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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.

Review and dispute—spreadsheets and emails

With so much riding on the information published under Open Payments, covered recipients must participate in painting the picture. While the review and dispute process may seem daunting at first, once registration for the Open Payments Portal is complete, the process boils down to emails and spreadsheets. Which can be simplified further by continual collaboration with purchasing and accounting and by creating tools for the process before the actual review period.

On April 1 of each year, CMS makes data regarding attributed payments available to covered recipients via reports reviewable in the Open Payments Portal and as a downloadable spreadsheet. This spreadsheet contains details for each reported payment, including vendor contact points for direct discussions. With a few minutes of customization, this spreadsheet becomes a ready-made tracking document filled with vital review data. Once organized, the next step is to confirm any expected reports with internal partners, which means those made because of compliant arrangements or agreements previously reviewed and approved internally before execution.

After whittling down the payments to the unknowns and potentially (or blatantly) incorrect, it is time to initiate disputes. Initiating a dispute may be done by emailing the vendor contact(s) and/or within the CMS Portal, though doing both may be in a covered recipient’s best interest. It is important to note that disputing a report is not saying the report is wrong; it simply means additional details are needed to confirm the payment is correctly attributed. The best information to confirm a reported payment is a copy of contracts, invoices, or purchase orders. Obtaining these can make short work of the dispute, especially if it is for another organization or entity.

Incorrect reports

As the data shows, reporting entities have millions of payments to report each year. CMS allows these entities to report throughout a calendar year or in one lump report so long as the vendor reports all payments before March 31 of the review year (e.g., the data for CY 2023 must be input by March 31, 2024). However, attributing the payment to the correct entity can take time and effort. Examples of why this is tricky can be easier to understand when discussing payments attributed to teaching hospitals (the only facilities currently covered under the Open Payments program). Still, they can occur for any covered recipient. Covered recipients who co-locate in shared

office space, work in multiple office locations, or for various facilities are easy vectors for incorrect payment attribution.

For teaching hospitals, this can be especially tricky. Providers who qualify as covered recipients may be members of the associated university's college of medicine and use the hospital address for their records, causing payments attributable to the individual provider to name the hospital instead. Clarifying this with reporting entities can be challenging as vendors often cite the provider using the same address, hospital name, or other shared demographics as a rationale for the payment to be attributable to the hospital.

Using templated emails (for vendor contacts) and responses for the Open Payments Portal dispute mechanism streamlines the dispute process. Including precise details regarding a payment believed to be incorrectly attributed in initial vendor contacts is crucial. Clear communication can, in some cases, end in resolution after only one communication. The information included in a template depends on whether the dispute is initiated via the Open Payments Portal or direct email to the vendor. For an Open Payments Portal dispute, including the following details can support quick resolution:

- The reason for the dispute, e.g., the need for additional information or evidence that the payment is incorrectly attributed;
- Tax ID number—especially for co-located entities; and
- Contact information for the person handling the dispute on behalf of the covered recipient.

Responses sent to reporting entities on the Open Payments Portal can be short and to the point, as the system ties the dispute to the exact payment in question. However, individual disputes are required for each payment. If initiating the dispute via email, including the Open Payment ID for *each* disputed payment, it is essential as vendors may not have a method to review the payment without it.

Disputes and results matter

CMS provides covered recipients with over a month to work with reporting entities on corrections to attributed payments *before publication*, and understanding this before publication is necessary, as CMS requires reporting entities to update or delete records before the data refresh on May 16. Whatever status the payment shows on May 16 is how it will be published on June 1—making it critical to highlight disputed payments as such. When published, these payments will show they are in disputed status, highlighting to patients or other reviewers that the covered recipient has an issue with the report.

Dispute discussions may continue throughout the calendar year, and it is a good idea for covered recipients to continue the conversation until the payment is confirmed or resolved. Any updates or changes to reported payments will be reflected in the published data during the annual refresh at the end of the calendar year. Disputes will likely be resolved during the review and dispute period, as reporting entities designate staff to transparency reporting and the Open Payments process during the review and dispute period.

After the six-week review period, it is time to summarize the process and report to organizational leadership about the work completed. During the completion of the review and dispute process, the number and value of initially reported, disputed, and published payments should be captured. Doing this at each state in the process facilitates easy data gathering. Payments fall into three categories under the Open Payments program: general, research, and physician ownership. For accurate reporting, amounts for each category and overall totals should be collected and reported.

A short annual report best summarizes the information collected and addressed during the Open Payments

review and dispute process. Creating a template for this report—outside the review and dispute period—facilitates a quick data population and allows for the release of the internal report to coincide with CMS' publication of the Open Payments data on June 1.

Conclusion

Compliance professionals must keep their attention on many hot topics; however, the data shows that voluntarily participating in the Open Payments review and dispute period is not high on that list. Yet, the focus on the real and perceived financial relationships between healthcare entities, their vendors, and each other is not going away soon. Reporting entities clearly take their mandated reporting seriously and report more payments year after year, painting their side of the relationship picture that is becoming increasingly important to patients and regulatory agencies. This regulatory and patient pressure means covered recipients must consider whom they want to hold the brush.

Takeaways

- Scrutiny of payments by covered recipients in the Open Payments process is declining despite an increase in the number and value of reported payments.
- A new California law requires notifying patients of the availability of Open Payments data.
- Patients and their families may use Open Payments data when “shopping” for healthcare.
- The U.S. Department of Health and Human Services Office of Inspector General and the U.S. Department of Justice use Open Payments data in Anti-Kickback Statute investigations.
- Annual review of the Open Payments data in the review and dispute process supports compliance activities.

All opinions expressed in this article are those of the author and do not represent official positions of the University of Florida, UF Health, or affiliated partners.

1 Centers for Medicare & Medicaid Services, Search Open Payments database, last updated June 2023, <https://openpaymentsdata.cms.gov/>.

2 Centers for Medicare & Medicaid Services, “Reporting Entities,” last modified February 13, 2023, <https://www.cms.gov/openpayments/program-participants/reporting-entities>.

3 Centers for Medicare & Medicaid Services, “Covered Recipients,” last modified March 8, 2023, <https://www.cms.gov/openpayments/program-participants/covered-recipients>.

4 Centers for Medicare & Medicaid Services, “The facts about Open Payments data,” June 30, 2023, <https://openpaymentsdata.cms.gov/summary>.

5 California Legislative Information, “AB-1278 Physician and surgeons: payments: disclosure: notice. (2021-2022),” Assembly Bill No. 1278, September 29, 2022, https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1278.

6 Publication of OIG Special Fraud Alerts, 87 Fed. Reg. 51,683, 51,683–87 (Aug. 23, 2022), <https://www.federalregister.gov/documents/2022/08/23/2022-18063/publication-of-oig-special-fraud-alerts>.

7 Centers for Medicare & Medicaid Services, “Natures of Payment,” last modified January 23, 2023, <https://www.cms.gov/openpayments/natures-of-payment>.

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