

ALLSPIRE HEALTH PARTNERS, LLC

AND

ALLSPIRE HEALTH GPO, LLC

***JOINT ANTITRUST POLICY
AND COMPLIANCE STATEMENT***

Dated as of December 2018

Prepared by:

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Legal Counsel

ANTITRUST POLICY AND COMPLIANCE
ANTITRUST POLICY

PURPOSE

This Antitrust Policy and Compliance Statement (“Antitrust Policy”) is intended to assist AllSpire Health Partners, LLC (“AHP”), AllSpire Health GPO, LLC (“AHGPO”) and their respective committees to understand how the laws concerning competition, antitrust and trade regulation (collectively, the “antitrust laws”) apply to and affect their operations and activities. Any “differences” in the application of the antitrust laws to AHP and AHGPO is generally a function of their different business focus. AHPGO is more directly involved in commercial activities and AHP is mainly involved in governance, policy, clinical initiatives and strategic planning.

Unless stated otherwise in this Antitrust Policy, the term “AllSpire” refers to AHP or AHGPO.

AllSpire is committed to at all times be in full compliance with the antitrust laws. For both AHP and AHGPO, compliance is only possible if all board members, committee members, staff, employees, member organizations and employees and staff of member organizations participating in the activities of AHP and AHGPO (collectively, “Interested Parties”) understand and act in accordance with the antitrust laws. It is critical to the success of AHP that AHGPO be fully compliant with this Antitrust Policy because AHGPO is directly involved in both the purchasing of goods and services for its members and in arranging commercially-advantageous opportunities for members to purchase goods and services.

Interested Parties need to review this Antitrust Policy to understand the general danger areas of antitrust law with respect to AllSpire's operations.

The key issues for Interested Parties to understand include:

- * What types of agreements are illegal?
- * What kinds of information can be shared?
- * What are the limits on discussions among AllSpire Members?

All questions related to this Antitrust Policy should be directed to Michael Forese (AHP Vice President, Finance and Operations) for resolution by contacting him at (484 532-5823) or email (michael.forese@allspire.org).

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Included within this Antitrust Policy are the following sections: Context with respect to the antitrust laws; Potential Penalties related to non-compliance; Responsibility for Antitrust Compliance; Basic Antitrust Principles; Meeting Guidelines; Meeting Procedures; and the Antitrust Compliance Statement and Antitrust Policy Acknowledgement Form which appear at Exhibit A, and B, respectively.

CONTEXT

The antitrust laws (which are comprised of statutes, regulations, court decisions and agency guidance) are designed and implemented to help assure that competition remains vigorous and that consumers get the benefit of that vigorous competition.

There is one very fundamental reason the antitrust laws are important with respect to AllSpire: its very existence is built on having academic health centers and large health

systems who may actually or potentially compete with one another together “in the same room” on a regular and ongoing basis to engage in and design collaborative activities for both clinical and commercial purposes.

Without being an Interested Party in AllSpire, the separate health systems could not work “together” as they currently do with respect to policy, clinical initiatives or purchasing or other commercial decisions and preserve the competition and arms-length independent business deliberations required under the antitrust laws.

A key issue under the antitrust laws is the planned or inadvertent sharing of what is commonly referred to as “*competitively sensitive information*” (“CSI”),¹ which, when obtained or used “outside the room” for business reasons not related to the collaboration may be anticompetitive and illegal. CSI can be used in anticompetitive ways both unilaterally and collusively. The manner in which CSI is collected, shared and/or used is important for AllSpire to ensure compliance with the antitrust laws.

When competitors meet or work together in settings like those used by AllSpire, there is always a clear *opportunity* to discuss business strategies in ways that can lead to unlawful *agreements* under the antitrust laws. Those unlawful agreements can be written or oral, and the antitrust laws make it clear that the *fact of* an agreement is in and of itself illegal. The parties to an illegal agreement do not have to act on the agreement to violate the antitrust laws. The fact that they reached an agreement is in and of itself illegal.

AllSpire and Interested Parties must remember that the antitrust laws are concerned *not* with preventing discussions and meetings among competitors, but instead with the outcomes of such discussions and meetings if they result in agreements or other

¹ A thorough legal definition of “competitively sensitive information” is beyond the scope of this Antitrust Policy. However, the best way to understand it is perhaps a common-sense assessment: “competitively sensitive information” is *any* information that you, as a competitor, *really want to know about what your competition is doing, but have no way to determine or discover*. “Any” is literal – the information is not confined to data about price. Strategic, non-price information about a competitor’s activities is also under the “CSI umbrella.”

activities that unreasonably restrict or harm competition.

