RESOLUTION 73-19

Title: Centers for Medicare and Medicaid Services Open Payments Program

Introduced by: Lee Begrow, DO, for the Kent County Delegation

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Referred to: Reference Committee A

House Action: **APPROVED**

Whereas, the Physician Payments Sunshine Act (Sunshine Act) was enacted along with the 2010 Patient Protection and Affordable Care Act[1], and

Whereas, the Sunshine Act is a law that was designed to increase transparency of financial relationships between physicians, teaching hospitals, and manufacturers of drugs, medical devices, biologics, and medical supplies and to uncover potential conflicts of interest by disclosing this information to the public, and

Whereas, the Sunshine Act requires manufacturers of drugs, medical devices, biologics, and medical supplies covered by the three federal health care programs, Medicare, Medicaid, and the State Children's Health Insurance Program (SCHIP), to collect and track all financial relationships with physicians and teaching hospitals and to report these data to the Centers for Medicare and Medicaid Services (CMS), and

Whereas, the Centers for Medicare and Medicaid Services (CMS) fulfills the law's mandate through the CMS Open Payments Program as a national disclosure program, and

Whereas, on September 30, 2014, CMS reported payment information on its Open Payments Program website for the first time, reporting attribution of payments data from 2012[2], and

Whereas, the CMS Open Payments Program data may be inaccurate due to erroneous reporting of the payment amount, payment reason, and/or name of the physician receiving the payment, and

Whereas, inaccurate reporting may reflect unfairly on a physician's reputation and/or employment arrangement, including inaccurate reporting of potential conflicts of interest, and

Whereas, understanding how payments are attributed and what may be legally recorded by the pharmaceutical companies is important to protect physicians, and

Whereas, in 2013, the American Medical Association (AMA) offered physicians training to understand the Sunshine Act and its implications, and

Whereas, many physicians are unaware of the potential need to check the CMS Open Payments Program website and review any attributed payments to avoid any inaccurate potential conflicts of interest, and

Whereas, the available time frame to review and dispute these payments is limited to the calendar year in which the attributed payment is reported, and

Whereas, the process for disputing payments is time consuming to complete, and

Whereas, the pharmaceutical companies are listed on the site with only payments to physicians or teaching hospitals listed, and

Whereas, some states are allowing pharmacists to prescribe some medications, either as a direct legal change in the laws of that state or as a potential delegated option by physicians, and

Whereas, the prescribing of medications and/or the prior authorization process may increasingly be directly influenced by pharmacists and Pharmacy Benefit Managers (PBMs), and

Whereas, pharmacists and PBMs are not reported for the attribution of any payments within the CMS Open Payments Program in spite of the increasing influence of pharmacists and/or PBMs on the prescribing habits of physicians and teaching hospitals; therefore be it

RESOLVED: That MSMS provide education to physicians about the Physician Payments Sunshine Act of 2010 and the resultant Center for Medicare and Medicaid Services Open Payments Program, including the importance of monitoring and disputing inaccurate data; and be it further

RESOLVED: That the Michigan Delegation to the American Medical Association (AMA) ask our AMA to again offer physicians training to understand the Sunshine Act and its implications in light of recent public disclosure of the Centers of Medicare and Medicaid (CMS) Open Payments Program website; and be it further

RESOLVED: That the Michigan Delegation to the American Medical Association (AMA) ask our AMA to urge the Centers for Medicare and Medicaid Services to extend the scope of reporting payments to include pharmacists and Pharmacy Benefit Managers (PBMs), especially as pharmacists and PBMs continue to expand their influence on the prescribing of medications.

WAYS AND MEANS COMMITTEE FISCAL NOTE: $5,000 or more as the resolution requires MSMS to assemble resources and engage in messaging. Additionally, there are minimal administrative costs related to the submission of resolutions to the AMA HOD.

Relevant MSMS Policy: None

Relevant AMA Policy:

Physician Payments Sunshine Act H-140.848
1. Our AMA will continue its efforts to minimize the burden and unauthorized expansion of the Sunshine Act by the Centers for Medicare & Medicaid Services (CMS) and will recommend to the CMS that a physician comment section be included on the "Physician Payments Sunshine Act" public database.
2. Our AMA will lobby Congress to amend the Sunshine Act to limit transfer of value reporting to items with a value of greater than $100.
3. Our AMA will advocate that: (a) (i) any payment or transfer of value reported as part of the Physician Payments Sunshine Act should include whether the physician acknowledged receipt of said payment or transfer of value, and (ii) each payment or transfer of value on the Open Payments website indicates whether the physician verified the payment or transfer of value; and (b) a contested reported payment or transfer of value should be removed immediately from the Open Payments website until the reporting company validates the compensation with verifiable documentation.

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[1] Sunshine Act: "S.301 - Physician Payments Sunshine Act of 2009 - 111th Congress (2009-2010)". Library of Congress (Congress.gov). 2009. Accessed 02-16-2019.
[2] Centers for Medicare and Medicaid Services (CMS) Open Payments Act: https://www.cms.gov/openpayments.