

**LOS ALAMOS PHO  
ANTI-TRUST POLICY**

SUBJECT: ANTI-TRUST

STANDARD: Los Alamos PHO (LAPHO) recognizes that antitrust violations can have extremely serious consequences. It is the intention of LAPHO to comply with all laws applicable to its operations, including the antitrust laws, and accordingly, an appropriate antitrust policy is consistent with this philosophy.

PURPOSE: To establish guidelines for antitrust compliance.

**POLICY**

1. All LAPHO members, officers, directors, managers, employees, affiliates (hereafter, “affiliates” are defined as hospitals, physician organizations, or physician hospital organizations that are not full members of LAPHO) and providers must comply with antitrust laws. LAPHO will not condone any conduct which violates the antitrust laws. *Violation of the LAPHO Antitrust Policy by any LAPHO member, officer, director, manager, employee, affiliate or provider may result in immediate termination from LAPHO or loss of employment with LAPHO.*
2. Any LAPHO member, officer, director, manager, employee, affiliate or provider who has questions about the application of antitrust laws to past, present or future conduct of LAPHO should contact the LAPHO President, who will, in turn, consult with LAPHO’s antitrust counsel.
3. Local and regional employers in New Mexico have expressed their desire for a region-wide physician and hospital network that would help employers stay competitive in their respective industries and maintain their employees’ health. LAPHO believes that it can respond to this demand by improving access to a broad range of services across the region, by increasing efficiency and cost-effectiveness, and by enhancing the already high quality of health care delivered in New Mexico.

4. At the present time, it is anticipated that most contracting opportunities presented to LAPHO will be in the nature of non-risk agreements. Should any agreements which contemplate the sharing of substantial financial risk be presented to LAPHO, LAPHO will adopt appropriate antitrust protocols for handling those contracts. Thus, this Policy and LAPHO's Antitrust Compliance Guidelines for Contracting with Third Party Payors ("Guidelines") which are attached hereto and incorporated by reference, may be expanded, as circumstances warrant.
5. For payor agreements that do not involve the sharing of substantial financial risk, LAPHO will adhere to the protocols of the messenger model or other appropriate procedures which avoid antitrust concerns. Specific protocols are set forth in Section II A of the Guidelines, which are attached hereto and incorporated by reference. Under no circumstances will LAPHO or its messenger negotiate or suggest fees or other competitively-sensitive terms in proposed non-risk agreements. LAPHO and the messenger will maintain the confidentiality of all fee and other competitively-sensitive information received from providers and payors. Likewise, "firewall" protocols, as described in Section II B.1 of the Guidelines will also be adopted, as circumstances warrant.
6. Hospitals, physicians and other duly-licensed individuals or providers participate in LAPHO on a non-exclusive basis. Hospitals, physicians and other duly-licensed individuals or providers that participate in LAPHO are free at all times to contract directly with payors or participate in other networks or joint ventures.
7. LAPHO shall distribute copies of this policy and attached Guidelines to each of its members, officers, directors, managers, employees, affiliates and providers who will sign in the space provided on the last page of this policy, confirming that they have read this policy and the attached Guidelines, and agree to be bound by them. When this policy or the Guidelines are updated, LAPHO shall circulate a revised version to each of its members, officers, directors, managers, employees, affiliates and providers reminding them of the existence and substance of this policy and the Guidelines.
8. This policy and the attached Guidelines will be reviewed annually by LAPHO. Any proposed deviations from this policy or the attached Guidelines will be reported to LAPHO's Chief Operating Officer, who will, in turn, consult with LAPHO's antitrust counsel, before any deviation is implemented.

I have read the foregoing statement of policy and attached Guidelines and agree to be bound by them. If so indicated below, my signature constitutes the agreement of the institution or group I represent to be bound by this policy and the attached Guidelines.

---

Name (please print)

---

Provider's Signature

---

Title

---

Date

**EXHIBIT**  
**RETAIN FOR YOUR RECORDS**  
**DO NOT RETURN**

**Los Alamos PHO**  
**Antitrust Compliance Guidelines (“Guidelines”)**  
**For Contracting with Third-Party Payors**

**I. Background**

Los Alamos PHO (“LAPHO”) has been formed to develop and provide the benefits of a health care delivery system. The goals of LAPHO are to provide access, improve choice, enhance the quality of health care delivered in New Mexico, and arrange to provide health care services in a more efficient and cost-effective manner.

