

Open Payments Errors Could Put Physicians in a Bad Light

As the Open Payments website becomes more user-friendly, physicians must ensure their disclosures are accurate, or risk misinterpretation.

BY STEVEN J. CAGNETTA, ESQ, AND STEVEN K. LADD

Primacea has just audited the recently published Open Payments (Sunshine Act) records for 25 selected physicians (from young innovators to department chiefs across many specialties). Payments totaling nearly \$2.4 million for the August 2013 to December 2013 time period were reviewed.

The results—and the implication of the results—were shocking. Thirty-one percent of the transactions, representing 34% of the payments, were in error.

As we wrote in “First CMS Attempt at Transparency Is Remarkably Cloudy,”¹ the Centers for Medicare & Medicaid Services (CMS) reported that only 5% of physicians registered to review their payments in advance, and fewer than 0.3% of all records were disputed. If the results of our audit are representative, then published records of millions of dollars of purported payments to large numbers of physicians would be wrong.

REVIEWING THE DATA

In order to encourage physicians to review their Open Payments data, Primacea created software that downloads the entire Open Payments database from CMS, segregates it by physician, and organizes the result into an easy-to-read report. An example is shown in Figure 1.

Physicians can see the individual payment data by selecting the names of each organization that reported payments to them. When we scanned various reports, we were surprised to see what appeared to be multiple copies of some payments in the data. In one of the first examples we viewed, on a single date (November 1, 2013), one company reported three entries of \$21.15 and three entries of \$33.31 for “education” (Figure 2).

Scanning payments by another company to a second physician yielded what appeared to be duplicate entries for food and travel on a single date (September 3, 2013): One entry for \$22.28 was listed as “food and beverage,” but this amount also appeared on a second line as “travel and lodging.” Two other travel and lodging entries may also be duplicates (for the amounts of \$168.13 and \$9,929.93, respectively) (Figure 3).

Whether or not each payment is legitimate, the lack of clarity in this regard underscores the need for contextual information to be included with each payment, and for physicians to carefully review each line of their information as it appears on Open Payments.

Figure 1

Open Payments Report – Summary
2013

Organization	Total
BMS	17,719.53
Boehringer	24,280.13
Janssen Pharmaceuticals, Inc	2,008.50
Pfizer	84,807.67
Total	\$ 128,815.83

Figure 1. An example of CMS Open Payments data organized by physician into an easy-to-read report.

HOW CAN THIS HAPPEN?

Although possible, it seems unlikely that plane tickets for different trips were purchased on the same day and for the same amount unless the purchases were made for multiple travelers on one itinerary; the same can likely be said for education and food amounts. When announcing the Open Payments regulations, CMS estimated that industry would spend more than \$200 million in modifying accounting systems to track spend-

ing to be reported under Open Payments. At meetings in Washington, DC, several companies that had created such capabilities to meet Corporate Integrity Agreement conditions testified that they had spent years to reach partial success. Now that 60% of the August through December 2013 reporting has been released by CMS, it appears that much work remains to be done to keep inaccurate reporting out of the public record.

Figure 2				
11/01/2013	In-kind items and services	Education	21.15	🔍
11/01/2013	In-kind items and services	Education	21.15	🔍
11/01/2013	In-kind items and services	Education	21.15	🔍
11/01/2013	In-kind items and services	Education	33.31	🔍
11/01/2013	In-kind items and services	Education	33.31	🔍
11/01/2013	In-kind items and services	Education	33.31	🔍

Figure 2. Possible duplicate payment entries for “education” listed in an individual physician’s payment data.

Figure 3				
09/03/2013	In-kind items and services	Food and Beverage	22.28	
09/03/2013	In-kind items and services	Travel and Lodging	22.28	
09/03/2013	In-kind items and services	Travel and Lodging	168.13	🔍
09/03/2013	In-kind items and services	Travel and Lodging	168.13	🔍
09/03/2013	In-kind items and services	Travel and Lodging	9,929.93	🔍
09/03/2013	In-kind items and services	Travel and Lodging	9,929.93	🔍

Figure 3. Another possible example of duplicate payment entries for “food and beverage” and “travel and lodging” expenses.

The screenshot shows the OpenPaymentsData.CMS.gov search page. At the top, there are navigation buttons: "Conduct a Search", "Data Explorer", "About", "Download the Data", and "Open Payments Home". Below these is a search bar with the text "Search for a ...". There are three tabs: "Physician" (selected), "Teaching Hospitals", and "Company Making Payments". The search form includes fields for "David" (Name), "Kessler" (Last Name), "City", "State" (dropdown menu), "ZIP", and "Speciality". At the bottom, there is a "Search" button and a note: "Please be patient, search results take a few moments to load."

Figure 4. Sample search for Dr. David Kessler through openpaymentsdata.cms.gov.

THE PRESS USES THESE DATA

The *New York Times* and others reported the top-paid physicians across the nation. Inaccuracies in the data impacted their stories. One case in particular, involving a leading research physician, had substantial double-reporting of a different nature. The researcher contacted us after being named in a national news story and told us, “There’s no way I earned that much money.”

