Open Payments Update:
Will More Data + More Errors = More Physician Peril?

An early look at samples from the full 2014 Open Payments records suggests that physicians must be ready to review and dispute their records before they go public.

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On Monday, April 6, the Centers for Medicare & Medicaid Services (CMS) opened its Open Payments system to physicians so that they can review and potentially dispute data submitted for payments they supposedly received from industry in 2014. Our company, Primacea, has reviewed hundreds of data submissions from dozens of companies, and based on the results we have seen, physicians should quickly take action to ensure the accuracy of their data.

In this article, we describe actual stories from Primacea's experiences representing a variety of physicians during the first week of the review and dispute period. The identities of the physicians, their institutions, and their reporting organizations have been changed to protect all parties. We share each of these cases as illustrations of discrepancies in what a physician might assume will be listed in his or her Open Payments records versus what might actually be there. While the review period is scheduled to be open until May 20 (with no guarantee that it will be extended for downtime, as was the case last year), it is critical that physicians take the opportunity to register, review, and possibly dispute the payments attributed to them. However, as we'll describe, even the registration process is not necessarily straightforward.

EVEN HIGHER ERROR RATES ON MUCH MORE DATA

One physician discovered he had more than 125 entries totaling more than $500,000. Of those, only four (with a combined value of ~$4,100) were correct according to his records. He is disputing the other 121 entries. Ignoring this situation could very well bring a physician unwarranted national media attention and distressing conversations with his hospital and/or university conflict-of-interest organizations.

As we wrote in our January column this year, entitled, "Open Payments Errors Put Physicians in a Bad Light" (http://evtoday.com/2015/01/open-payments-errors-could-put-physicians-in-a-bad-light), about one-third of last year's reviewed records were in error. With an opportunity to learn and improve after the first reporting cycle, most would expect an improvement from this dismal start. Instead, early results point to a worsening situation.

Not only does the already-high error rate appear to be rising, but the number of transactions is soaring. Roughly 60% of 5 months of the 2013 data were published by CMS in the last cycle. With all of the 2014 data to be published in the current cycle, four times as many records and dollars could reasonably be expected. The early returns show as much as 10 times as many records for some physicians.

What accounts for the greatly increased reporting? Based on the early data we have evaluated, it appears that, in this period, some payments made to hospitals and other organizations may be listed instead as having been made to individual physicians. We have even seen instances of payment reports attributed to entities that appear to be completely unaffiliated with the named physicians.

HUGE GIFT? OR BRIBE?

The very first record we reviewed this year was an $85,000 payment from "DevXco" that was categorized as a gift. Perhaps the money was given to the physician's hospital? No. After checking with the physician's accountant, we learned that DevXco had acquired a firm that the physician had invested in 7 years earlier. A $75,000 investment in a startup firm yielded a $10,000 capital gain, best interpreted, in our opinion, as a modest return on a risky investment. The record, submitted as a "gift" by DevXco, however, could be interpreted by the press and the public as a bribe.

WHO GOT PAID?

The Chief Medical Officer of a contract research organization (CRO) in the spine surgery field was named on hundreds of records.

Although her organization billed and collected for millions of dollars of research, the CMO was named on roughly one-fifth of those payments, totaling nearly $1 million. There were two major inconsistencies in how these payments were reported that might apply to leading physicians in similar positions, so we highlight those here for consideration.

First, she was not listed on a single payment from any of these organizations in the published Open Payments records from 2013, at a time when payments to some of her colleagues were highlighted in the local and national press. However, she was shocked to find that, based on this year's disclosures, she might be viewed as one of the "highly paid docs" in future headlines.

Second, she was baffled as to why some firms ascribed all of their payments to her CRO, while others reported some payments in her name, and the rest attributed none to her. Industry may be interpreting its reporting obligations under Open Payments differently from company to company and even division to division.

This physician is currently disputing every payment to her CRO on the grounds that the recipient was neither a physician (she didn't receive any direct payments) nor a teaching hospital.

WAIT … WHAT PAYMENT?

A leading physician-innovator found hundreds of reported payments that totaled just over $1 million dollars. These payments were for consulting fees, royalties, and research. The physician serves as principal investigator on several clinical trials, and the research payments were made to a wide variety of hospitals conducting the trials.

Although the previously mentioned CRO's Chief Medical Officer was able to gain access to her organization's accounting records, this physician didn't even know the administrative people in the various hospital organizations that received research funds. He therefore had no way to confirm or deny the records, yet his name is attached to hundreds of thousands of dollars in payments for which he had no awareness of benefit.

The physician is planning to dispute every record of these payments as a means to, at minimum, understand whether they have any legitimacy and, at best, reduce the amount attributed to him to less than $1 million. He expressed surprise to Primacea that companies would, in effect, force him to do this and, as a result, be forced to respond to hundreds of disputes.

THESE ARE THE FORTUNATE PHYSICIANS

The physicians mentioned in these three stories are fortunate in that they have taken the opportunity to correct the errors and misrepresentations that might damage their reputations. Based on last year's experience, however, they are in a small minority of physicians: Only 5% of physicians registered to review and potentially dispute records like these.

LOCKOUTS AND CHALLENGES: DIFFICULTIES REVIEWING PHYSICIAN RECORDS

Physicians who previously navigated the challenging process of registering with Open Payments have been surprised to discover that their accounts have been locked this year. Why did this happen? The CMS Enterprise Portal locks every account that has no activity for 60 days or more. To unlock an account, physicians are told by CMS to go the CMS Enterprise Portal, enter their ID, and correctly answer all three challenge questions; they will then be prompted to enter a new password. Unfortunately, answering the three challenge questions often failed to unlock accounts. Physicians facing this plight must call the Open Payments Help Desk ([855] 326-8366), explain their situations, and be patient. Several tries are often required to establish a new password.

CMS Help Desk technicians have also explained to us that a large number of physicians were incorrectly notified that they failed a "vetting process" for Open Payments. This process compares physician-entered registration data to the public National Plan and Provider Enumeration System (NPPES) database; we therefore recommend copying and pasting physician information from the NPPES database into the Open Payments registration forms. Help Desk technicians have told Primacea to make sure that the entries match exactly, including "blanks and special characters." Despite registration records perfectly matching their NPPES data, some physicians cannot complete their registration until a new version of CMS software is released.

Figure 1. Error message screencap. The CMS website had multiple outages during the first week of the review period.

Compounding these problems, the CMS website was down on multiple occasions during the first week in which records were available for physicians to review. One 18-hour outage was described as "routine scheduled maintenance" (Figure 1). When asked if "stoppage time" would be added to the review and dispute period as was the case last year, CMS technicians replied, without hesitation, that there have been no discussions about that to date.

PHYSICIANS: PROTECT THYSELVES

As we wrote in this column a few months ago, "For the busy physician without any support, getting pre- pared may seem like a daunting task. However, the alternative (misguided press coverage, investigations, etc.) is no doubt worse."

The cases described in this article are not intended to cast parties on either side of the reporting process in a negative light, but rather to illustrate possible dis- crepancies in interpretations of the legislation, some key variables in the process, and especially, the need for physicians to carefully review their data during the des- ignated period.

In our next article, we aim to describe a process that makes it easier for physicians to review and dispute Open Payments records. ■

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

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