



POLICY/GUIDELINE TITLE: Antitrust Compliance	ADMINISTRATIVE POLICY AND PROCEDURE MANUAL
POLICY #: 800.65	CATEGORY: Compliance and Ethics
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Prepared by: Office of Corporate Compliance	Notations: N/A

GENERAL STATEMENT of PURPOSE

The purpose of this policy is to provide guidance on the antitrust compliance obligations of Northwell Health under Federal and State antitrust laws.

POLICY

It is Northwell Health’s policy to compete fairly and to comply fully with applicable antitrust laws. Northwell Health requires all directors, officers, and employees to conduct Northwell Health’s business in full compliance with the antitrust laws. No director, officer, or employee should assume that Northwell Health’s interest ever requires otherwise.

The antitrust laws are designed to preserve market-based competition, including competition in markets for healthcare products and services. These laws are founded on the belief that the public interest is best served by vigorous competition. They prohibit certain agreements among competitors, such as those which improperly set prices or price terms (i.e., including reimbursement rates or methodologies, as well as salaries and compensation), allocate markets or boycott other competitors. These prohibitions apply to agreements even when there is no formal, written contract: Any understanding reached with a competitor (directly or indirectly) – including, for example, “gentlemen’s agreements” and “wink, wink, nod, nod” understandings – may provide the basis for an antitrust violation.

The antitrust laws also prohibit other arrangements and conduct that unreasonably restrain competition, such as excluding certain parties from doing business in a particular market, when the effect is to suppress competition, leading to increased prices or reductions in services or output.

Violations of the antitrust laws can lead to civil and criminal monetary fines, civil liability for treble damages, and injunctions. Additionally, antitrust violations may subject individuals to personal liability, conduct orders and monetary fines.

The Office of Legal Affairs is an important resource for Northwell Health personnel. It is essential that Northwell Health personnel seek legal advice before taking any action that might lead to antitrust problems. Seeking advice from the Office of Legal Affairs at the earliest possible stage may enable Northwell Health personnel to address antitrust concerns before an antitrust violation arises.

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Health; faculty and students of the Hofstra Northwell School of Medicine conducting research on behalf of the School of Medicine on or at any Northwell Health facility; and the faculty and students of the Hofstra Northwell School of Graduate Nursing and Physician Assistant Studies.”

DEFINITIONS

N/A

PROCEDURE/GUIDELINES

I. Policies and Procedures Relating to Business Activities

It is Northwell Health’s policy to unilaterally and independently determine the terms upon which it does business, including its rates, discounts and reimbursement methodologies for services, products and related items, as well as its salaries and compensation for personnel. In setting these terms, Northwell Health may consider all relevant factors, including costs, market conditions and prevailing competitive rates to the extent these can be fairly determined in the market place. This policy prohibits any agreement or understanding with any competitor regarding the terms on which Northwell will do business.

A. Discussions With or Involving Competitors

To avoid the possibility of misunderstanding or misinterpretation, this policy prohibits any consultation or discussion with competitors relating to:

- a) Prices or terms on which Northwell Health or any competitor does business or intends to do business;
- b) Northwell Health’s employee compensation and benefits including current or future individual salaries, wages or wage levels or ranges;

- c) Allocations, divisions or rationalization of any services or geographic areas, including Northwell Health's intentions with respect to its current or future service offerings, including any potential expansion or down-sizing of services; and
- d) Arrangements or activities that are intended to, or would have the effect of, excluding another competitor or potential competitor from doing business in a relevant market.

B. Joint Ventures, Acquisitions and Affiliations

Joint ventures, acquisitions and other affiliations may involve exchanges of competitively sensitive information or other coordination and must be individually reviewed for antitrust compliance.

C. Trade Associations and Surveys

Northwell Health is involved in a number of trade and professional associations. These organizations promote quality patient care by allowing Northwell Health representatives to learn new skills, develop policies and, where appropriate, speak with one voice on public issues. However, it is not always appropriate to share Northwell Health's business information with trade associations and their members. Sharing information is appropriate if it is used to better inform consumers or to promote efficiency and competition.

Northwell Health representatives may participate in surveys of price, cost, and wage information if the survey is (i) conducted by a third party, (ii) involves at least five comparably sized providers, and (iii) participants' data will be aggregated prior to disclosure. Additionally, any price, cost, or wage information released by Northwell Health must be at least three months old. If asked to provide a trade association with information about Northwell Health charges, costs, salaries, or other competitively sensitive information, Northwell Health employees must consult the Office of Legal Affairs.

