Two provisions of the health care reform law passed in March 2010 affect medical device companies. A 2.3% tax on companies’ gross sales from medical devices starting in 2013 will help pay for reform.

In addition, drug and device companies will have to publicly report gifts and payments made to physicians and teaching hospitals.

Medical device tax

The device tax will apply to devices regulated by the Food and Drug Administration. Hearing aids and contact lenses are explicitly excluded from the tax. Retail products used by individuals will also be exempt.

For the entire orthopedic industry, based on 2008 sales, the tax would raise $500 million, or 2.3% of about $22 billion.

“This is parallel to the deal that drug manufacturers put together with the administration,” says Stan Mendenhall, publisher of Orthopedic Network News, referring to negotiations between the companies and the White House over the reform legislation.

The largest device manufacturers will likely bear the brunt, according to MassDevice.com, a news service for device makers in Massachusetts. If the tax had been in effect in 2009, Medtronic would have paid $336 million on its $14.6 billion in revenue, while Boston Scientific would have paid $188.4 million on $8.19 billion in sales. For a small company with device sales of about $10 million, the tax would be $230,000.

Passing tax along?

Though companies would like to pass the tax along to customers, this won’t be easy.

“The market is pretty competitive, and hospitals have been having a tough time economically,” says Dave Kaczmarek, FAHRMM, CRMP, a supply chain expert who is director of Wellspring Partners, Chicago.

“A company that says, ‘Here’s our price plus 2.3%’ is going to find that’s not acceptable to supply chain folks.”

Asked whether the tax will be passed on, Blair Childs, spokesman for Premier Inc, the health care alliance and group purchasing organization, says “Our objective is not to let that happen.”

With 3 years until the tax kicks in, he says, there is time to go through a contract cycle, and companies will have to compete to renew, keeping the costs down.

Regarding research and development, Kaczmarek says, “I think companies are going to do what’s best for business. Companies make a pretty substantial profit on new technology compared with older technology that has
been commoditized.” He thinks companies are still going to want to be first to market with new technology, “and that takes R & D.”

**Physician payment disclosure**

Health care facilities will be able to learn more about physicians’ financial relationships with industry under a new transparency requirement.

Starting in 2012, the reform law requires manufacturers of drugs, devices, biologics, and medical supplies to report payments to physicians and teaching hospitals annually to the Department of Health and Human Services (HHS), which will post the information in a searchable database on its web site.

Disclosure is required for:

- cash and in-kind transfers, including compensation
- food, entertainment, or gifts
- travel
- consulting fees
- honoraria
- research funding or grants
- education or conference training
- stock or stock options
- ownership or investment interest
- royalties or licenses
- charitable contributions
- any other transfer of value determined by the HHS Secretary.

Exempt would be educational material, rebates and discounts, loans of covered devices, items provided under warranty, dividends or investments in publicly traded securities or mutual funds, and payments to physicians employed by the reporting company.

The disclosures do not apply to nurses, pharmacists, or other types of nonphysician providers.

The first reports would be posted by September 30, 2013.