

Of Sunshine and Darkness

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The Physician Payment Sunshine Act (referred to simply as the Sunshine Act) is officially upon us. For physicians who are not aware, it is the single greatest threat to your personal privacy since Facebook; although, to date no photos will be posted.

The Sunshine Act,¹ a provision of the Patient Protection and Affordable Care Act, requires manufacturers of drugs, medical devices, biologics, and medical supplies who participate in US federal health care programs to report certain payments and items of value given to physicians and teaching hospitals.² As of August 1, these manufacturers are required to collect and track information on payments, transfers, and ownership, and submit annual reports to the Centers for Medicare & Medicaid Services. In addition, manufacturers and group purchasing organizations must report certain ownership interests held by physicians and their immediate family members.² The majority of the information contained in these reports will be available on a public searchable Web site. Physicians have the right to review their respective reports and challenge any false, inaccurate, or misleading information. I would like to review some interesting facets of the Sunshine Act.

Who is covered by the reporting requirements? Physicians, including doctors of medicine and osteopathy, dentists, podiatrists, optometrists, and chiropractors who are legally authorized to practice by the state in which they practice, are all subject to reporting.² This mandate applies as long as the physician has a current license to practice, even if he/she is enrolled in Medicare. The Sunshine Act does not include medical residents or mid level providers. The Centers for Medicare & Medicaid Services will publish a list of teaching hospitals annually.²

What will be reported? Consulting fees; compensation for serving as faculty or as a speaker for

a continuing education program; compensation for services other than consulting, including serving as faculty or as a speaker at an event other than a continuing education program; honoraria; gifts; food and beverages; entertainment; travel and lodging, including the city, state, and country of specified destinations; education; research; charitable contributions; royalties or licenses; current or prospective ownership or investment interests; grants; and space rental or facility fees (for teaching hospitals only) are all applicable.²

Now that we have a general overview of the system, I would like to point out some of the more interesting and/or absurd requirements of the Sunshine Act. First, applicable manufacturers must report the middle initial of a physician who is a covered recipient as listed in the National Plan & Provider Enumeration System but will not be penalized for leaving the field blank if it is not available in the National Plan & Provider Enumeration System or if the physician does not have a middle name.

Additionally, if a physician receives a reprint of a journal article from a pharmaceutical representative, he/she will be assigned a reporting value of \$10 for that transaction. Items such as medical textbooks and journal article reprints do not fall within the statutory exclusion of educational materials that directly benefit patients or are intended for patient use. Wall models and anatomical models, which are ultimately intended to be used with a patient, are excluded. I have 2 thoughts on this mandate: (1) if you are given a choice, use wall models in 2013, and (2) keep in mind that we are not only being credited for the good stuff!

Lastly, the per-person value of a meal must be reported as a payment or other transfer of value only for covered recipients who actually partook in the food or beverage. Applicable manufacturers are not required to report or track buffet meals, snacks, soft drinks, or coffee made generally available to all participants of a conference or similar event where it is difficult to identify who partook in the offering.² Basically, if you did not eat it, you did not buy it! If your staff eats and you do not, you are free and clear. I do not in any way support circumventing the rules,

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but if there are leftovers, no one can ever be sure of their final disposition. Don't eat, don't tell?

Overall, many of these new regulations are unique and will change the way we approach pharmaceutical interactions. In 2013 the average physician has to question whether to accept an article reprint or take a bite of a tuna sandwich because of the potential consequences of it being made public. Some physicians will be more concerned than others, but if anyone had any doubts, it is certainly another sign that we have entered a new era in health care.

REFERENCES

1. Medicare, Medicaid, Children's Health Insurance Programs; transparency reports and reporting of physician ownership or investment interests. *Fed Registr.* 2013;78(27):9458-9528. To be codified at 42 CFR §402 and 403. <http://www.cms.gov/Regulations-and-Guidance/Legislation/National-Physician-Payment-Transparency-Program/Downloads/Final-Rule.pdf>. Accessed September 5, 2013.
2. Physician Payment Sunshine Act Final Rule: Quick Reference Guide. Policy and Medicine Web site. <http://www.policymed.com/2013/02/physician-payment-sunshine-act-final-rule-quick-reference-guide.html#sthash.rqjRJdOm.dpuf>. Published February 13, 2013. Accessed August 26, 2013.