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Kelly Cooper (kcoo0013@shands.ufl.edu, [linkedin.com/in/kellyfcooper/](https://www.linkedin.com/in/kellyfcooper/)) is Compliance Specialist at UF Health Shands Compliance Services, Gainesville, FL.

Open Payments: Who is painting the picture?

by Kelly Cooper, RHIA, CHPS, CCS, CHC

The Centers for Medicare & Medicaid Services (CMS) Open Payments program is a “national transparency program”^[1] providing patients and the public with information regarding potential financial relationships between drug and device manufacturers (reporting entities),^[2] and certain healthcare providers (covered recipients).^[3] As of June 3, 2023, the Open Payments program has tallied 74.82 million general payments, representing \$21.66 billion since its inception in 2016.^[4] The data aggregated by CMS shows continued growth in the number and value of reported payments year over year (with a dip due to the COVID-19 public health emergency), which may reflect a potential increase in the overall value of payments, transparency by reporting entities, or both.

However, scrutiny of payments by covered recipients appears to be declining. For example, during the review and dispute processes for calendar year (CY) 2016, there were 11.71 million reported general payments and 1,051 disputes; however, for CY 2022, only 287 of the 13.15 million payments were disputed by covered recipients. This decline in disputed payments could mean that reporting entities more accurately attribute payments to covered recipients each year, but given the sheer number of payments, that is unlikely to be true.

Patients are increasingly taking the driver’s seat in their care while seeking additional methods to shop for the best price and quality of care. As more organizations support the empowerment of patients to become their own healthcare champions, regulators are also taking note and looking to help patients in their efforts. Between regulatory actions such as the No Surprises Act and the power of the internet, patients and their families now have vast amounts of social and data-based resources to consider. The Open Payments database is one of these resources. It provides data intended to allow patients and their families to paint a picture of what outside influences may affect their providers’ decision-making. The picture that the data shows is being painted almost exclusively by the reporting entities.

Regulatory and enforcement actions

As new transparency regulations have kept compliance and legal professionals on their toes, older programs, like Open Payments, may be overlooked. But enforcement agencies are not the only ones taking notice of the potential for this data. Legislators are beginning to see the value of this information for patients. An example is a newly enacted California state law, effective January 2023. Assembly Bill No. 1,278 requires “physicians and surgeons” to post a notice on how to access the Open Payments database “in an area that is likely to be seen by all persons who enter the office.”^[5] For those physicians who work in a facility or hospital, the facility takes responsibility for posting the notice. While this is the first state law addressing the national program, it sits alongside heightened enforcement activity from the U.S. Department of Health and Human Services Office of Inspector

General (OIG) and U.S. Department of Justice (DOJ) focusing on violations of the Anti-Kickback Statute (AKS) and False Claims Act (FCA).

In the last several years, DOJ enforcement actions relating to AKS—especially concerning remuneration for provider participation in speaker events—have steadily grown. The volume of these enforcements was so high that OIG published Special Fraud Alerts in August 2022, highlighting the risks related to these speaker arrangements.^[6] By their nature, these arrangements are required reportable transfers of value, per the Open Payments program, under several of the “nature of payment” categories that compliance professionals already know are concerns—including compensation for serving as faculty or a speaker for a medical education program, food and beverage, and travel and lodging.^[7]

Reviewing the published information in the Open Payments database and publishing it correctly are critical components of supporting compliance initiatives and for patients to have the most accurate information for their decision-making. The data provides additional value to credentialing and conflict of interest activities—allowing for spot checks of potential unreported conflicts or highlighting the need for specific provider education and training. The data is also trackable and easily trended over time, keeping compliance and the organization ahead of the curve.

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