All Interested Parties must understand and remember *at all times* that the “agreement” – oral or written – can create the risk of an antitrust problem. Because there is no requirement that the agreement be carried out or otherwise acted upon and because there is no requirement that the parties to an illegal agreement actually be able to accomplish it, discussions resulting in any form of an express or implied agreement with a competitor should be avoided by each AllSpire member. *An agreement between competitors is per se unlawful whether or not, for example, the prices agreed to are actually ever fixed and implemented in the marketplace.*

For example, AllSpire members A and B should not agree that they will not pay Vendor X more than a specific price for a specific commodity. However, each member of AHGPO could independently decide to participate in a bulk purchasing arrangement for that commodity that was negotiated by AHGPO and which AHGPO then offered each Interested Party the opportunity to independently participate in that purchasing arrangement opportunity.

Similarly, AllSpire members A and B should not agree that they will not charge a third party payor or a patient a specific price for a specific service.

A fundamental rule for AllSpire and Interested Parties to abide by at all times: do not independently agree with other AllSpire members outside of the AllSpire confines,² to do anything which may have an impact on price or something related to price, or to do or not do business with third parties. Immediately advise Mr. Forese if you are approached to make such an agreement, and send a memo via email to Mr. Forese providing all details.

² In other words, AllSpire should be viewed as a vehicle for providing protection from some forms of antitrust exposure. AllSpire members agreeing to do business in accordance with programs and initiatives established within and by AllSpire is acceptable. However, members agreeing to do business a certain way, particularly concerning price, fall outside of that protected zone and such agreements should be avoided.

Under the antitrust laws, there are certain “per se” illegal agreements – the fixing of prices and terms and conditions relating to or bearing on price, market and customer allocation, bid-rigging, and similar activities, that are illegal in and of themselves whether or not carried out.

There are other activities involving avoidable risks. When *properly* conducted, such activities can and will play a valuable role in *promoting* free and open competition and be a benefit to consumers. In addition, there are specific “safe harbor” rules which can protect AllSpire from antitrust exposure when properly followed.

There are no particular words or phrases that when spoken or intimated give rise to a violation of the antitrust laws. However, there *are topics* and *situations* that are inherently suspect because they tend to lead to the possibility of illegal agreements or may appear to do so, and which the antitrust laws forbid in an effort to promote and preserve competition. See the section in this Antitrust Policy regarding Meeting Guidelines for examples.

POTENTIAL PENALTIES

The penalties for violating the antitrust laws are severe and can expose AllSpire and Interested Parties to potential criminal prosecution (which may result in significant fines and prison sentences) as well as government and private civil suits for fines and damages (which are expensive to litigate and defend, and may result in the assessment of costs and attorneys’ fees, and in which damage awards are automatically “trebled” – *i.e.*, a judgment of \$1,000,000 in money damages is subject to a 3x multiplier and becomes a \$3,000,000 judgment).

RESPONSIBILITY FOR ANTITRUST COMPLIANCE

AllSpire and all Interested Parties are individually responsible for complying with both the letter and spirit of the antitrust laws. AllSpire staff is expected to be vigilant and to *intervene* in situations where it may be necessary to remind Interested Parties to use their good judgment to avoid discussions or activities that give even the appearance of involving impermissible subjects or improper procedures. Since anticompetitive agreements may be inferred from circumstantial evidence,³ AllSpire staff must ensure that discussions at AllSpire meetings and functions do not stray into subjects that may have troublesome implications.

BASIC ANTITRUST PRINCIPLES

One of the most important antitrust laws relating to AllSpire activities is Section 1 of the Sherman Act, the federal law which prohibits "contracts, combinations, or conspiracies. . . in restraint of trade." Section 2 of the Sherman Act prohibits monopolization, attempts to monopolize, and conspiracies to monopolize and is, therefore, somewhat less relevant⁴ to trade association activities.

³ For example, assume that at an AllSpire meeting individual members discuss, coincidentally, their separate dealings with one vendor or supplier, and the content of the discussion indicates that continuing to do business with that vendor or supplier may not be prudent unless "things change." In the weeks following the meeting, several (or all) AllSpire members, acting on their own behalf, take various actions toward that vendor or supplier, such as not paying invoices, cancelling contracts, or changing the terms of agreements in an effort to coerce a different outcome. Those activities may give rise to the inference of an illegal group boycott or refusal to deal even if no one at the AllSpire meeting said "let's cut this guy off/out." The group discussion and the actions taken in the aftermath can create the risk that such an agreement will be inferred from circumstantial evidence. While group boycott and refusal to deal cases are hard to *win* (as a plaintiff), they are easy to *file* – which means that AllSpire may expend significant sums of money on legal fees and expenses to accomplish that "win."

