

The Sunshine Act and Its Impact on Physicians and Patients

☒ On Friday, February 1st, The Centers For Medicare and Medicaid Services (CMS) released their final regulations on the Physician Payment Sunshine Act that was passed as a part of Healthcare Reform in 2010. The PPSA or “Sunshine Act” mandates that any manufacturer of medical supplies, medical equipment or pharmaceuticals will disclose to the Department of Health and Human Services (DHHS) any payments, gifts, or “transfers of value” over \$10. The resulting disclosures will be publicly available in a database of transactions so that there will be “sunshine” on any financial relationships, direct or indirect, between providers and manufacturers. **All of the disclosure requirements are the responsibility of the vendor**, but the public nature of the resulting data has implications for day to day operations in your practice, as well as any relationships you might have with prominent manufacturers.

What is the Purpose of the Sunshine Act?

Supreme Court Justice Louis Brandeis said “Sunlight is the Best Disinfectant”, and that idea is central to this “Sunshine Act.” The hope is that by ensuring that any transactions between manufacturers and providers are documented and made public, all other stakeholders in the healthcare system will be able to make decisions based on the best possible information – and “disinfect” any conflict of interest that could impact patient care outcomes.

For example, if a physician prescribes a drug and the

manufacturer of that drug makes (completely legal) payments to that physician, access to that information could inform decisions by patients, payers and affiliated providers of the physician. For better or worse, this information will be in play as a part of the public record – and like all parts of the public record, will be open to interpretation.

Whether or not any financial relationships physicians might have with manufacturers end up influencing individual patient treatment decisions, a record of the payments will be a part of a growing body of public information that will influence patients' perceptions of medical quality, and will ultimately be a part of determining how they engage with physicians. In other words, these financial relationships are now a part of your public image and brand. As such, we are advising our clients to be proactive about how they are presented in these disclosures.

When Does the Sunshine Act Start?

- Vendors will begin recording information on payments starting on August 1st, 2013.
- Q4 2013 data is due to CMS on March 31st, 2014.
- Data will be publicly released September 30th, 2014.
- Vendors, providers, and other covered entities will have 45 days to review or dispute data to be published.
- The final ruling exempts manufacturer sponsorship of speakers at a Continuing Medical Education (CME) event from the Sunshine Act.
- Food purchases by manufacturer reps will be divided by the total number of employees, not just the number of physicians, but only the physicians' portions will be reported.

What Should Medical Practices & Physicians Do?

CMS suggests that physicians and other care providers would do well to keep their own records of any value exchanges they receive and it makes sense. Even though physicians aren't responsible for reporting the data, they can be affected by it, and so they should monitor it for accuracy and completeness. Physicians should review any and all manufacturer relationships to get an overview of what the reporting will look like. Talk to vendors about reviewing data before it is reported so there are no surprises. Keep in mind, even if a relationship is completely ethical, legal and beneficial to your patients, if it can be portrayed as unethical, it can harm you.

Finally, you need to be sure to regularly review the information that is publicly available in September of 2014, even after checking with the manufacturers before they report, and reconciling this information with your own records. Mistakes get made, typos don't get fixed, and you are ultimately responsible for your own brand as a provider – so check it!

How is your practice preparing for the Physician Payment Sunshine Act? Let us know in the comments below!