D. Boycotts and Refusals to Deal

Northwell Health policy prohibits any agreement with competitors to boycott or refuse to deal with a particular person or persons, such as a vendor, payor, or other provider. Additionally, any agreement with a vendor, payor, or other third party that is intended to or is likely to have the effect of boycotting or excluding a third party from a relevant market – including exclusive agreements – should be reviewed in advance by the Office of Legal Affairs.

E. Credentialing, Peer Review and Physician Discipline

Northwell Health engages in credentialing and peer review activities for the purpose of improving patient care and preventing incidents of medical malpractice. Because of the special training and experience of physicians, their skills may best be evaluated

by other physicians, including physicians who may be competitors. As a result, credentialing, peer review and physician discipline at Northwell Health are conducted in accordance with criteria established by clinical leadership, subject to the approval of properly constituted quality assurance and medical peer review committees and processes. Questions about peer review activities should be directed to the Office of Legal Affairs. Risk Management shall be notified when there is a disciplinary action taken against a physician, loss of privileges, and matters related to credentialing.

F. Non-Competition Provisions and Restrictive Covenants

Northwell Health may enter into a covenant not to compete or a restrictive covenant in connection with an employment contract or a contract for the sale of a business where (i) there is a legitimate business purpose for the covenant and (ii) the covenant is reasonably limited in scope (e.g., duration of time, size of geographic area or territory, and services or products). For example, when purchasing a business, a restrictive covenant may be necessary to protect the purchaser's investment in the business and its goodwill. Similarly, when an employee is in a position to obtain valuable personal contacts or trade secrets as a result of his or her employment, a restrictive covenant may be necessary to protect the employer from losing the value of those contacts or trade secrets in the event the employee becomes employed by, or otherwise affiliated with, a competitor. The appropriate geographic scope and duration of a restrictive covenant may vary from contract to contract. Questions about the appropriateness of a non-competition provision should be directed to the Office of Legal Affairs.

G. Transaction Planning: Mergers, Acquisitions, Joint Ventures and Affiliations

Transactions that exceed a certain dollar threshold may require pre-merger notification of the Federal Trade Commission and the Department of Justice. Where pre-merger notification is required, the parties also must comply with statutory waiting periods which are designed to provide the enforcement agencies with time to review the transaction. A failure to comply with pre-merger notification obligations and the statutory waiting periods can result in penalties of up to \$80,000 per day.

The Office of Legal Affairs can assist you in determining whether a particular transaction requires pre-merger notification; facilitate the requisite reporting; and help to ensure compliance with the statutory waiting periods. Questions about any aspect of pre-merger notification should be directed to the Office of Legal Affairs.

H. Exclusive Contracts

Agreements that include exclusivity provisions or which could have the effect of excluding other providers, payors or vendors from a relevant market should be reviewed by the Office of Legal Affairs.

I. Unfair or Deceptive Practices

In addition to the antitrust laws, Northwell Health is committed to complying with other Federal and State laws governing market competition. For example, Federal and State laws prohibit advertising and marketing materials that are false or misleading. Northwell Health employees responsible for preparing and distributing such materials should be familiar with these laws. Direct questions about specific materials should be directed to the Office of Legal Affairs before distribution.

II. Situations In Which Reports Are Required

All employees are expected to report suspected violations of this policy to the Northwell Health Office of Corporate Compliance. No employee may be retaliated against for making a report in good faith.

Employees also are encouraged to consult with the Office of Legal Affairs if they have any questions as to whether actual or proposed activities are prohibited by this policy.

III. When to Report

Employees must report suspected violations of this policy to the Office of Corporate Compliance. No employee may be retaliated against for making a report in good faith.

IV. Reporting

In discussing any issue with the Office of Legal Affairs, you should provide all the relevant facts. Legal advice is only as good as the information on which it is based. If the Office of Legal Affairs does not have all the necessary information, it will be more difficult to take the appropriate action to protect you and Northwell Health.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

Northwell Health Code of Ethical Conduct
Sherman Antitrust Act - 15 U.S.C. Sections 1-7
Clayton Antitrust Act – 15 U.S.C. Section 12-27; 29 U.S.C. Sections 52-53
Federal Trade Commission Act – 15 U.S.C. Sections 41-58

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES

N/A

ATTACHMENTS

N/A

FORMS

N/A

APPROVAL:	
System Administrative P&P Committee	9/28/17
System PICG/Clinical Operations Committee	10/19/17

Standardized Versioning History:

*=Policy Committee Approval; ** =PICG/Clinical Operations Committee Approval