

## ANTITRUST COMPLIANCE POLICY

June 11, 2012

### A. Scope and Applicability

This Antitrust Compliance Policy is designed to provide direction to QHP and its participating physicians. QHP's participating physicians may be actual or potential competitors of one another. QHP may collectively negotiate with third party payors on behalf of QHP participating providers who are integrated through participation in QHP's clinical integration program ("CIP") for the rates that third party payors will pay QHP and its participating providers for services rendered to the payors' beneficiaries on the basis of clinical integration.

**Clinical integration** means an active and ongoing program (i) to evaluate and modify practice patterns of the participants and (ii) to create a high degree of interdependence and cooperation among the participants to control costs and ensure quality. However, QHP and its participating physicians must ensure that their activities within QHP's CIP do not "spill over" into areas beyond the scope of their collaborative arrangement.

The purpose of this Antitrust Compliance Policy is to minimize QHP's and its participating physicians' liability for anticompetitive conduct. Failure to comply with federal and state antitrust laws could result in serious consequences for QHP and its participating physicians. Violations of many antitrust laws are criminal violations, subjecting QHP, its participating physicians and individuals to heavy fines (\$100 million or more per company; as much as \$1 million per individual) and individuals to possible imprisonment (up to 10 years). In addition, QHP and its participating physicians may be required to pay treble damages and may be permanently enjoined from engaging in the offending activity in the future.

### B. Unlawful Agreements

QHP participating physicians will risk antitrust liability for conduct that is not ancillary to and reasonably necessary to achieve the QHP's legitimate procompetitive objectives. In other words, participating physicians must continue to compete with one another outside of the limited context of their CIP.

The antitrust laws prohibit agreements, conspiracies and understandings among competitors that unreasonably restrain competition. Unlawful agreements among competitors encompass a wide variety of understandings that may be formal or informal, explicit or implicit, and do not even require any verbal exchange. Below are some examples of anticompetitive agreements or conspiracies that QHP and its participating physicians may not enter into.

#### 1. Agreements Regarding Price and Other Matters

Unlawful agreements include "naked" price fixing, which is an agreement on price that is not reasonably necessary to achieve the underlying business purposes of a pro-competitive arrangement between the parties, such as QHP's CIP. Any price-fixing agreement among QHP

participating providers who are actual or potential competitors for services outside of the context of QHP's CIP (or another legitimate collaborative arrangement between the parties pursuant to which an agreement on price would be ancillary) would be considered an unlawful price-fixing agreement. Price-fixing is any understanding whatsoever between competitors with respect to price or any element of price (e.g., discounts). For example, an agreement among competitors to adhere to a specific formula for determining price is just as unlawful as an agreement on the price itself.

### ***Examples of Prohibited Price-Fixing Agreements***

- For services rendered by actual or potential competitors outside of the context of QHP's CIP (or another legitimate joint venture):
  - Jointly negotiating managed care agreements
  - Agreeing on the prices that each QHP participating provider will charge patients or payors, such as each participating provider's chargemaster or price list
  - Agreeing on the payment methodology (e.g., discount off of charges) that will be the basis for each QHP participating provider's contracting with payors
  - Agreeing on the discount or other price offered to payors
  - Agreeing to use a common formula or methodology to set prices (or to refuse to accept a certain reimbursement methodology)
  - Adopting a common starting price level for negotiations
  - Establishing maximum or minimum reimbursement rates
  - Raising, lowering or holding prices or discounts
  - "Calling a truce" on price competition
- Coordinating wages and salaries for any employees of competing practices

## **2. Allocating Services or Service Areas**

Unlawful agreements also include dividing or allocating service areas or agreeing to the specific services each competing QHP participating physician practice will provide.

### ***Examples of Prohibited Allocation Agreements***

- Allocation accounts (e.g., agreements that one or more QHP participating providers will market only to certain payors and that other QHP participating providers will market only to other payors)
- Allocating territories (e.g., agreements that one or more QHP participating providers will establish practice locations within a certain geographic region and market their services only in that area, and that other QHP participating provider practices will be located in another geographic area and market their services only in that geographic area)
- Agreements to discontinue any services
- Allocating services between competing QHP participating physician practices (e.g., agreements that one or more QHP participating providers will provide one category of ancillary services and that the other QHP participating provider practices will provide another category of ancillary services only, so that there is no competition between the two groups for those ancillary services)
- Agree to contract exclusively with specified payors or types of payors

### **3. Refusals to Deal**

The antitrust laws also limit competitors' abilities to agree among each other to refuse to deal, or to deal only on specific terms, with particular payors.

### ***Examples of Unlawful Refusals to Deal***

- Refusing to do business with certain payors with the expectation or understanding that the other QHP participating providers will do the same
- Refusing to deal with certain physicians or their organizations

### **C. Information Sharing**

An unlawful agreement may often be no more than an informal understanding based on the sharing of competitive information, which naturally tends to produce uniform action. For this reason, QHP participating physicians may not exchange or discuss any competitively sensitive information about their respective practices. If a QHP participating physician attempts to discuss such information, that discussion should be immediately terminated.

In order to remain above suspicion, below are categories of information that QHP participating physician practices should never exchange and subjects they should never discuss.

