

The Sunshine Act and Health Care Transparency

In response to consumer complaints that industry compensation paid to physicians, estimated at \$20 to \$57 billion each year,¹ may influence their choice of prescription drugs or treatment plans, the Affordable Care Act of 2010 (ACA) requires healthcare industry payments made to physicians to be publicly disclosed under the Physicians Payments Sunshine Act,² which was finalized this month by the Centers for Medicare and Medicaid Services (CMS). While the intent of the Sunshine Act is to deter industry influence on medical treatment, some physicians are concerned that the provisions will unfairly taint legitimate work they do for the healthcare industry.³

CMS has stated that “...disclosure of [physician-industry] relationships will discourage the inappropriate influence on clinical decision-making that sometimes occurs while still allowing legitimate partnerships,”⁴ e.g., clinical trial research. However, physicians acknowledge that even legitimate relationships are subject to undue influence as industry sway in medical research ultimately affects the practice of medicine based on research outcomes.⁵ Many states have already responded to consumer concerns by requiring disclosures of gifts in hopes that physicians receiving benefits from the healthcare industry will not be incentivized to prescribe more expensive products.

The Sunshine Act requires manufacturers of drugs, devices, biological and medical supplies covered by Medicare, Medicaid, or the Children’s Health Insurance Program to report to CMS those payments or other “transfers of value” they make to physicians or teaching hospitals.⁶ Transfers of value can include consulting fees, food, travel, education, research, or direct compensation for speaking at a medical continuing education (CME) program. The Sunshine Act also requires group purchasing organizations to disclose to CMS physician ownership or investment interests. These violations of the Sunshine Act will be subject to civil monetary penalties not to exceed \$150,000 annually for failure to report, and \$1,000,000 annually for knowingly failing to report.⁷

These provisions prompted more than 300 comments from stakeholders during the 2012 notice and comment period.⁸ Of particular concern were mandatory disclosures of payments made, directly or indirectly, to physicians speaking at CME programs. However, the final provisions of the Sunshine Act do not mandate

company reporting for payments made to speakers at accredited CME events if the companies do not select the speakers, or if they do not pay them directly.⁹ Also of concern were the lengthy delays in implementation, prompting several prominent academic physicians to appeal to the White House, urging prompt passage of the Sunshine Act.¹⁰ The letter cited various research, including a recent survey published in the *Journal of the American Medical Association* suggesting that more than a third of physicians “sometimes or often” prescribe brand-name drugs in place of generics despite patient requests, and physicians are more likely to do so if they receive food, beverages or drug samples from pharmaceutical manufacturers.¹¹

The Sunshine Act becomes effective 60 days after the February 8, 2013 publication of the Final Rule. Applicable manufacturers and group purchasing organizations must collect data, beginning on August 1, 2013, and report the requisite payment to CMS by March 31, 2014. With certain industry compensation information being made public, obtaining a certified opinion of value that the compensation paid to the physician for services actually rendered is at fair market value (FMV) and is commercially reasonable will likely become increasingly important going forward.

- 1 “Ain’t No Sunshine Yet for Docs,” Jenny Gold, Kaiser Health News, May 7, 2012, <http://capsules.kaiserhealthnews.org/index.php/2012/05/aint-no-sunshine-yet-for-docs/> (Accessed 2/19/2013).
- 2 “Patient Protection and Affordable Care Act” Pub. Law 111-148, 124 STAT 689 (March 23, 2010).
- 3 “New Health Law Will Require Industry to Disclose Payments to Physicians,” Arlene Weintraub, Kaiser Health News, April 26, 2012, <http://www.kaiserhealthnews.org/stories/2010/april/26/physician-payment-disclosures.aspx> (Accessed 2/19/2013).
- 4 “Affordable Care Act Sunshine Rule Increases Transparency in Health Care,” CMS Press Release, December 14, 2011, <https://www.cms.gov/apps/media/press/release.asp?Counter=4220&intNumPerPage=10&checkDate=&checkKey=2&srchType=2&numDays=0&srchOpt=0&srchData=transparency&keywordType=All&chkNewsType=1%2C+2%2C+3%2C+4%2C+5&intPage=&showAll=1&pYear=1&year=2011&desc=&cboOrder=date> (Accessed 2/19/2013).
- 5 “What the Sunshine Act Means for Health Care Transparency,” Alice Dreger, The Atlantic, February 6, 2013, <http://www.theatlantic.com/health/archive/2013/02/what-the-sunshine-act-means-for-health-care-transparency/272926/> (Accessed 2/19/2013).
- 6 CMS, “Affordable Care Act Sunshine Rule Increases Transparency in Health Care,” December 14, 2011.
- 7 *Ibid.*

- 8 Gold, May 7, 2012.
- 9 “Medicare, Medicaid, Children’s Health Insurance Programs; Transparency Reports and Reporting of Physician Ownership or Investment Interests,” Centers for Medicare & Medicaid, Federal Register Vol. 78, No. 27, February 8, 2013, p. 9461.
- 10 Letter from Marcia Angell, Editor-in-Chief, New England Journal of Medicine to the White House, January 13, 2013, <http://freepdfhosting.com/fe8035359b.pdf> (Accessed 2/19/2013).
- 11 “Physician Acquiescence to Patient Demands for Brand-Name Drugs: Results of a National Survey for Physicians,” Journal of the American Medical Association Internal Medicine, Vol. 173, No. 3, p. 237-239, <http://archinte.jamanetwork.com/article.aspx?articleid=1555818> (Accessed 2/24/13)



(800) FYI - VALU

*Providing Solutions
in the Era of
Healthcare Reform*

Founded in 1993, HCC is a
nationally recognized healthcare
economic financial consulting firm

- [HCC Home](#)
- [Firm Profile](#)
- [HCC Services](#)
- [HCC Experts](#)
- [Clients Projects](#)
- [HCC News](#)
- [Upcoming Events](#)
- [Contact Us](#)
- [Email Us](#)

HEALTH CAPITAL CONSULTANTS (HCC) is an established, nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, Missouri, with regional personnel nationwide. Founded in 1993, HCC has served clients in over 45 states, in providing services including: valuation in all healthcare sectors; financial analysis, including the development of forecasts, budgets and income distribution plans; healthcare provider related intermediary services, including integration, affiliation, acquisition and divestiture; Certificate of Need (CON) and regulatory consulting; litigation support and expert witness services; and, industry research services for healthcare providers and their advisors. HCC's accredited professionals are supported by an experienced research and library support staff to maintain a thorough and extensive knowledge of the healthcare reimbursement, regulatory, technological and competitive environment.



Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as Chief Executive Officer of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“Accountable Care Organizations: Value Metrics and Capital Formation”* [2013 - Taylor & Francis, a division of CRC Press], *“The Adviser’s Guide to Healthcare”* – Vols. I, II & III [2010 – AICPA], and *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books]. His most recent book, entitled *“Healthcare Valuation: The Financial Appraisal of Enterprises, Assets, and Services”* will be published by John Wiley & Sons in the Fall of 2013.

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows. In 2011, he was named a Fellow of the Royal Institution of Chartered Surveyors (RICS).



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives, and serves as President of the St. Louis Chapter of the American Society of Appraisers (ASA). He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser’s Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Executive Vice President & General Counsel of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the Journal of Health Law, published by the American Health Lawyers Association. Ms. Sharamitaro has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.