

ARE YOU IN THE SUNSHINE?

by Rendi L. Mann-Stadt

A section of the Affordable Care Act, known as the "Sunshine Act," or the National Physician Payment Transparency Program, provides transparency by creating a national resource for consumers to research and learn more about the relationships among physicians, teaching hospitals, and industry. The Sunshine Act imposes reporting requirements on applicable manufacturers and group purchasing organizations ("GPOs") regarding payments and other transfers of value made to "covered recipients and physician owners or investors." Additionally, manufacturers and GPOs are required to report ownership or investment interests held by physicians or their immediate family members in applicable manufacturers and GPOs.

Under the Sunshine Act, the manufacturers required to report are those who make drugs, devices, biologicals, or medical supplies for which payment is available under Medicare, Medicaid, or CHIP. Covered recipients are physicians and teaching hospitals. For purposes of this reporting requirement, physicians include doctors of medicine, osteopathy, dentistry, dental surgery, podiatry, optometry, and chiropractic medicine. Manufacturers' and GPOs are not required to report relationships with medical residents or physicians who are bona fide employees of the applicable manufacturer or GPO.

In contrast to the prohibitions against certain relationships under the Stark and Anti-Kickback laws, the Sunshine Act does not forbid relationships between manufacturers or GPOs and physicians or teaching hospitals; it merely imposes a reporting duty on the manufacturer or GPO. The manufacturer or GPO is required to report gifts, unless below \$10.00 in value, in-kind services, consulting fees, entertainment, food, travel, stock, ownership, honorarium and some speaking fees paid to physicians or teaching hospitals.

The Centers for Medicare and Medicaid Services ("CMS") maintains the repository of information and publishes the data on a public website, referred to as "Open Payments." CMS also must submit annual reports to Congress and each state summarizing the data. Initial publication of the Sunshine Law data was in September 2014, but annual publication in subsequent years is annually on June 30th.

Physicians do not have any responsibility for reporting under the Sunshine Act, but may certainly wish to see what information has been reported about them. Physicians may view reported information (including the amount of any payment or transfer of value) and if the information is not correct, approach the reporting entity to request revision.

For more information about the Sunshine Act and the reported data, visit <http://www.cms.gov/Regulations-and-Guidance/Legislation/National-Physician-Payment-Transparency-Program/Downloads/Physician-fact-sheet.pdf> or watch <http://youtu.be/mXbOzkgHx9Y>. To register with CMS to view the Open Payments, go to <https://www.cms.gov/OpenPayments/Downloads/Physician-Registration—Quick-Reference-Guide.pdf>.

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