

# PUBLICATION

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## Open Payments Update: End of CME Exception for Sunshine Reporting [Ober|Kaler]

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**On July 17, 2015, CMS announced updates to the Law and Policy page on the Open Payments website to provide additional guidance regarding the termination of the continuing medical education (CME) exception for reporting under the Sunshine Act. CMS had announced this change in the 2015 Medicare Physician Fee Schedule final rule [PDF].**

Under the Sunshine Act, or Open Payments program, drug and device manufacturers are required to submit annual reports to CMS of virtually all payments and other transfers of value to physicians and teaching hospitals. (*For a more detailed discussion of the Physician Payment Sunshine Act, see "[Physician Payment Sunshine Rule is Finalized](#)."*) During the initial years of the Open Payments program, CMS permitted covered entities to make contributions to certain qualified organizations to provide CME to physicians without having to disclose those contributions. CMS is terminating the CME exception, effective for contributions made in 2016 that will be reported to CMS in 2017.

On the Law and Policy page, CMS summarizes its deletion of the CME exemption which had previously allowed for unreported compensation to physician speakers at accredited or certified continuing education events. CMS contends that it took this step to be more consistent in its reporting requirements and to add clarity for consumers who review the Open Payments data.

Indirect payments or other transfers of value occur when an applicable manufacturer (or other covered entity) requires, directs, instructs, or otherwise causes a third party to pay a covered recipient. Starting in 2016, applicable manufacturers that make indirect payments or other transfers of value to continuing medical education organizations for physician-related CME must report those payments as long as the identity of the physician attendees and speakers are made available within the reporting year, or by the end of the second quarter of the following reporting year. CMS directs interested persons to its Frequently Asked Questions page and emphasizes that direct payments, those between applicable manufacturers and physicians or teaching hospitals, still need to be reported according to the requirements.

CMS further notes that reporting of payments or transfers of value which related to a covered or non-covered drug, device, biological, or medical supply will need to include the marketed name and therapeutic area or product category. CMS's stated goal for this requirement is to facilitate consistent reporting for researchers and consumers who rely on the Open Payments data.