

DEPARTMENT: Legal	POLICY DESCRIPTION: Communications with Competitors Concerning Prices, Costs of Service and other Competitively Sensitive Topics
PAGE: 1 of 4	REPLACES POLICY DATED:
EFFECTIVE DATE: March 25, 2008	REFERENCE NUMBER: LL.GEN.003
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: HCA Inc. and all affiliates and subsidiaries of HCA Inc., including, but not limited to, hospitals, ambulatory surgery centers, outpatient imaging centers, home health agencies, physician practices, All About Staffing, service centers, HealthTrust Purchasing Group, joint ventures in which an HCA Affiliate has at least a 50% interest, and all Corporate Departments, Groups and Divisions (collectively, “HCA” or individually, “HCA Affiliate”).

PURPOSE: Antitrust violations may subject an HCA Affiliate to severe civil and criminal monetary fines, civil liability for treble damages, and injunctions that could impair its ability to compete effectively. Antitrust violations may also subject individual employees to imprisonment, personal liability, and substantial monetary fines. Defending against even a false charge can be costly. HCA’s *Code of Conduct* therefore requires not only compliance with the law but avoidance of activities which, though not illegal, may pose unnecessary risks of litigation, government investigation, or injury to HCA’s reputation. The following limitations on information exchanges with Competitors are designed both to aid compliance with antitrust laws and protect HCA Affiliates’ competitive and financial interests.

POLICY: Each HCA Affiliate and its officers, directors and employees (collectively, “employees”) shall comply with the following:

1. **Prohibited Communications:** Except with legal advice from the Legal Department, or as set forth in paragraphs 2 through 7 below, employees shall not communicate with a Competitor, either directly or through other employees, medical staff, contractors, consultants or other third parties, about the following:
 - a. prices charged for goods or services, including physician services;
 - b. costs of goods, supplies, equipment, or services, including physician services;
 - c. employee salaries, wages, or benefits, compensation policies, staffing policies or terms of collective bargaining agreements, employment contracts or severance agreements;
 - d. terms of managed care contracts;
 - e. terms of equipment, supply or service contracts;
 - f. allocation among competitors of customers, services or territories;
 - g. exclusion of any existing or potential competitor or supplier from the market; or
 - h. joint bidding or joint venture arrangements.

These topics are referred to in this policy as Competitively Sensitive Topics. This policy does not prohibit seeking or using information concerning Competitively Sensitive Topics that is publicly available.

2. **Permissible Communications:** There are many legitimate business reasons to communicate with Competitors that this policy is not designed to prohibit. For example, this policy does not prohibit communications with Competitors concerning:
 - a. medical treatment of patients;

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- b. patient billing matters;
- c. performance of EMTALA-related responsibilities;
- d. physician credentialing and privileging;
- e. development of Electronic Health Records data bases;
- f. improvement of patient safety or quality of patient care;
- g. emergency preparedness planning or community emergency response;
- h. medical research projects;
- i. general trends in the healthcare industry; or
- j. non-business matters.

Even when discussing permissible topics, however, employees must still abide by requirements to protect privileged, proprietary or confidential information, as set forth in the *Code of Conduct* and the Information Confidentiality and Security Agreements Policy, IS.SEC.005.

It is not practical to identify every topic on which it is permissible to communicate with Competitors. For any topic not expressly prohibited by Paragraph 1 but that is not expressly addressed in this Paragraphs 2 or other paragraphs of this Policy, advice should be sought from the Legal Department.

3. **Surveys.** HCA Affiliates may not survey Competitors concerning Competitively Sensitive Topics listed in Paragraph 1, nor participate in such surveys conducted by a Competitor. HCA Affiliates may use or participate in outside party surveys of prices, costs, compensation or employee benefits if:
- a. with respect to referral sources, the survey complies with HCA's policy governing the market value of goods or services provided to potential referral sources (Fair Market Evaluations Policy, LL.025) and Operations Counsel has been consulted; or
 - b. as to employee compensation and benefits, the outside party surveyor gives written assurances that the survey meets the Antitrust Safety Zone guidelines set forth in the U.S. Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care. Those guidelines are:
 - the survey is managed by a non-competitor third-party (e.g., a government agency, commercial vendor, academic institution or trade association);
 - the information provided by the survey participants is at least 3 months old;
 - there are at least five participants covered by each category of reported data;
 - no single participant's data represents more than 25% of the reported data; and
 - the survey results are presented in an aggregated manner that does not allow the individual participant's information to be identified.