The physician had 75 Open Payments records from seven manufacturers. Much of the work was performed through a contract research organization. We reviewed each record against hospital conflict-of-interest reports, 1099s, and detailed accounting records from the contract research organization. Twenty-seven of the payments were reported by two affiliates of a multinational medical manufacturer. The errors exceeded \$150,000.

Because the duplicate figures spanned different unique manufacturer names and numbers in the CMS system, it would be unrealistic for the press to perform detailed diligence when reporting on deadline. Unfortunately, when physicians and their hospitals do not have this information either, they often reply “no comment” when reporters call to confirm their stories, which is what happened in the previous case.

YOUR PATIENTS CAN NOW SEE WHAT WAS REPORTED

Initial reviews of Open Payments data were conducted not by patients, but by reporters with expert techni-

Figure 5

Search Results for: ⓘ Not the search results you're looking for?

First Name: **David**
 Last Name: **Kessler**
 Results found: **4**

You can [refine your search criteria](#) to expand or narrow down your search. To download all identified or all de-identified datasets (general, research, and ownership files), go to the Dataset Downloads page on cms.gov/openpayments.

Click on a physician name to see details. Results are sorted by physician's last name, then by first name. **Please be patient as the tool searches millions of records and the detailed results load.**

Physician Name	Specialty	Primary Address
KESSLER, DAVID BRIAN	Behavioral Health & Social Service Providers/ Counselor, Allopathic & Osteopathic Physicians/ Dermatology	[REDACTED]
KESSLER, DAVID J	Allopathic & Osteopathic Physicians/ Internal Medicine/ Clinical Cardiac Electrophysiology, Allopathic & Osteopathic Physicians/ Internal Medicine/ Cardiovascular Disease, Allopathic & Osteopathic Physicians/ Internal Medicine/ Interventional Cardiology	[REDACTED]
KESSLER, DAVID JOSEPH	Allopathic & Osteopathic Physicians/ Otolaryngology, Allopathic & Osteopathic Physicians/ Otolaryngology/ Facial Plastic Surgery	[REDACTED]
KESSLER, DAVID A.	Allopathic & Osteopathic Physicians/ Pediatrics	[REDACTED]

Figure 5. Our search results for “David Kessler.”

cal resources. That is no longer a requirement.

The Open Payments website was virtually unusable for patients, as we previously reported.¹ Since then, CMS made substantial improvements, and the site

now has a user-friendly interface. This time, when we researched Dr. David Kessler (the US Food & Drug Administration Commissioner in the 1990s), we entered his first name and last name on a simple form at openpaymentsdata.cms.gov (Figure 4). The results show four David Kesslers (Figure 5).

Clicking on David A. Kessler shows his reported payments in 2013, a total of \$232,265.00 in five transactions (Figure 6). Your data will be just as easy to find. Given the percentage of errors found to date, it is incumbent on each physician to ensure that his or her relationships are being accurately portrayed. ■

Primacea provides tools to physicians and leading hospitals to facilitate transparency in innovation and manage compliance obligations. For more information, please follow @Primacea on Twitter or www.primacea.com.

Steven J. Cagnetta, Esq, is Founder and Chief Counsel at Primacea, Inc. in Andover, Massachusetts. He may be reached at (781) 369-2900; steve.cagnetta@primacea.com.

Steven K. Ladd is Founder and President at Primacea, Inc. in Andover, Massachusetts. He may be reached at (617) 901-3140; steven.ladd@primacea.com.

Figure 6

OpenPaymentsData.CMS.gov | Sign In to OpenPaymentsData.CMS.gov

Conduct a Search | Data Explorer | About | Download the Data | Open Payments Home

DAVID A. KESSLER
 505 PARNASSUS AVE FL 8
 SAN FRANCISCO, CA 94143

Specialty:
 Allopathic & Osteopathic Physicians/ Pediatrics

Summary Information

\$232,265.00 Total General Payments	5 Total General Transactions	\$0.00 Total Research Payments	0 Total Research Transactions
\$0.00 Total Amount Invested	0 Total Invested Transactions	\$0.00 Total Value of Interest	0 Total Interest Transactions

General Payments Received

Company Making Payment	Nature of Payment	Date	Amount	Third Party Payment	Disputed?	Comment
Aptalis Pharma US, Inc.	Consulting Fee	08/28/2013	\$18,750.00	No Third Party Payment	No	
Aptalis Pharma US, Inc.	Consulting Fee	08/29/2013	\$13,750.00	No Third Party Payment	No	
Aptalis Pharma US, Inc.	Consulting Fee	10/03/2013	\$18,750.00	No Third Party Payment	No	
Aptalis Pharma US, Inc.	Consulting Fee	10/03/2013	\$13,750.00	No Third Party Payment	No	
Aptalis Pharma US, Inc.	Consulting Fee	10/04/2013	\$167,265.00	No Third Party Payment	No	

Figure 6. The 2013 reported payments listing for David A. Kessler.

1. Cagnetta SJ, Ladd SK. First CMS attempt at transparency is remarkably cloudy. *Endovasc Today*. 2014;13:109-111.