

**AB-1278 Physicians and surgeons: payment or transfer of value: disclosure: notice.** (2021-2022)SHARE THIS: **Date Published: 04/15/2021 09:00 PM**

AMENDED IN ASSEMBLY APRIL 15, 2021

AMENDED IN ASSEMBLY MARCH 17, 2021

CALIFORNIA LEGISLATURE—2021–2022 REGULAR SESSION

ASSEMBLY BILL**NO. 1278****Introduced by Assembly Member Nazarian****February 19, 2021**

An act to add Article 6.5 (commencing with Section 660) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, as amended, Nazarian. Physicians and surgeons: ~~payments:~~ *payment or transfer of value:* disclosure: notice.

Existing law, the Medical Practice Act, establishes the Medical Board of California within the Department of Consumer Affairs and sets forth its powers and duties relating to the licensure and regulation of physicians and surgeons. Existing law establishes the Osteopathic Medical Board of California within the department and sets forth its powers and duties relating to the licensure and regulation of osteopathic physicians and surgeons.

Existing federal law known as the Open Payments program requires, among other things, applicable manufacturers of drugs, devices, and biological or medical supplies to annually report to the federal Secretary of Health and Human Services certain payments and other transfers of value made to covered recipients, as defined.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices, and is administered by the State Department of Public Health. That existing law specifically regulates drug marketing practices and requires a pharmaceutical company to adopt and update a program that includes policies on interactions with health care professionals and limits on gifts and incentives to medical or health professionals, as defined. Existing law requires each pharmaceutical company to establish in its program a specific annual dollar limit on gifts, promotional materials, or items or activities that the pharmaceutical company may give or otherwise provide to an individual medical or health care professional, with certain exemptions.

This bill would require a physician and surgeon, defined to include a physician and surgeon licensed pursuant to the Medical Practice Act or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California under the Osteopathic Act, who receives ~~remuneration~~ *a payment or transfer of value* from a drug or

device company, to disclose the source of the ~~remuneration orally and~~ *payment or transfer of value* in writing to each patient or patient representative prior to the intended use or prescription of a device or drug manufactured or distributed by the company, as prescribed.

This bill would require a physician and surgeon to post an open payments database notice, as described, in each location where the licensee practices and in an area that is likely to be seen by all persons who enter the office. The bill would require a physician and surgeon to conspicuously post the same open payments database notice on the internet website used for the physician and surgeon's practice. If the physician and surgeon is employed by a health care employer, the bill would instead require a health care employer to comply with these posting requirements.

This bill would define other terms for its purposes. A violation of the bill's provisions would constitute unprofessional conduct. The bill would specify that these provisions do not apply to a physician and surgeon working in a hospital emergency room.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 6.5 (commencing with Section 660) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 6.5. Open Payments Database Notices

660. For purposes of this article, all of the following definitions apply:

(a) "Drug or device company" means a manufacturer, developer, or distributor of pharmaceutical drugs or any device used in the context of the physician and surgeon's or osteopathic physician and surgeon's practice.

(b) "Health care employer" means an employer that provides health care services and that employs a physician and surgeon or an osteopathic physician and surgeon.

(c) "Open payments database" means the database created to allow the public to search for data provided pursuant to Section 1320a-7h of Title 42 of the United States Code and that is maintained by the federal Centers for Medicare and Medicaid Services.

(d) "Physician and surgeon" includes a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000)) or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California under the Osteopathic Act.

661. (a) A physician and surgeon who receives ~~remuneration orally and~~ *payment or transfer of value* from a drug or device company shall disclose the source of the ~~remuneration orally and~~ *payment or transfer of value* in writing to each patient or patient representative prior to the intended use or prescription of a device or drug manufactured or distributed by the company. The disclosure shall cover any ~~remuneration~~ *payment or transfer of value* received on or after January 1, 2014. The written disclosure shall include a signature from the patient or patient representative and the date of signature.

(b) The written disclosure pursuant to subdivision (a) shall contain the following text:

"If you would like further details on the information provided above you may discuss with Dr. _____ and/or visit openpaymentsdata.cms.gov, a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals."

(c) A physician and surgeon shall include in the written or electronic records for the patient a record of disclosure pursuant to this section.

(d) A physician and surgeon shall give to the patient or patient representative a copy of the signed and dated disclosure.

662. (a) (1) Notwithstanding any law, except as provided in subdivision (c), a physician and surgeon shall post in each location where the physician and surgeon practices, in an area that is likely to be seen by all persons who enter the office, an open payments database notice.

(2) The open payments database notice described in paragraph (1) shall include both of the following:

(A) An internet website link to the open payments database.

(B) The following text:

"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."

(b) Except as provided in subdivision (c), a physician and surgeon shall conspicuously post the open payments database notice described in subdivision (a) on the internet website used for the physician and surgeon's practice.

(c) Notwithstanding subdivisions (a) and (b), if a physician and surgeon subject to this section is employed by a health care employer, the health care employer shall be responsible for meeting the requirements of this section.

(d) A posting required by this section may be placed within the same notice posted by the physician and surgeon in accordance with Section 138 or 2026.

663. A violation of this article shall constitute unprofessional conduct.

664. This article does not apply to a physician and surgeon working in a hospital emergency room.