The legislation sends a message to medical device suppliers that if they want to do business with the federal government, they have to show us their prices. By making this important information readily available, in collaboration with similar initiatives in the private sector, we can help control government spending on healthcare.”

The *Transparency in Medical Device Pricing Act of 2007* would require medical device manufacturers, as a condition of receiving direct or indirect payments under Medicare, Medicaid and CHIP, to submit to the Secretary of Health and Human Services on a quarterly basis data on average and median sales prices for all implantable medical devices used in inpatient and outpatient procedures. Manufacturers would be subject to civil monetary penalties from \$10,000 to \$100,000 for failure to report or misrepresentations of price data. The Secretary would also be required to make the data available to the public on the website of the Centers for Medicare & Medicaid Services and update the website on a quarterly basis.

Grassley and Specter’s floor statements on introduction follow here.

Statement of Senator Charles E. Grassley  
Before the United States Senate  
Introduction of the Transparency in Medical Device Pricing Act of 2007  
October 23, 2007

Mr. President, I am pleased to introduce today with Senator Specter the Transparency in Medical Device Pricing Act of 2007. As we all know, both parties to a transaction need information in order for the free market to properly work. If only one party has information, the market does not properly function because you have a one-sided negotiation. The purpose of this legislation is to bring transparency to medical device pricing so that there will be sufficient information available for market forces to truly work.

In the Medicare program, most hospitals receive a single payment for all the health care goods and services provided during a beneficiary's stay. This payment structure is designed to give hospitals incentives to provide efficient, effective, and economical care. Why? Because when a hospital lowers its costs, more of the Medicare payment can go towards the hospital's bottom line.

Hospitals normally have many resources like consultants or reference materials to help them when they negotiate prices for things like drugs, nursing care, or hospital gowns. Unfortunately, this is not the case with implantable medical devices like pacemakers, stents and artificial hips and knees.

Hospitals have no way of knowing what a fair market price for medical device is, because in this one industry there is a veil of secrecy over pricing information. In fact, manufacturers typically require hospitals to agree to secrecy or gag clauses in their contracts. The device makers actually PROHIBIT hospitals from disclosing the price of a medical device to others. So hospitals have no idea of what is a fair price. Instead they must engage in one-sided negotiations with medical device manufacturers.

We all know that there must be enough transparency for market forces to work. The free market, after all, thrives on complete information and open competition – not on gag rules and secrecy clauses.

As a farmer, when I go out and buy a tractor, I first go out and talk to a number of people to help me figure out what is a fair price. Having this information puts me on equal footing with the dealer when we negotiate the price. After all, I don't want to be taken to the cleaners.

Today, there is no level playing field when hospitals negotiate with device manufacturers. It shows. This is a major reason why many hospitals pay absurdly more than others for the same medical device. The inflated prices many hospitals pay have implications for the health care system on multiple levels.

First, higher medical device costs take up more of the Medicare payment. That means hospitals have less to spend on other crucial components of care such as staff. And hospitals have less of the Medicare payment to devote toward its bottom line. So they have less money for activities to improve hospital quality and safety. They have less money to spend on health information technology systems. Most importantly, they have less money to keep their doors open and provide care to Medicare beneficiaries. In rural areas in my state where hospitals are barely squeaking by, this is a problem.

Also, I want to point out how hospitals paying more than the fair market price for medical devices adds to skyrocketing entitlement spending. Medicare hospital payments are updated every year. The update takes into account the increased cost of goods and services used to provide care to

beneficiaries. Let's say medical device prices are higher than they should be. As a result, Medicare hospital payment updates and Medicare spending will rise faster than they should.

Also, let's remember that there are cost-sharing requirements for certain hospital services. And so Medicare beneficiaries will be paying more out-of-pocket than they should.

All this adds up to one thing: a need for greater transparency in medical device pricing. My good friend and colleague, Senator Specter, and I have developed a way to provide greater transparency.

The Transparency in Medical Device Pricing Act of 2007 would bring this needed transparency to medical device pricing by building on current initiatives at the Department of Health and Human Services (HHS). Under the Act, here are some conditions device manufacturers would have to receive direct or indirect payments under Medicare, Medicaid, or SCHIP. Every quarter they would have to submit to the HHS Secretary data on average and median sales prices for all medical devices that are implanted during inpatient and outpatient procedures. Manufacturers would be subject to civil monetary penalties from \$10,000 to \$100,000 for failure to report or misrepresentations of price data.

