

# Complete Healthcare Compliance Manual 2024

## Conflicts of Interest: CMS Open Payments

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### What Are Conflicts of Interest and CMS Open Payments?

The Centers for Medicare & Medicaid Services (CMS) Open Payments database is a public reporting tool that compliance officers should use annually in conjunction with other information and research to monitor potential conflicts of interest between contracted, employed, and other healthcare providers and manufacturers of drugs, medical devices, biological, and medical supplies.<sup>[2]</sup>

A healthcare provider who benefits personally from payments, gifts, entertainment, or other compensation provided by manufacturers may develop a conflict with their employer or contracted healthcare provider if that remuneration causes them to engage in conduct that benefits them personally and puts their employer and/or patients in harm's way. The CMS Open Payments database does not identify conflicts of interest, but it is the only national resource of its type that allows federal payment program beneficiaries, consumers, physicians, and the public to review and research financial relationships with providers that could cause a conflict.

Compliance officers can use the information reported in the database to validate information disclosed to their organizations in conflicts of interest statements and ultimately as a basis to monitor their providers' prescribing trends and evaluate medical device use. Examples of potential conflicts that can be identified include, but are not limited to:

- A review of a psychiatrist's open payments data shows the provider being paid more than \$100,000 a year to talk with other providers at restaurants and conferences about an antidepressant drug that a company manufactures. When the compliance officer reviewed the psychiatrist's prescribing patterns, it showed the provider almost exclusively prescribed the antidepressant drug the provider was being paid to promote. The psychiatrist also did not disclose the financial relationship on the annual conflict of interest statement.
- A review of an orthopaedic surgeon's open payments shows the provider is receiving more than \$1 million annually in royalties from a device manufacturer for a knee replacement device the provider developed in conjunction with the manufacturer. When the compliance officer reviewed the orthopaedic surgeon's medical device utilization, it showed the provider chose the knee replacement device the provider was receiving royalties on in 90% of surgical procedures performed by the provider. The orthopaedic surgeon also did not disclose the royalty payments on the annual conflict of interest statement.
- A review of the Open Payments database shows a family practice physician accepted an all-expenses paid trip, including airfare, lodging, food, and entertainment totaling \$7,500, from a drug manufacturer to attend a conference to learn about a new medication in violation of the organization's code of conduct and gift policy. Further review by the compliance officer shows the provider began prescribing the medication after the trip.
- A review of the Open Payments database shows a cardiac surgeon received research payments from a

device manufacturer. When the compliance officer reviewed the cardiac surgeon's conflicts of interest statement, the compliance officer found that no payments had been disclosed. The cardiac surgeon also did not have any active research studies approved by an institutional review board (IRB) or the organization's research office.

The CMS Open Payments database reported information on physicians and teaching hospitals for the first time on September 30, 2014, after being developed to shine a light on financial relationships and potential conflicts of interest between healthcare providers and manufacturers.<sup>[3]</sup> The database developed out of the Physician Payments Sunshine Act, which requires manufacturers of biological and medical supplies, drugs, and medical devices that are paid for by federal healthcare programs to collect and track financial relationships with physicians and teaching hospitals and to report the data to CMS.<sup>[4]</sup> Before the data is published annually, physicians and teaching hospitals have an opportunity to review and dispute the information that has been reported.

Financial relationships reported in the Open Payments database include, but are not limited to:

- Travel and lodging
- Fees, including consulting, speaking, honoraria, teaching, and licenses
- Charitable contributions
- Entertainment (e.g., food, beverages, and gifts)
- Royalties
- Research activities<sup>[5]</sup>

In addition to reporting data on doctors of medicine/osteopathy, doctors of dental medicine/dental surgery, doctors of podiatric medicine, doctors of optometry, and chiropractors, the Open Payments database will begin reporting data on five additional provider types in 2022:

1. Physician assistants,
2. Nurse practitioners,
3. Clinical nurse specialists,
4. Certified registered nurse anesthetists, and
5. Certified nurse-midwives.<sup>[6]</sup>

In addition to the added provider types, the types of payment categories will be expanded to include debt forgiveness, long-term medical supply or device loan, and acquisitions.

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