



## NHIA ANTITRUST DO'S AND DON'T'S

It is important to recognize that NHIA is comprised of members that compete in providing home infusion products and services and, therefore, there are limits on permissible communications among them. In most cases, where there is a *valid* business justification for the communication (*i.e.*, to facilitate efficiency enhancing measures as opposed to measures that will diminish competition among existing or potential NHIA participants), the communication ultimately will be viewed as procompetitive. There are, however, a few topics of communication among competitors, which never can be justified as efficiency enhancing because if jointly acted upon, they will only result in the reduction of competition. These *per se* illegal topics of communication among competitors include:

- an individual member's price or price components,
- an individual member's recent input costs,
- excluding existing or potential competitors from the market,
- allocating customers or products; and
- restricting product (and product innovation) output
- agreements on what members will pay
- agreements on what members will charge
- agreements on with whom members will deal (or not deal)

Since valid business justifications will not insulate the NHIA or individual members from liability for joint conduct in these *per se* illegal categories, it is important that NHIA activities do not facilitate joint communication or conduct in these categories. While other joint conduct may raise competitive concerns, the risk of liability significantly is minimized because efficiency enhancing business justifications may be available to outweigh the competitive concerns. Such business justifications, however, do not ameliorate the risk associated with *per se* illegal conduct. These guidelines are intended to assist in identifying some specific examples of industry topics that would fall within *per se* illegal categories if discussed or communicated jointly among two or more NHIA members. These examples are intended to be illustrations only.

## I. Communication Among NHIA MEMBERS

- A. Do not discuss specific prices, rates, fees, margins, or costs (or components thereof). It is *not* permissible for members to discuss or compare their individual current or future *prices, rates, fees or costs* for their products or components thereof, e.g.:
  - 1. drugs/pharmaceuticals
  - 2. nursing salaries;
  - 2. administrative fees;
  - 3. costs of other supplies.
- B. It is permissible to discuss aggregated, historical (more than 3 months old) price/rate/fee, margin or cost data that have been collected by neutral third parties from at least 5 NHIA members and sufficiently aggregated such that no specific data can be tied back to a specific member.
- C. It is permissible to discuss general historical industry trends with respect to prices, rates, fees, margins, efficiencies, methodologies, and best practices.
- D. It is permissible to discuss trends in customer/ third party payer requirements, preferences, etc. It is *not* permissible, however, for NHIA members to discuss or identify individual (existing or prospective) suppliers, customers/ third party payers. Do *not* in any way discuss customer or market allocation. Do *not* in any way agree or form a plan regarding future negotiations or dealings (or refusals to deal) with any supplier, customer or third party payer.
  - **However, any individually negotiated terms any NHIA member has negotiated with any customer or third party payer can never be discussed with another NHIA member.**

## II. NHIA MEMBER COMMUNICATION WITH SUPPLIERS, CUSTOMERS AND THIRD PARTY PAYERS

- A. There should never be any *joint* (two or more NHIA members) discussions with suppliers, customers, and/or third party payers regarding costs, prices, rates, fees or any other negotiated term.
- B. All transaction specific costs, prices, rates, fees or any other negotiated rate must be conducted on an individual basis.
- C. Properly collected and aggregated (pursuant to the terms described above), historical cost, price, rate, fee and margin information can be disclosed

jointly to suppliers, customers and third party payers. It is permissible, for example, for NHIA staff or other third party retained by NHIA members to prepare a report that includes properly collected and aggregated data that members can provide to customers or third party payers during individual negotiations.