***Subjects Never to Discuss and Information Never to Exchange***

- Information relating to current or future price lists or prices, discounts or other competitive terms or conditions of contracting for services contracted outside of QHP
- Information relating to costs, profits or other financial information, including financial projections, for QHP participating physician practices
- Information relating to service areas, markets or shares of the QHP participating physician practices
- Information with respect to wages or salaries of professional or nonprofessional staff of the QHP participating physician practices
- Information relating to marketing or strategic planning information for the QHP participating physician practices
- Any plans to discontinue services or to offer new patient services
- Any other information that would *not* be shared with a competitor

**D. Non-Exclusivity**

QHP is a non-exclusive contracting network. This means that payors, if they choose to contract only with one or more – but not all – of the QHP participating physicians, may contract individually (or through another network) with one or more of the QHP participating physicians and not with QHP on behalf of all of the QHP participating physicians. QHP participating physicians are permitted to contract independently of QHP (either individually or through another network) with payors that do not hold contracts with QHP.

If a payor attempts to contract independently with only a portion of QHP’s physicians, QHP should not deny that opportunity to payors. Instead, QHP should attempt to persuade the payor that the entire QHP network will provide more advantages than a subset of QHP’s membership – in terms of geographic coverage, cost control, or higher quality, for example. Further, QHP should communicate in writing to those participating providers that they are free to contract independently with the payor, and should remind those participating providers that they must make such participation decisions independently and without consulting with other competing physicians. QHP may also provide talking points to the physicians for discussions with payors regarding the advantages of QHP and data to demonstrate the quality and cost-effectiveness of QHP’s entire network and CIP.

**E. Minimizing Overinclusion Risk**

The formation of QHP’s network would raise antitrust issues if too large a percentage of area physicians were permitted to participate. If such overinclusiveness allows QHP to exercise “market power” by raising prices above competitive levels, or prevents competing networks

from forming, QHP could face antitrust liability. QHP is monitoring its network composition with respect to compliance on an ongoing basis.

## **F. Communications**

Since an agreement may be inferred from circumstantial evidence, conversations and memoranda, QHP employees, officers, directors and participating physicians should draft all documents (*e.g.*, e-mails, letters, reports and memoranda) to convey a precise meaning. QHP employees, officers, directors and participating physicians should articulate the pro-competitive purposes of QHP's activities such as improving the quality of care and reducing the cost of care in all oral and written communications. Numerous executives have brought scrutiny to their organizations by mischaracterizing the intent or purpose of a given strategic endeavor, as follows:

### ***Examples of Executive Quotes in Select FTC Proceedings***

- “By buying [Wild Oats] we will . . . avoid nasty price wars in [several] cities which will harm [Whole Foods’] gross margins and profitability. By buying [Wild Oats] . . . we eliminate forever the possibility of Kroger, Super Value, or Safeway using their brand equity to launch a competing national natural/organic food chain to rival us. . . . [Wild Oats] may not be able to defeat us but they can still hurt us . . . . [Wild Oats] is the only existing company that has the brand and number of stores to be a meaningful springboard for another player to get into this space. Eliminating them means eliminating this threat forever, or almost forever.” - Whole Foods’ Chief Executive Officer John Mackey
- “Through our growth initiatives, we will expand our presence in our marketplace in order to provide leverage to our market position as we negotiate relationships with purchasers of care. Our goal will be to receive superior pricing for our services and to become indispensable to the purchaser of care as they sell their product in our marketplace.” - Jeffrey Hillebrand, Evanston Northwestern Healthcare COO

The following chart sets forth examples of words and phrases that could lead to mischaracterization of the purpose and effect of QHP’s activities and, therefore, should be avoided.

<b>Category</b>	<b>Words, Phrases and Conduct to Avoid</b>	<b>Reason to Avoid</b>
<b>GUILTY WORDS</b>	“Destroy after reading,” “no copies,” “for your eyes only”	Casts suspicion on the activity
<b>POWER WORDS</b>	“Control,” “dominate,” “dominance,” “dominant position”	Suggests abuse of power
<b>NEGOTIATING POWER</b>	“Increased bargaining power,” “dominant position,” “leverage”, “clout”	Suggests power to increase profits
<b>PHRASES SUGGESTING NO REALISTIC COMPETITORS</b>	“Only seller,” “essential seller”	Suggests no choice and power to raise prices
<b>WORDS OF DESTRUCTION</b>	“Eliminate,” “destroy,” “obliterate,” “annihilate”	Suggests an intent to destroy or injure
<b>WORDS DEFINING MARKETS OR MARKET SHARE</b>	“75% of the [Service X] market”	Probably too narrow a market from an antitrust perspective
<b>WORDS SUGGESTING AGREEMENT RATHER THAN COMPETITION</b>	“Collaborate,” “collaboration,” “gentlemen’s agreement,” “partnering”	May imply an unlawful conspiracy
<b>WORDS SUGGESTING ELIMINATION OR END OF COMPETITION OR CHOICE</b>	“Eliminate the competition,” “no choice but to use ...”	Implies an unreasonable restraint or anticompetitive effect
<b>WORDS OF EXCLUSION OR BOYCOTT</b>	“Exclude,” “avoid,” “boycott,” “united front”	Suggests anticompetitive intent or effect
<b>WORDS SUGGESTING POWER TO RAISE PRICES</b>	“Enhance the bottom line,” “increase profits,” “leverage”	Suggests intent to raise prices

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Adopted by the QHP Board of Directors  
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