

New California Law Requires Open Payments Notice to Patients

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On September 29, 2022, California Governor Gavin Newsom signed Assembly Bill 1278, which requires physicians and their employers to provide patients with notices about the Open Payments database starting January 1, 2023.

The federal Open Payments program is designed to promote transparency by requiring applicable manufacturers of drugs, devices, and biological or medical supplies to annually report to the Centers for Medicare & Medicaid Services certain payments and other transfers of value made to physicians, certain advanced practice providers (e.g., nurse practitioners) and teaching hospitals. Currently, pharmaceutical companies in California must disclose their compliance program, including information related to the annual dollar limits on gifts, promotional materials or incentives provided to medical or health professionals (California Health & Safety Code § 119402). The enactment of this new legislation will impose new disclosure requirements specifically onto physicians and their employers regarding physicians' financial relationships with pharmaceutical and medical device manufacturers.

Effective January 1, 2023, physicians and surgeons who are licensed pursuant to the California Medical Practice Act or the California Osteopathic Act, or their employers, must provide patients with a written or electronic notice of the Open Payments database at the initial office visit. The new notice requirement will apply to California-licensed physicians who are located outside of California but provide telehealth services to patients in California. The new law does not apply to physicians and surgeons working in a hospital emergency room.

The written or electronic notice must include a signature from the patient or the patient's representative, the date of signature and 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.

Physicians and surgeons must retain the notice in the patient's medical record.

Physicians and surgeons also are required to post an Open Payments database notice in each location where they practice, in an area where the notice is likely to be seen by all persons who enter the office. Effective January 1, 2024, physicians and surgeons also must conspicuously post the same Open Payments database notice on their practice's website if any.

Violation of this law will constitute unprofessional conduct, which may subject violators to disciplinary actions by their respective licensing boards.

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