If assistance is needed to obtain assurances of compliance for a particular survey, or if there are otherwise concerns about whether a survey meets the Safety Zone guidelines, contact the Legal Department.

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4. **Recruitment.** For Recruitment Purposes, an HCA Affiliate may discuss wages, benefits, or other Competitively Sensitive Topics with a current or prospective employee, medical director, independent contractor, or medical staff member even though he or she may also be associated with a Competitor. However, except with prior legal guidance, the HCA Affiliate may not contact the Competitor to verify the information discussed.
5. **Employment Verification.** HCA retains vendors to provide employment verification to other employers, lenders, apartment managers and other credit agencies, in accordance with specific policies (see the Reference Inquiries Policy, HR.OP.028). If there is a need for any other communication with a Competitor concerning a particular employee or prospective employee, the HCA Affiliate must first seek legal advice from the Legal Department.
6. **Business Transactions:** HCA Affiliates must seek legal advice from the Legal Department prior to conducting negotiations or due diligence with respect to a potential merger, acquisition, joint venture, divestiture or other non-recruitment business transaction that involves a Competitor, or employees or medical staff of a Competitor.
7. **Seminars and Trade Meetings.** Employees may participate in social functions, seminars, conferences or trade association with Competitors as long as they abide by this Policy. If a Competitor or someone else initiates a discussion of non-public, Competitor-specific information relating to a Competitively Sensitive Topic covered in Paragraph 1, steps must be taken to avoid any appearance of having participated in or condoned the discussion. This might include, for example, objecting to the discussion and asking that it stop, or leaving the meeting.

Definitions:

1. For purposes of this policy, a **“Competitor”** is any person or entity that provides products or services that are similar to, or are viable alternatives to, products and services provided by an HCA Affiliate. A **Competitor** may also be a person or entity that competes for supplies, labor, equipment contracts or other inputs that affect an HCA Affiliate’s costs. For purposes of this policy, employees or medical staff of HCA Affiliates are not deemed Competitors solely as a result of being also employed by, or having privileges with, a Competitor.
2. **“Communicating”** with Competitors includes providing or receiving documents; sending or receiving letters, memos, emails or other text messages; engaging in phone or personal conversations; or participating in meetings or seminars, such as trade association meeting or industry conferences.
3. **“Recruitment Purposes,”** as used in Paragraph 4, includes recruitment, retention, or negotiation of compensation or other terms of employment, medical directorship or independent contractor arrangement with a current or prospective employee or member of the medical staff.

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PROCEDURE: Requests for legal advice pursuant to this policy should be directed to the General Counsel, or, depending upon the issue involved, to other members of the Legal Department, as follows:

- Labor or Employment: the Vice President or Managing Counsel – Labor and Employment Section
- Mergers, Acquisitions, Divestitures, Partnerships or other Transactions: the Vice President – Development
- Managed Care or Shared Services: the Managing Counsel, Shared Services Group
- Supply Purchasing: the Managing Counsel, HealthTrust Purchasing Group
- Real Estate: the Senior Real Estate Counsel
- Operations and All Other Issues: the Vice President – Operations; the Managing Operations Counsel; or the Affiliate’s assigned Operations Counsel

It is contemplated that the Legal Department will give legal advice concerning specific situations, and, from time to time, may issue guidelines of general applicability for certain categories of communications with Competitors.

REFERENCES:

Code of Conduct

Fair Market Evaluations Policy, [LL.025](#)

Reference Inquiries Policy, [HR.ER.022](#)

Information Confidentiality and Security Agreements Policy, [IP.SEC.005](#)