

SAMPLE ANTITRUST COMPLIANCE REFRESHER HANDOUT

_____ wants to take this opportunity to remind you of our obligations to comply with federal and state antitrust laws and refrain from anti-competitive behavior. Below are examples of potentially problematic activities to avoid. If you are asked to participate in any of these types of activities whether by someone internally or externally, please notify

_____. If you have any questions regarding whether a certain practice is allowable, please reach out to _____.

Federal and state law prohibits certain conduct that has anti-competitive effects and can harm consumers. Below are common examples of anti-competitive behavior in the health care industry which can lead to antitrust violations.

1. **Information Sharing.** Information sharing among competitors can lead to antitrust violations. This includes sharing detailed information on the prices charged for services, the prices we pay for services from vendors, and the wages and benefits we pay employees. Information sharing can lead to “price fixing” which is a per se violation of the antitrust laws. An explicit agreement among competitors is not required.

AVOID:

- Asking another employer to share wage or benefits data;
- Providing our wage or benefits data to another employer;
- Sharing the prices we charge with other providers or requesting another provider’s price data; and
- Sharing what we pay for specific items and services with another purchaser of those items and services or requesting another party provide you with similar data.

If you receive a third party request for data, such as a request to participate in a salary survey, please forward the request to _____. We evaluate these types of requests to determine whether the request is legitimate and avoid antitrust issues.

2. **Group Boycott.** Organizing, or sharing an intention to boycott an insurer, vendor, supplier, contractor or other third party can lead to antitrust violations. For example, it would be inappropriate for us to communicate with competitors our desire for us all to decline to sign new payer agreements with a commercial insurer. Even sharing our intention to reject a new agreement or fee schedule can be problematic.

AVOID:

- Encouraging others not to do business with or sign new agreements with third parties, such as payers, vendors, or contractors.
- Providing others outside our organization with specific information on our plans relating to signing new agreements with payers, vendors or contractors.

If you receive a third party request for information on our contracting plans or concerns, please forward the request to _____. In some cases, we may share our general concerns regarding third party contracts with a trade association or other organization acting on our behalf after review to ensure doing so avoids antitrust issues.

3. **Restrictive Covenants.** Agreements between competitors to refrain from engaging in otherwise competitive activities, such as agreeing to no-poaching agreements or geographic or service limitations is also anti-competitive behavior which can lead to antitrust violations.

AVOID:

- Agreeing with another employer not to hire or interview their employees;
- Agreeing with a competitor not to offer particular services or market or provide services within their specific territory.

There are times when non-solicitation or non-competition provisions are legitimate and may be agreed to such as if the parties are contracting for specific services and the restrictive covenant is reasonable and incorporated into and made part of the written agreement. If you receive a request for a non-solicitation or non-competition agreement, please forward to

_____.

4. **Joint Purchasing.** Agreements between competitors with a common vendor, supplier or contractor can also create antitrust compliance issues as they can drive prices below competitive levels or lead to price fixing. Before engaging in any joint contracting, please contact _____ to ensure the arrangement is appropriate.

AVOID:

- Requesting other providers enter into joint negotiations with a third party vendor, supplier or contractor without first receiving approval of _____ and the vendor, supplier or contractor involved.

If you have any questions regarding whether a particular request or arrangement raises antitrust concerns, do not hesitate to reach out to _____.

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