

# The Physician Payments Sunshine Act



## Health Policy Brief |

Reforms to the Sunshine Act are needed to shed light on payments made to patient groups and free drug samples, both of which increase spending on high priced drugs.

### THE ISSUE

The Sunshine Act, enacted as part of the Affordable Care Act in 2010, requires physicians to report to the federal government gifts from pharmaceutical and device companies that are greater than \$100. This information is publicly available on the Open Payments database and is intended to inform consumers about whether their physicians have potential conflicts of interest.<sup>1</sup> The data contain nearly 52 million records totaling about \$33 billion in payments over the August 2013 through December 2017 period.<sup>2</sup>

The law, however, is not comprehensive and does not require reporting of all the ways that pharmaceutical manufacturers influence both providers and the policy process. Patient groups, which have been rising in influence, are not required to report funding by pharmaceutical companies. Additionally, healthcare professionals, including physicians, are not required to report free samples of drugs they receive from companies.

**\$162M**

The amount that more than two dozen pharmaceutical companies paid to patient groups in 2015

**\$6B**

What pharmaceutical companies spent on free samples provided to physicians in 2012

**83%**

The percentage of US-based patient advocacy organizations that receive financial support from drug, device, and biotechnology companies

### THE EVIDENCE

*Payments to Patient Groups.* Patient groups can act as de-facto lobbyists for pharmaceutical companies and advocate for policies that do not lower drug prices. Patients testify at congressional hearings, meet with lawmakers, and provide grassroots influence for legislation.<sup>3,4</sup> It is critical to know these groups' funding sources to understand potential biases when they advocate for particular policy changes.

A Kaiser Health News (KHN) database that tracks some of these payments has found that, in 2015, 26 pharmaceutical companies paid over \$162 million to patient groups.<sup>5</sup> Since this information is not required to be reported systematically and can be difficult to collect currently, it is likely that the KHN data are not reflecting all payments. In fact, a study found that 83 percent of patient groups take money from drug companies.<sup>6</sup>

*Free Drug Samples.* Samples influence consumer demand for, and prescribing of higher cost brand medications, essentially acting as direct marketing by pharmaceutical manufacturers.<sup>7</sup> It was estimated that, in 2012, pharmaceutical companies spent nearly \$6 billion on free samples provided to physicians, making up over 20 percent of total marketing spend in that year.<sup>8</sup> Studies have found that physicians are more likely to prescribe medications that they have received as samples.<sup>9,10</sup>

### THE SOLUTION

In order to reinforce the Sunshine Act and provide consumers and lawmakers with a more complete picture of potential conflicts of interest, manufacturer payments to patient groups and the value of free samples should be added to current reporting requirements. *The Patient Advocacy Transparency Act* (S. 3000, 115<sup>th</sup> Congress), would add advocacy organizations to the Sunshine Act reporting requirements.<sup>11</sup> The value of free drug samples should be added to this reporting structure and legislation should define how this value is calculated so data are reported consistently using the same pricing metrics across drugs.

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<sup>1</sup> <https://openpaymentsdata.cms.gov/> [Accessed 3/20/2019]

<sup>2</sup> *Id.*

<sup>3</sup> <https://khn.org/news/patient-advocacy-groups-take-in-millions-from-drugmakers-is-there-a-payback/>

<sup>4</sup> <https://khn.org/news/drugmakers-help-turn-patients-with-rare-diseases-into-d-c-lobbyists/>

<sup>5</sup> <https://khn.org/patient-advocacy/#>

<sup>6</sup> McCoy, Matthew S., et al. "Conflicts of interest for patient-advocacy organizations." *New England Journal of Medicine* 376.9 (2017): 880-885.

<sup>7</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4274368/>

<sup>8</sup> <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2013/11/11/persuading-the-prescribers-pharmaceutical-industry-marketing-and-its-influence-on-physicians-and-patients>

<sup>9</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2957394/>

<sup>10</sup> <https://onlinelibrary.wiley.com/doi/abs/10.1046/j.1365-2710.2003.00481.x?sid=nlm%3Apubmed&>

<sup>11</sup> <https://www.congress.gov/bill/115th-congress/senate-bill/3000/text?q=%7B%22search%22%3A%5B%22Patient+Advocacy+Transparency+Act+of+2018%22%5D%7D&r=8&s=2>