⁴ "Less relevant" does not mean "unimportant." If there is a dominant (in terms of market share) member of a trade group, it is possible that, for example, a member could use CSI obtained through such membership to increase its dominance. While the nuances of a "Section 2 offense" are beyond the scope of this Policy Statement, it is important to remember that maintaining or acquiring market dominance through illegal means is a violation of the antitrust laws, and using CSI obtained through one's association membership outside the association is fraught with antitrust perils.

Section 1 of the Sherman Act prohibits competitors from circumscribing, restraining or eliminating competition among themselves by agreeing to each take action (“concerted action”) concerning the pricing of their products, how those products are produced or how those products are marketed and distributed, for example. If the concerted action fixes prices, it is always illegal, *because any agreement among competitors to raise, lower, or stabilize prices is unlawful even if the price agreed upon is reasonable or beneficial to consumers and even if the agreement is never put into effect.*

The Sherman Act also prohibits agreements among competitors to harm, through trade boycotts or similar means, the competitive capabilities of their suppliers, customers, or other competitors. For example, if AllSpire identifies and discusses a market situation where a supplier with which some or all AllSpire members do business has presented difficulties, acknowledging the problem and common experiences is fine, but *coming to a group agreement on how to deal with it is not*. It would be illegal to agree as a group to stop doing business with the supplier. And, as noted above, there is a risk that even absent an agreement, “consciously parallel” conduct can lead to the inference of an illegal agreement. Maintaining and implementing independent business decision making processes, and not making decisions based on agreements with competitors that are anticompetitive, must be the operative goal.

Businesses are also subject to Section 5 of the Federal Trade Commission Act. Under Section 5, the Federal Trade Commission (“FTC”) may challenge actions or commercial practices that, although perhaps not rising to the level of an antitrust violation are deemed “unfair methods of competition” or “deceptive acts or practices.” The FTC may challenge not only agreements that restrain competition but also such practices as false advertising.

MEETING GUIDELINES⁵

Because the existence of unlawful agreements may be inferred from circumstantial evidence, the following topics carry antitrust risks and must be avoided at AllSpire and AHGPO meetings, seminars and other functions:

- members' current or future prices or components thereof including discounts, rebates and other terms;
- the possibility or desirability of members' limiting or enhancing business by creating inaccurate information etc.;
- allocation or division of customers or certain kinds of business among the group, for example, by setting up a mechanism for rotating certain kinds of large group meeting functions among members and with an agreement in advance on how to price such function;
- reasons why members should refuse to deal with a particular supplier or customer;
- whether the pricing or distribution practices of a competitor are “unethical” or constitute an unfair trade practice;
- efforts to influence suppliers’ prices;
- what constitutes a “fair” profit margin;
- price lists of procedures for coordinating price changes.

⁵ AHP and AHGPO operate regularly through the activities of multiple committees, and these Guidelines, and the Procedures which follow in the next section, apply to the activities of those committees. A list of committees in place as of the date this Policy is adopted is attached as Attachment C, to be updated as committees may be formed and added after the adoption of this Policy.

An agreement between competitors on price can be inferred from circumstantial evidence, such as an exchange of price lists between competitors. This does not mean, however, that the word "price" may never be spoken at meetings. For example, a presentation by an outside speaker on how economic trends⁶ might affect members' prices would not in itself raise any antitrust risk.

- It is *not* appropriate, however, for the members to discuss a joint price-related response to what may be perceived as a common problem. Because many price-related topics can be of value to AHP and AHGPO, and present no antitrust risks if presented properly, AllSpire's legal counsel should be consulted whenever the members are interested in discussing such topics so that proper limits for the presentation may be established in advance. It is only the express or implied *agreement* among competitors restricting their unilateral and independent freedom to establish prices that is prohibited.⁷

MEETING PROCEDURES

Generally, regularly scheduled meetings of the AHP and AHGPO Board and their respective committees will be preceded by the distribution of an agenda and an information packet. Ideally, these materials will be sent to legal counsel simultaneously for its general review to determine whether there are any agenda topics or information

⁶ For example, an economist could collect relevant data from members and conduct an analysis and present a report that does not attribute data to any specific member concerning how trends in the industry, etc. are affecting AllSpire members in the aggregate.

⁷ If prices and pricing are to be discussed, it is always best to "publish" the information within the AllSpire setting on a non-attributable, anonymous basis. Identifying how prices affect trends and how trends affect pricing is acceptable, but knowing how one member reacted or intends to react creates antitrust risk because of the threat of a resulting agreement on price by the group, or the use of such information by one member of the group to the competitive disadvantage of another (member or nonmember) and in furtherance of gaining, maintaining or increasing market share, etc.

being distributed which might trigger an antitrust concern and, if so, counsel will advise Mr. Forese. This is not intended to allow legal counsel a go/no-go with respect to any issue – unless something is clearly prohibited. Instead, it is intended to help ensure continuing sensitivity to and compliance with this Antitrust Policy.

