

Client Alert- A Priority Regulatory Update: Physicians to Provide Mandatory Notice to Patients About Payments Received From Manufacturers of Drugs or Medical Equipment

A Priority Regulatory Update: Physicians to Provide Mandatory Notice to Patients About Payments Received From Manufacturers of Drugs or Medical Equipment

Beginning January 1, 2023, physicians and surgeons licensed by the Medical Board of California and Osteopathic Medical Board of California will be required to notify their patients of the opportunity to publicly search payments made by drug and medical device companies to physicians, physician assistants, advanced practice nurses, and teaching hospitals through the Centers for Medicare & Medicaid Services' Open Payments database.

Requirements Starting January 1, 2023

Physical Posting of Notice in Office

This new notice rule, contained within California Assembly Bill 1278, requires physicians and surgeons to post a conspicuous paper notice of the Open Payments database in each physical location they practice in. The posted Open Payments database notice shall include the link to the Open Payments database as well as the following text:

"For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments website page is provided here. The federal Physician Payments Sunshine Act requires that detailed information about payment and other payments of value worth over ten dollars (\$10) from manufacturers of drugs, medical devices, and biologics to physicians and teaching hospitals be made available to the public."

Notably, the Open Payments database posting can be placed within the same notice informing consumers and patients that the physician or surgeon is licensed or registered to practice medicine in the State of California, should the physician or surgeon choose to do so.

Provision of Notice to Patients

In addition to physical posting, physicians and surgeons will be required to provide a patient at his or her initial office visit with written or electronic notice of the Open Payments database, which shall request a signature and signature date from the recipient patient and shall include the following language:

"The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>."

Following the patient's signature, the physician or surgeon must provide the patient or patient representative with a copy of the signed notice and upload the original signed Open Payments database notice into the patient's electronic records. If the physician only has paper records, the signed notice will be inserted into the patient's paper records.



Requirements Starting January 1, 2024

Website Posting of Notice

Beginning January 1, 2024, physicians and surgeons will be required to upload the same notice contained in Section I above electronically to the physician or surgeon's practice website used in their medical practice.

Though some exceptions to these new rules apply, starting January 1, 2023, physicians and surgeons all across the state of California should be prepared to roll out their Open Payments database notices. For assistance with drafting legally compliant notices or questions about your obligations, consult with the attorneys at Nelson Hardiman LLP.

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