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AB-1278 Physicians and surgeons: payments: disclosure: notice. (2021-2022)

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Assembly Bill No. 1278

CHAPTER 750

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.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1278, Nazarian. Physicians and surgeons: payments: 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. The federal Centers for Medicare and Medicaid Services makes this Open Payments data available to the public via a federal government internet website.

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, to provide to a patient at the initial office visit a written or electronic notice of the Open Payments database, 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, beginning January 1, 2024, 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 such a website is used, except as provided. If the physician and surgeon is employed by a health care employer, the bill would instead require the 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 shall provide to each patient at the initial office visit a written or electronic notice of the Open Payments database. The written notice shall include a signature from the patient or a patient representative and the date of signature.

(b) The written or electronic notice shall contain the following text:

"The Open Payments database is a federal tool used to search payments made by drug and device companies to physicians and teaching hospitals. It can be found at <https://openpaymentsdata.cms.gov>."

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

(d) If a physician and surgeon does not maintain electronic records, the physician and surgeon shall include the notice pursuant to this section in the written records.

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

663. (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) Beginning January 1, 2024, if an internet website is used for a physician and surgeon's practice, then the physician and surgeon shall conspicuously post the Open Payments database notice described in subdivision (a) on that internet website, except as otherwise authorized under subdivision (c).

(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.

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

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