

**AMERICAN HEALTH CARE ASSOCIATION/
NATIONAL CENTER FOR ASSISTED LIVING
ANTITRUST COMPLIANCE POLICY**

1. Policy of Full Compliance

It is policy of the American Health Care Association/National Center for Assisted Living (“AHCA/NCAL”) a to comply fully with all applicable antitrust laws, state and federal. Consistent with this policy of full compliance, the AHCA/NCAL has adopted this Antitrust Compliance Policy (the “Policy”).

2. Procedures And Conduct

A. Procedures

(1) The AHCA/NCAL shall observe the following procedures:

- (a) All AHCA/NCAL Board of Governors, Council of States and Committee meetings, and all other meetings facilitated by AHCA/NCAL, shall be conducted pursuant to a written agenda distributed in advance to attendees;
- (b) Discussions shall be limited to agenda items, including items added as new or old business;
- (c) AHCA/NCAL members and Board of Governors, Council of States, and Committee representatives shall only conduct the business of Association matters at official meetings;
- (d) Minutes shall be kept of all Board of Governors, Council of States and Committee meetings, and all other meetings facilitated by AHCA/NCAL; and
- (e) All AHCA/NCAL Committee meeting agenda and minutes shall be reviewed by designated AHCA/NCAL staff prior to finalization, who shall consult with the AHCA/NCAL Legal Counsel concerning such agenda and minutes as necessary.

(2) A copy of this Policy shall be included in all Board of Governors Board Meeting Books and Committee meeting materials. The existence and content of this Policy shall also be announced at each Council of States meeting, and copies of this Policy shall be available to attendees at such meeting. As a designated item on the agenda, at the start of each Board of Governors, Committee, and Council of States meeting, the following statement shall be read:

Before we begin, let me take the opportunity to remind you that it is the established policy of the AHCA to comply with all laws, including the antitrust laws. Because our group contains members that are or may be competitors, we must continue to be careful to confine our discussions, both formal and informal, to the topics described on our Agenda. As you all know and appreciate, in order to comply with our policy, we will not address, in the group or separately, any issues related to our respective companies' current or future pricing, terms of sale or costs, strategic plans or initiatives, bidding situations, sales to specific customers or in specific geographic areas. If you have any questions or concerns about these matters as we proceed, please raise them immediately.

B. Conduct

- (1) AHCA/NCAL and its Member Facilities and representatives shall not engage in activities or discussions which might be construed as an attempt to:
 - (a) Raise, lower, or stabilize prices;
 - (b) Regulate the amount of services available;
 - (c) Allocate markets;
 - (d) Encourage boycotts;
 - (e) Foster unfair trade practices;
 - (f) Assist in monopolization; or
 - (g) In any way violate federal or applicable state antitrust laws.
- (2) Any AHCA/NCAL Member Facility or representative who participates in conduct that the AHCA/NCAL Board of Governors determines to be contrary to this Policy shall be subject to disciplinary measures, up to and including, termination of participation in AHCA/NCAL or termination of membership in accordance with the AHCA/NCAL Bylaws.

3. General Overview of Pertinent Antitrust Laws

A. Federal Antitrust Statutes

The federal antitrust provisions of primary concern to AHCA/NCAL members acting within the AHCA/NCAL context are Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45).

Section 1 of the Sherman Act prohibits agreements, combinations, or conspiracies in restraint of trade. Although courts have interpreted Section 1 to prohibit only "unreasonable" restraints of trade, the courts have further found that particular practices such as price fixing, group boycotts, or division of customers or markets are by their very nature so pernicious as to automatically be deemed "per se" unreasonable without the need for detailed inquiry as to their effect on the market.

The following are examples of activities that, within the AHCA/NCAL context, would violate Section 1 of the Sherman Act:

- (1) Any agreement to fix prices or to provide care only in certain markets;
- (2) Any agreement to refuse patients insured by a specific third-party payor;
or
- (3) Any agreement not to utilize a certain supplier or service provider.

The following are examples of activities that, within the AHCA/NCAL context, most likely would not be found to violate Section 1 of the Sherman Act:

- (1) Discussions regarding strategies for lobbying of federal and state governments in order to obtain favorable legislation or regulatory treatment that benefits the long-term care industry;
- (2) The setting of standards or formulation of industry best practices utilizing a reasonable process that is designed to enhance the quality care in the long-term care setting; and
- (3) The collection, use and distribution of industry data in a manner that meets applicable Department of Justice and Federal Trade Commission safe harbor guidelines.

Violation of the Sherman Act Section 1 is a felony, punishable by fines of up to \$100 million for each count for a corporation and up to \$1 million, and/or up to ten year's imprisonment, for individuals, although provisions put fines up to twice the gain or loss caused by illegal conduct. In addition, violation of the Sherman Act Section 1 may subject those involved to civil liability for treble damages.

Section 5 of the Federal Trade Commission Act prohibits unfair methods of competition and unfair deceptive acts or practices. Essentially any violation of the Sherman Act Section 1 would also constitute a violation of Section 5 of the Federal Trade Commission Act. Violation of Section 5 of the FTC Act may result in injunctions, cease and desist orders, and civil penalties against those involved.

B. State Antitrust Statutes

Most states have antitrust statutes which equate to the Sherman Act Section 1, except that they apply to actions affecting commerce within the state, as opposed to interstate commerce. The District of Columbia, where AHCA/NCAL is based and operates, has a state antitrust equivalent of the Sherman Act Section 1 at DC Code § 28-4502. Violation of the District of Columbia Antitrust Act subjects the violator to civil damages, which may be three times the amount of actual damages sustained.