At the present time, LAPHO consists of hospitals and organized physician groups. In the future, LAPHO may wish to extend membership to, or affiliate with other hospitals and organized physician groups. Collectively, and for purposes of these Guidelines, the current and future members or affiliates of LAPHO shall be called “Providers.” LAPHO may offer the services of its Providers to Payors, including without limitation employer self-funded plans, insurers, health maintenance organizations, and other organizations responsible for paying health care services.

LAPHO intends to conduct its operations in strict compliance with state and federal antitrust laws. LAPHO expects and requires that its members, officers, directors, managers, employees, affiliates (as defined in LAPHO’s Antitrust Policy) and Providers do the same. Accordingly, LAPHO adopts the following Guidelines for itself and for its members, officers, directors, managers, employees, affiliates, and Providers. These Guidelines are attached to and incorporated by reference in LAPHO’s Antitrust Policy, to which all LAPHO members, officers, directors, managers, employees, affiliates and Providers have agreed in writing to be bound.

**II. Payor Contracting**

LAPHO recognizes that otherwise independent providers who are not substantially integrated generally may not collectively agree on rates or charges. Providers who are not integrated must set their fees independently, and must make independent decisions whether or not to contract with a particular Payor.<sup>1</sup>

---

<sup>1</sup> At the present time, it is anticipated that most contracting opportunities presented to LAPHO will be in the nature of non-risk agreements. Should any agreements which contemplate the sharing of substantial financial risk be presented to LAPHO, LAPHO will adopt appropriate antitrust protocols for handling those contracts.

LAPHO recognizes the need to set guidelines to ensure that decisions on pricing and contracting are made in an appropriate manner. Accordingly, LAPHO will observe the following guidelines when contracting.

**A. Messenger Model Procedures**

For contracts that do not involve the sharing of substantial financial risk among individual Providers, LAPHO may identify a messenger to act as a facilitator of arrangements between individual Providers and Payors. The messenger will be a person designated by LAPHO who is not otherwise affiliated with any Provider. The messenger may be an employee of LAPHO, provided that all of the procedural requirements concerning the use and dissemination of confidential information set forth in these guidelines are strictly followed.

LAPHO may ask each Provider to unilaterally determine its floor prices or rates or a conversion factor for providing services under fee-for-service contracts. This information will be provided directly to LAPHO on forms and in the manner prescribed by LAPHO. Each Provider may also be asked to execute an agreement authorizing LAPHO to enter into contracts on his or her behalf if the contract rate is at or above a “floor” rate unilaterally determined by the individual Provider. This process is called the “independent fee survey.” The survey process is offered solely for the purpose of streamlining the contracting process within the legal boundaries of the messenger model.

Neither the Providers nor the messenger will share information concerning an individual Provider’s floor price or rate or conversion factor with any other Providers. The messenger will maintain the information related to each Provider’s floor prices or rates or conversion factor in such a way as to ensure its confidentiality from the other Providers of LAPHO (including Providers acting in their capacity as directors or officers of LAPHO). The messenger may not negotiate on a collective basis on behalf of Providers or otherwise facilitate collective decision making by Providers.

1. Payors Proposes Fee Schedule. When a Payor asks that LAPHO enter into a fee-for-service arrangement and the Payor proposes the fee schedule, LAPHO may, at the written request of the Payor, review forms of contracts proposed by such a Payor and negotiate changes unrelated to price or other competitively-sensitive terms that LAPHO believes will make the contracts more acceptable to its Providers. Thereafter, the messenger will follow the steps outlined in subsections (a) and (b) below:

- a. The messenger may transmit the Payor's contract offer to all providers or to a subset thereof that best meets the Payor's needs (the subset will be chosen by the Payor) for individual acceptance or rejection with such neutral explanations of the offers as may be necessary to assist the Providers in understanding and evaluating them. Providers will thereafter be given ten (10) business days to review the offer and to notify LAPHO if they accept the offer and/or wish to make a counterproposal to the Payor. If no acceptance or counterproposal is received from the Provider within the ten (10) day period, the Provider will be deemed to have rejected the offer. All counterproposals (and any responses thereto) will be passed from Payor to Provider in accordance with this provision; under no circumstances shall LAPHO or the messenger collectively negotiate fees or other competitively sensitive terms on behalf of Providers. All compensation and other competitively-sensitive information which LAPHO transmits to or from Providers in LAPHO's capacity as messenger is confidential and will not be disclosed by LAPHO to any Provider. If a Provider rejects a contract opportunity primarily because of the Payor's proposed compensation terms, Provider may use good faith efforts to negotiate directly with the Payor to reach a mutually satisfactory agreement with the Payor.
  - b. At the written request of the Payor, and as an alternative to option (a) above, LAPHO may also review Providers' unilaterally-determined floor rates to ascertain the number of Providers who are willing to contract at the rate offered by the Payor and may advise the Payor of the number of Providers who will contract at that rate. If the Payor's offer meets or exceeds the Providers' unilaterally-determined floor rates, LAPHO may enter into contracts on behalf of those providers who have elected to participate in the pre-authorization process. Any offers that do not meet the Providers' individually determined floor rates will be transmitted to the Providers for their individual consideration.
2. Payor Does Not Propose Fee Schedule. When a Payor asks LAPHO to enter into a fee-for-service arrangement and the Payor does not tender a fee schedule to LAPHO, LAPHO will follow the steps outlined below:

At the written request of the Payor, LAPHO may review the forms of contract or terms proposed by such Payor, and negotiate changes unrelated to price or other competitively-sensitive terms that LAPHO believes will

make the contract more acceptable to its Providers. LAPHO may provide the Payor with information concerning Providers' individually-determined floor rates. Such information shall be furnished to the Payor for the sole purpose of enabling Payor to develop contract offers. The Payor is free to counter propose compensation terms which will be conveyed to the Providers via the messenger model.

If, after reviewing the fee information provided pursuant to this Section 2, a Payor offers compensation terms which meet or exceed the Providers' individually-determined floor rates, the Payor, at its option, may utilize the fee survey process described above, or it may request LAPHO to transmit the fee information to the Providers for their individual consideration. If the fee survey process is utilized, any offers that do not meet the Providers' individually-determined floor rates will be transmitted to the Providers for their individual consideration.

3. Prohibited Actions. Except as specifically provided above, LAPHO and the messenger shall not:
  - a. Agree or disagree on behalf of Providers, individually or collectively, to enter into contracts;
  - b. State the terms (price or other) on which Providers, individually or collectively, will enter into contracts with Payors, or negotiate price or other competitively-sensitive terms;
  - c. Advise Providers whether they should or should not enter into contracts with Payors;
  - d. Share information among Providers as to the terms (price or other) on which they contract to do business individually, or as to whether or not they are prepared individually to do business with any given Payor; nor
  - e. Prohibit individual Providers who wish to negotiate the offer with the Payor from doing so directly. In the case of individual Provider negotiations, the Provider may obtain independent assistance from the messenger.
  
4. Information Regarding Provider's Fees. LAPHO's messenger may provide Payors with information concerning its Providers' fees, which may include their usual and customary fees, and the fees at which they have stated their willingness to contract. The messenger may assist Payors in developing contract offers by taking the fee survey information of the Providers and developing a schedule that can be presented to a Payor showing the percentages of participants in LAPHO who have authorized contracts at various price levels. In

doing so, LAPHO and the messenger will observe the following guidelines:

- a. Only the messenger will gather and disseminate the information;
- b. Under no circumstances will LAPHO or the messenger negotiate or agree to fees or other competitively-sensitive terms on behalf of Providers;
- c. The messenger will collect fee information from the Providers, and will maintain it in such a way as to ensure its confidentiality from other Providers ( including Providers acting in their capacity as officers or managers of LAPHO);
- d. In his or her capacity as such, the messenger will act independently of the officers and managers of LAPHO, and will be free to consult LAPHO's legal counsel as he or she deems necessary, and to act on legal counsel's advice for protection of LAPHO and its Providers;
- e. For purposes of furnishing fee information to Payors, the messenger will provide actual information for all of a sample of Providers, rather than typical or average fees; and
- f. The messenger may discuss with LAPHO's officers and directors any market considerations affecting prices, but will not discuss specific prices, price levels or price proposals.

**B. Other Protocols for Payor Contracting**

1. **Non-Exclusivity.** Providers remain free at all times to contract or affiliate with any person or entity outside LAPHO and to contract directly with Payors.
2. For Providers that negotiate Payor fees independent of LAPHO, the Providers Payor Agreement may be part of the final LAPHO Payor Agreement with the Payor, but the Providers information or fees shall not be shared with other LAPHO Providers or the LAPHO Board of Directors.