

Payments To Physicians: The Reports Are Coming!

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The Department of Health and Human Services (HHS) has released a proposed rule to implement a provision of the 2010 Patient Protection and Affordable Care Act that will have consequences for the healthcare, manufacturing, and pharmaceutical industries.

The proposed regulations would implement the Physician Payment Sunshine Act, which requires drug, medical device, and other manufacturers to annually report payments made to physicians and teaching hospitals in excess of \$10 for consulting, research, speaking, entertainment, travel, or food.

According to CMS, the provision was devised in an effort to prevent conflicts of interest between physicians and the medical device/pharmaceutical industries, and to ensure transparency for patients. To that end, the data collected will be posted on a website in a “clear and understandable format.”

In addition, Group Purchasing Organizations (GPOs) that arrange for the purchase of drugs or medical supplies are also subject to the law.

The law requires qualifying entities to begin to report data to HHS on March 31, 2013. It originally called for an effective date of January 1, 2012, but CMS proposed delaying data collection until the final regulation is released later this year.

HHS will levy a penalty of anywhere from \$1,000 up to \$10,000 for each undisclosed payment, with a \$150,000 per year cap. But a knowing failure to disclose can result in penalties between \$10,000 and \$100,000, with a \$1 million cap. This may lead to some interesting situations – how does not prove, or disprove, a knowing failure to disclose?

The Sunshine Act explicitly preempts any existing State mandatory reporting statutes.

The recipients of the payments – physicians and teaching hospitals – are not required to review or correct the data before it is reported publicly.

HHS will accept public comments on the proposed rule until February 17.