

Insights

Dollars to Donuts - Sunshine Audit Review

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Although most physicians have heard about the Physician Payments Sunshine Act (the “Sunshine Act”) and have seen reports of the payments physicians have received from reporting drug and medical device companies, few physicians take the time to review or correct their own records.

Many physicians have only small amounts reported under their name, often less than \$100 a year. These amounts are typically the allocated cost of lunches, dinners, and other conference-type activities. It is difficult to track these expenses and likely not worth the effort to do so. However, amounts in excess of \$5,000 should be more carefully audited and corrected, since the information is publicly available.

As more hospitals and sophisticated physician groups track this information, it is important to make sure that physicians are not credited with sums they did not actually receive. If asked about these amounts later, it appears careless (or worse) for a physician to have not appealed incorrect data. This is even more important when questioned by the media or by a government agency.

In order to properly track payments, physicians should have complete and fully-signed copies of agreements with any vendor sponsors. Ideally, these agreements should have been previously reviewed by legal counsel. Even a post-signing legal review, however, is advisable. These agreements include consulting arrangements, as well as awards or opportunities in ownership interests like stocks or options.

Physicians should also consider any employment or contractual obligation they may have to disclose payments from drug and device companies. Sometimes, even if a payment has not yet been received, the mere possibility of a future payment may require disclosure pursuant to an applicable conflict of interest policy of a hospital or private practice.

This can be particularly true in the case of payments from a physician-owned medical device company. Such companies continue to attract the attention of regulators and lawmakers who may not understand the important innovations often developed by such companies.

The best course of action in all of these matters is to seek counsel before executing agreements, to make sure the company and the proposed arrangement are in compliance with state and federal law and industry best practices. Physicians should also annually review and correct (as needed) their Sunshine Act Data, which can be assessed at <https://openpaymentsdata.cms.gov/search>.

If you have any questions regarding reporting or the Sunshine Act generally, please contact Thomas N. Hutchinson or Alexandria M. Foster.

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are urged to consult with counsel concerning your situation and specific legal questions you may have.