AllSpire will decide to include the Antitrust Compliance Statement attached to this policy as Exhibit A in the packet distributed to Interested Parties, or to read the Antitrust Compliance Statement (also attached as Exhibit A) at the beginning of the relevant meeting. AllSpire may invite legal counsel to attend a meeting to make sure any issues that are likely to arise are dealt with in real time so as not to stall or delay discussion or action. If legal counsel is not present and an issue arises, the Chair of the meeting, on his/her own initiative or at the request of a participant, may table the discussion until counsel can be consulted.

Finally, accurate minutes of meetings will be taken, and, legal counsel will be asked to review the minutes prior to their being approved.

CONCLUSION

Attached as Exhibit B to this Antitrust Policy is an “Antitrust Policy Acknowledgement Form” which is to be executed *annually* by all board members and Interested Parties and relevant outside parties who may interact with AHP or AHGPO for any reason (for example, if AHP or AHGPO decides to engage a consultant to perform a market study of some sort, the Acknowledgement Form should be executed).

EXHIBIT A
Antitrust Compliance Statement

The following statement may either be read at the start of every AllSpire Board and relevant committee meeting or included with the agenda and materials in advance of the meeting:

“Welcome to all members and invited guests to today’s meeting. The purpose of this meeting is to provide a forum for the members to discuss information and trends critical to the success of each member’s employing organization. We talk about things like local, regional and national industry trends. In addition, we discuss ideas that may be reviewed, investigated and studied that we believe are important to the cost-effective and efficient delivery of all of the services our members provide. The outcome of that review, investigation and study may result in an agreement or arrangement made available to you as a member of this organization – but the decision to participate in that outcome is up to you and your organization.

*This is a forum for discussions and the use to which those discussions will be adopted will be the unilateral and independent decision of each person in this room and their employing organization. To highlight that fact, we have in place an Antitrust Policy, and each of you has been provided a copy and signed an acknowledgement that you’ve received it, read it and understand it. **We cannot overstress the importance of complying with what that Antitrust Policy tells us is in-bounds and out-of-bounds when it comes to the fact that we compete with each other in the health care delivery system.***

*An agenda for the meeting has been distributed in advance and a copy is here for each of you. Its topics have been reviewed and our discussions will comply with the Antitrust Policy. **If any issue arises during this meeting and any of you, or I as chair, believe it is necessary to obtain further guidance from counsel, we will speak up and do so before the discussion goes any further.** Does anyone have any questions at this time?*

EXHIBIT B

AllSpire

Antitrust Policy Acknowledgment Form

My signature below indicates that I have been provided with a copy of the AHP and AHGPO “Joint Antitrust Policy” and that I have read and understand it and that I agree to comply with its content and spirit at all times.

I also agree that certain topics will not be discussed at any meeting. I understand that concerted action agreed to at or taken in the aftermath of a meeting which eliminates, restricts or governs competition among members is a violation of antitrust laws.

I agree that unless authorized by the legal counsel in advance or at the meeting, I will not discuss, in the meeting or at any other time with any member subjects like surcharges, conditions, terms and prices of service, allocating or sharing of customers, and/or refusing to deal with a particular supplier or class of suppliers. I understand that such discussion between competitors may violate antitrust laws and can lead to severe criminal and civil penalties for me, my employer, other AHP or AHGPO members, and AHP or AHGPO members, and staff.

By: _____

(Signature)

Printed Name: _____

Employer: _____

Date: _____

Received by AllSpire on ____ (DATE) by _____ (Signature)

Print Name: _____ Chair, AHP /AHGPO

EXHIBIT C
AHP and AHGPO Committees as of
December 2018

AHP

- Board
- Executive Committee
- Development Committee
- Clinical Leadership Council
- Sepsis Committee
- COO Council
- CFO Council
- ACO/CIN Council
- Human Resources Council

AHGPO

- Board
- Operating Committee
- Cardiology Collaborative Committee
- Cardiovascular Collaborative Committee
- Facilities & Infrastructure Collaborative Committee
- Food & Nutrition Collaborative Committee
- Information & Technology Collaborative Committee
- Nursing Collaborative Committee
 - Respiratory Subcommittee
 - Advanced Wound Care Subcommittee
 - Perinatal Committee
 - Infection Prevention Committee
- Laboratory Collaborative Committee
- Pharmacy Collaborative Committee
 - Clinical Subcommittee
 - Ambulatory Subcommittee
 - Medical Safety Subcommittee
- Radiology Collaborative Committee
- Surgery Collaborative Committee
- Vascular Steering Collaborative Committee
- Value Analysis Steering Collaborative Committee