



# **ACO Antitrust Training For Providers**



**Banner  
Health Network**

# BANNER HEALTH NETWORK ANTITRUST POLICY

## Regarding Competitively Sensitive Information

Banner Health Network (“BHN”) has established this anti-trust compliance program to assure BHN providers do not share competitively sensitive pricing, or other data that could be used to set prices or other terms, for services provided outside BHN.

# Statements

## Health Care Statement 1996

- The Health Care Statement was originally created in 1996. It's original intent was to create antitrust policy for mergers and joint activities in health care.

## Policy Statement 2011

- The Policy Statement was finalized in 2011 to address the concerns over the competition restrictions set by the FTC in an ACO setting.

## Rule of Reason and Safety Zones

- Policy Statement sets forth the concept of Rule of Reason, and explains the Safety Zones for ACOs.

# Illegal Acts under Antitrust

- Market Allocation Agreements
  - Competitors divide the market among themselves
- Price Fixing
  - Influencing prices in the marketplace
- **Unless...** “Providers are financially or clinically integrated and the agreement is reasonably necessary to accomplish the procompetitive benefits of the integration.”
- BHN’s ACO is considered financially & clinically integrated.



# **SAFETY ZONES AND ACTIONS TO AVOID**

# Antitrust Safety Zone Analysis

- ACO should evaluate its share of services in each participant's Primary Service Area (PSA).
- Independent participants that provide the same service ("common service") must have a combined share of 30% or less in the PSA.
  - Banner completed this analysis before BHN was created and found no issues. Another analysis will not be necessary unless it is requested by an agency or unless something significant happens to our marketshare.

# Dominant Participation

- The *dominant participant limitation* applies to any ACO that includes a participant with a >50% share in its PSA of any service that no other ACO participant provides to patients in that PSA.
  - This would be a highly specialized provider.
  - Cannot make this an exclusive contract.



# Safety Zone Rules for Contracting

Hospitals and  
ASC

Must be Non-  
Exclusive

\*Dominant  
Participant

Must be Non-  
Exclusive

Physician  
(employed or  
contracted)

May be  
Exclusive  
(with some  
exceptions)

May be Non-  
exclusive



# **RULES TO FOLLOW**

# Rule 1

- Keep contracts within the Safety Zone.
  - As discussed in previous slide.

# Rule 2

- Do not improperly share Competitively Sensitive Information (CSI).
  - CSI is any non-public, company-specific information, in any format, that describes the business or strategic structure or process of BHN that could influence or fix prices or restrict competition within the business.

# Rule 3

- BHN cannot prevent or discourage private payers from directing or incentivizing patients from choosing certain providers.
  - Cannot add contractual clauses such as anti-steering or most-favored nation. Your role is to ensure that language is not contained in the contract.



# Rule 4

- BHN cannot restrict a private payer's ability to make available to its members information about cost, quality, efficiency or performance for the purposes of letting the member choose a provider.
  - Avoid contractual clauses that prohibit transparency of performance information. Your role is to ensure that language is not contained in the contract.



# Rule 5

- BHN cannot tie the ACO contract to the purchase of other services from providers outside the ACO. Your role is to ensure that language is not contained in the contract.



# Rule 6

- BHN cannot allow exclusive contracting with ACO physicians, hospitals, ASCs or other providers.
  - BHN's ACO providers should be able to contract with other private payers outside the ACO contract either individually or through other ACOs.

# What to Do If You Suspect a Violation

- Banner employees should follow the steps in policy 12648:
  - Address the matter with your direct supervisor.
  - Speak to your Department Manager or Director.
  - Speak to your Compliance Officer.
  - Bring the matter to the attention of the Banner Compliance Department.
  - Last resort: Call the ComplyLine 1-888-747-7989 or submit online:  
<https://bannerhealthcomplyline.alertline.com/gcs/welcome>





# Non-Banner Employees

- Notify the appropriate Banner contact person (i.e., Provider Rep, department liaison, etc.)
- Contact BHN Compliance Officer, Terri Dorazio, at 520-874-2847 or [theresa.dorazio@bannerhealth.com](mailto:theresa.dorazio@bannerhealth.com)
- Call the ComplyLine 1-888-747-7989 or submit online:  
<https://bannerhealthcomplyline.alertline.com/gcs/welcome>