

### **CAADS Antitrust Law and Compliance Guidelines**

It is the policy of the California Association for Adult Day Services (CAADS) and its members to strictly comply with laws and regulations applicable to their activities, including federal and state antitrust laws. It is further the policy of CAADS to assist its members and volunteers in complying with federal and state antitrust laws. CAADS members and leaders are expected to conscientiously adhere to antitrust laws. CAADS will neither knowingly permit nor condone anti-competitive behavior, whether willful or inadvertent, in connection with any CAADS activity.

### **Antitrust Laws**

The antitrust laws seek to preserve a free competitive economy. As a general rule, competitors (even most nonprofit entities) may not restrain competition among themselves through understandings or agreements as to the price, the production or the distribution of their products, or other agreements which unreasonably restrict competitive capabilities or opportunities of their competitors, their suppliers or their customers. The antitrust laws also prohibit monopolization and attempts to monopolize, unfair methods of competition, unfair or deceptive acts or practices, most discrimination in prices between different purchasers in the sale of a commodity, exclusive dealing arrangements, most tying sales and requirements contracts, some joint ventures / mergers / consolidations, and similar activities. A more complete discussion of the antitrust laws (Sherman Act, Federal Trade Commission Act, the Clayton Act, the Robinson-Patman Act, and California's Cartwright Act) is available upon request from CAADS.

Antitrust laws are often unclear in terms of applicability to any given conduct. Whether or not an antitrust violation exists depends purely on the specific conduct and facts involved in each instance. Notwithstanding the nebulous nature of the antitrust law, penalties for violating them, both civil and criminal, are severe.

Association members and leaders, in particular, have compelling reasons to understand and comply with antitrust laws because antitrust violations commonly consist of two elements:

1) **concerted action** which produces 2) an **unreasonable restraint of competition**. Since CAADS' activities involve meetings and activities of competitors (CAADS members), the *concerted action* element can generally be established without difficulty. The only other element necessary to prove a basic antitrust violation is to show that the action amounts to an *unreasonable restraint of competition*. So, agreements or activities of association members that are anti-competitive or have an anti-competitive effect, whether conducted as association business or not, could result in serious antitrust consequences.

### **Member Responsibilities**

CAADS programs are carefully designed and monitored on an ongoing basis to ensure compliance with antitrust law. Every CAADS member, whether organizational or individual, has a duty and responsibility under the law to avoid and prevent antitrust violations. Every CAADS member needs to understand basic antitrust laws, to recognize areas of potential antitrust risk, and to overtly object to and refuse to participate in any activity that poses antitrust risk until that risk is properly assessed and cleared by legal counsel.

## **Areas of Risk**

It is not possible to provide a complete or specific list of activities that amount to an antitrust violation. However, it is helpful to identify areas of risk, where close attention can be paid to the possible anti-competitive nature of the agreements or activity involved. Some areas of risk include discussions of the following:

- Controlling or influencing current or future prices charged to consumers, controlling or influencing price increases or decreases, or stabilization or standardization of prices
- What constitutes a “fair” profit level
- Procedures for establishing selling prices, cash discounts, credit terms
- Control of sales levels
- Allocation or division of markets or geographical divisions of markets among competitors
- Agreements to refuse to deal with any entity or entities / boycotts
- Whether or not the pricing practices of any competitor / industry member are unethical, or constitute an unfair trade practice, or denial of membership privileges or benefits based on the same
- Agreements limiting or restricting advertising

Again, some discussions relating to activities identified above will not amount to antitrust violations. However, discussions relating to them require thorough prior antitrust analysis and guidance in the discussion.

## **CAADS Meetings**

To avoid even the appearance of impropriety, as well as to avoid inadvertent violation of antitrust laws, all CAADS board and committee meetings will be conducted in accordance with the following rules:

1. A written agenda will be prepared and distributed in advance of each meeting. Agendized issues with potential antitrust implications will be reviewed and discussed by the chairman, executive director and legal counsel, if deemed appropriate. Additions to the agenda having potential antitrust implications should be postponed, or discussions of such matters held with legal counsel present.
2. Accurate, detailed meeting minutes of every meeting will be prepared and reviewed. Audio, video or other recordings of meetings will not be permitted. Minutes will be approved at the next meeting.
3. In the event of concern regarding potential antitrust implications of a discussion, discussion must be discontinued pending resolution of the matter through the executive director or legal counsel, if necessary.
4. In the event that any member has a concern about potential antitrust implications of discussion during a meeting, he or she shall interrupt discussion and state that concern immediately. If discussion is not terminated and the concern resolved, the concerned member should state that he or she is leaving the meeting for that reason, and leave.
5. Conversations involving discussion of matters in violation of this policy will not be tolerated at a CAADS meeting, and violating parties may be ejected from the meeting by the chairman.

*This document has been prepared for general reference only. It is intended to inform CAADS leaders and members of basic antitrust principles to assist them in acting responsibly in the conduct of CAADS and members business activities. It must not be considered as a substitute for competent legal advice. It is recommended that interested persons confer with competent legal counsel concerning this and other significant legal issues.*

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