

Alliance for Home Health Quality and Innovation – Antitrust Guidelines

The Alliance for Home Health Quality and Innovation is a nonprofit national consortium of home health care providers and organizations, which is qualified as a public foundation under Section 501(c)(3) of the Internal Revenue Code.

The Alliance invests in research and education about home healthcare and its ability to deliver quality, cost-effective, patient-centered care across the care continuum. The Alliance is committed to conducting and sponsoring research and initiatives that demonstrate the value proposition that home health care has to offer patients and the entire U.S. health care system.

Legal Overview

Collective efforts to influence government action by advocating changes to laws, regulations, and related government standards and policies, as well as by conducting research and demonstration projects in support of such efforts, are protected from antitrust liability under the so-called *Noerr Pennington* doctrine.

Groups like the Alliance can engage in efforts to influence government action free of antitrust concerns, because it is assumed that the government will consider competing perspectives and interests, and protect the public interest in making final policy decisions. The Alliance therefore has broad antitrust immunity to influence Medicare coverage, benefits, and payments, as well as related government standards and policies to the extent that they affect home health services, coverage, benefits and payments under the Medicare program.

Although the Alliance may act collectively to influence the government free of antitrust risk, the members must still act independently and as competitors in the marketplace. The Alliance may conduct research and demonstration projects, and develop practice guidelines and best practices to recommend to the government. Member organizations, however, must independently decide how to conduct their own business, which includes how and where each member may participate in the Medicare program, and members must still compete freely with each other for Medicare and non-Medicare business. The freedom to try and influence government policy also does not protect group boycotts, such as a collective decision not to participate or to condition providing particular goods and services. Each member must make its own business decisions.

Automatic antitrust immunity also does not apply to collective efforts to try and influence private intermediaries (such as Medicare contractors, the carriers that manage Medicare Advantage programs or private insurance plans). Instead, such efforts would be judged for potential antitrust liability under a facts and circumstances test that weighs the public benefits of such activities versus the impact on prices and overall competition. Due to this increased potential antitrust exposure, such expanded

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activities should only be conducted if authorized by the Board of Directors and in consultation with the executive director and legal counsel.

Although members of the Alliance are free to share public information, they may not exchange private information with each other that normally is considered business confidential. For this reason, research projects undertaken by the Alliance should always be conducted by an independent third party, which will make sure that the research data is historical in nature and includes a large enough sample so that the result results are aggregated and will not reveal any member specific information when reported.

Specific Guidelines

1. In general, activities of the Alliance should be directed toward efforts that are designed to influence Medicare policy regarding coverage, benefits and payments for home health care services under the Medicare program. Any exceptions to this policy must be authorized by the Board of Directors and in consultation with the executive director and legal counsel.
2. Only public information should be directly shared and communicated between members. Any private data needed for research shall be collected and analyzed by an independent third party and aggregated to protect individual member organization details. Such private data should be historical in nature and not predictive of future activities.
3. When Alliance members meet to engage in Alliance business, they should not discuss their private business activities. They also should not agree to act cooperatively such as by dividing markets, refusing to provide certain services, or discussing prices or services relating to their non-Medicare business.
4. At all times, Alliance members shall act as competitors except for their common goal to influence Medicare policy regarding the coverage, benefits and payments for home health care services.

Implementation

- Copies of these Antitrust Guidelines should be provided to the Board of Directors and to the Work Groups and others on behalf of the Alliance at least annually.
- Legal counsel should attend all Board meetings and provide training and additional guidance as appropriate.
- There should be written agendas and minutes or meeting summaries prepared for all Alliance meetings as appropriate.
- All questions regarding these guidelines should be referred to the executive director and legal counsel for clarification and response.

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Last Updated: October 2012