

New California Law Requires Physicians to Notify Patients About Open Payments/Sunshine Act Database

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Effective January 1, 2023, California [Assembly Bill 1278](#) (AB 1278) requires what the law refers to as “physicians and surgeons” (referred to herein as physicians) and their employers to provide patients with notice of the federal Open Payments program, also known as the Sunshine Act. The Sunshine Act requires manufacturers of certain drugs, devices, biologicals, and medical supplies that are reimbursable by Medicare, Medicaid, and the Children’s Health Insurance Program to report payments and other transfers of value they make to “covered recipients,” unless an exception applies. Covered recipients include physicians, teaching hospitals, physician assistants, nurse practitioners, and certain other healthcare providers. The Centers for Medicare & Medicaid Services (CMS) publishes this data in a publicly available online database, known as the Open Payments database. California is the first U.S. state to enact legislation requiring physicians to provide notice of the Open Payments information to patients.

Specifically, the new law requires most physicians licensed in California to provide to a patient at the initial office visit a written or electronic notice of the existence of the Open Payments database. The law requires that the notice contain the following text:

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>.

For informational purposes only, a link to the federal Centers for Medicare and Medicaid Services (CMS) Open Payments web 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.

The notice must be signed and dated by the patient or a patient representative and maintained in the patient’s medical record.

The law further requires physicians to post the notice language in each location where they practice, in an area that is likely to be seen by all persons who enter the location. Additionally, beginning January 1,

2024, if a physician's practice maintains a website, they must conspicuously post the same Open Payments database notice on their website. If the physician is employed by an employer that provides health care services, the law instead requires the employer to comply with these posting requirements. Physicians working in a hospital emergency room are exempt from the law.

Under AB 1278, a violation of the law would constitute unprofessional conduct subject to disciplinary action by the physician's licensing board.

The Floor Analysis of AB 1278 states that the bill is intended to increase public awareness of the Open Payments database and encourage transparency regarding financial relationships between manufacturers and healthcare providers so patients can make informed decisions about treatments prescribed by their physicians. To support this legislation, the bill's author, Assembly member Adrin Nazarian, cited four research studies that purport to show that physicians who received industry payments had, on average, a brand-name prescribing rate two percentage points higher than physicians who did not receive payments.

Opponents of the bill, including the California Medical Association, argued that the Sunshine Act's requirements that manufacturers publicly report payments made to covered recipients already provide for full transparency and that AB 1278 places unnecessary administrative burdens on providers. Interested stakeholders should anticipate increased awareness and review of the Open Payments database and continue to monitor whether other states may follow in California's footsteps in implementing this additional transparency measure.

Thank you to Sidley Law Clerk Taylor Andelman for her significant contribution to this Sidley Update.

CONTACTS

Meenakshi Datta , Partner	+1 312 853 7169, mdatta@sidley.com
Trevor L. Wear , Partner	+1 312 853 7101, twear@sidley.com
Catherine Y. Starks , Partner	+1 312 853 0579, cstarks@sidley.com
Donielle McCutcheon , Partner	+1 312 853 7282, dmccutcheon@sidley.com
Taylor Andelman , Associate	+1 202 736 8165, tandelman@sidley.com

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