Collecting such data is not new to HHS. The Secretary has been collecting average sales price data for drugs covered under Part B of the Medicare program for a number of years now.

The Secretary would also be required to make the data available to the public on the website of the Centers for Medicare & Medicaid Services (CMS). CMS would have to update the website on a quarterly basis.

Again, this is nothing new at HHS. It has been promoting transparency in Medicare for quite some time. The Secretary already publicly reports quality and price data of various Medicare providers. This is so beneficiaries can use these resources when selecting a provider.

Publicly reporting implantable medical device pricing would help hospitals negotiate fair prices. For once, they would have a resource to consult so negotiations would be fairer.

Mr. President, let me be clear. I fully support the medical device industry making a profit. I just think it should not be at the expense of hospitals, beneficiaries and the American taxpayer paying much more than they should. We must let the market work – and markets depend on information.

The Transparency in Medical Device Pricing Act of 2007 would go a long way toward ensuring that free market forces actually work. The Act would enable hospitals to obtain medical devices at fair prices.

Floor Statement of Senator Arlen Specter  
On The Transparency In Medical Device Pricing Act of 2007

Mr. Specter: Mr. President, with Senator Grassley, I introduce a bill that will help control Medicare spending and will increase transparency in our health care system. Medicare spending is a huge component of the federal budget. In 2006, Medicare benefit payments totaled \$374 billion and accounted for 12% of the federal budget.

Over the past several months I have received many letters from hospitals, consumer groups, employers, health and welfare funds, and health care journalists about the secrecy that the medical device industry is trying to impose around pricing for implantable medical devices—pacemakers, hip and knee replacements--which hospitals purchase. Hospitals are being told they can't share pricing information with any "third parties"—that would include patients, physicians, auditors, and consultants. The hospitals are not the ultimate payers. The payers are patients and those who provide health insurance coverage, which includes small businesses, large employers, and local, state and federal government programs. But the hospitals are the ones who have the role of negotiating fair pricing on behalf of the patients and other payers.

A New York hospital stated in a letter to me that many hospitals, patients, communities and federal agencies are "prevented from participating in an open and fair marketplace - culminating in inflated pricing and less than optimal cost effective health care." This hospital said that it has an annual health care supplies spend of approximately \$300 million, and although the implantable items such as cardiac pacemakers and orthopedic implants represent only 3% of the total items the hospital buys, the expenditures are close to 40% of the total spend. Moreover, these devices are characterized by annual cost increases of from 8% to 15%. Since national sales of implantable devices are approximately \$65 billion annually, with an expected growth in utilization of close to 20%, the potential of adding 8 to 15% annual price increases to the expenditures clearly demands attention.

A smaller health system in Jackson, Mississippi reports savings in 2006 of more than \$10 million because it was able to get detailed objective and measurable information that neutralized the arguments from the vendors who were telling them that they were getting the best price. The National Partnership for Women and Families told me that consumers can learn more about the quality and price of a car than they can about these medical devices that are implanted in the body. The Pacific Business Group on Health, a collection of 50 of the nations largest purchasers of health care who spend billions of dollars annually to provide health care coverage to more than three million employees, retirees and dependents, also wrote to me that the critical strategy for improving the quality of our nation's health care system is increasing its transparency.

The Transparency in Medical Device Pricing Act of 2007 would require medical device manufacturers, as a condition of receiving direct or indirect payments under Medicare, Medicaid and SCHIP, to submit to the Secretary of Health and Human Services, on a quarterly basis, data on average and median sales prices for all implantable medical devices used in inpatient and outpatient procedures. Manufacturers would be subject to civil monetary penalties from \$10,000 to \$100,000 for failure to report or for misrepresentation of price data. The data would be available to the public on the website of the centers for Medicare and Medicaid Services.

Senator Grassley and I believe this bill will improve the overall quality and efficiency of our health care system and will help ensure that health care programs administered or sponsored by the federal government, in particular, promote quality and efficient delivery of health care through (1) the use of health information technology; (2) transparency regarding health care quality and price; and (3) better incentives for those involved in these programs—physicians, hospitals, and beneficiaries. By making important information available in a readily useable manner and in collaboration with similar initiatives in the private sector and non-federal public sector, we can help control government spending on healthcare. The rising cost of health care and health insurance is a problem for consumers, small business owners, large employers and union health and welfare funds. This bill

says that if you want to do business with the federal government, you have got to show us your prices.