HEALTHCARE INDUSTRY SUPPLY CHAIN INSTITUTE
ANTITRUST COMPLIANCE GUIDELINES

Antitrust laws are intended to ensure free and open competition to the maximum extent possible by generally prohibiting business behavior that unreasonably restrains competition; however, some activity, such as price-fixing, is illegal regardless of its reasonableness. The laws are complex and it is impossible in this document to set out all of the principles they embody. These guidelines are useful as an alert concerning those types of activities that are most likely to present antitrust law compliance problems. As a general rule, any agreement that tends to limit competition is suspect and should be avoided. Companies should not discuss any joint activity or reach agreement that would tend in any way to limit competition among themselves, their suppliers or their customers without first consulting counsel.

To violate the antitrust laws, it is not necessary that an agreement actually be reached. Parallel actions following a meeting or meetings at which the actions were discussed could constitute an illegal agreement.

The following topics should not be the subject of any joint agreement or concerted activity and their discussion should be avoided or closely monitored by counsel:

1. Standardization or stabilization of prices;

2. Current or future prices to be charged to customers or by suppliers;

3. Possible increases or decreases in such prices;

4. Whether the pricing practices of any competitive industry member, supplier or distributor are "unethical" or constitute an "unfair trade practice;"

5. Pricing procedures or specific methods for determining prices, including margins, markups and cost percentages;

6. What constitutes a "fair" profit level;

7. Cash discounts or credit terms;

8. Production levels;

9. Refusal to deal with a supplier or distributor;

10. Listing "approved" customers or suppliers;

11. Control of sales;

12. Allocation of markets, customers or distribution methods;

13. Standardization of products or distribution systems that are designed to, or have the effect of, discriminating against some competitors; and

14. Required implementation of what are otherwise considered to be voluntary guidelines, standards, or “best practices.”

An exception to these general prohibitions is contained in what's known as the Noerr-Pennington Doctrine. This exception, named for the U.S. Supreme Court cases that developed the concept, permits certain otherwise questionable activity to take place in the context of discussing approaches to legislative and regulatory agencies. Any such discussions should, however, be closely monitored by counsel.

Conclusion

Violation of the federal antitrust laws is a felony subject to large fines (up to $1 million for corporations and up to $100,000 for individuals) and jail sentences. In addition, individuals or businesses that have been injured by a violation of the antitrust laws may recover three times the actual damages sustained plus attorneys' fees. In light of these extremely costly consequences of a violation of the antitrust laws, it is obviously important for to adopt a conservative approach to compliance.