

## SOUTHWEST BEHAVIORAL HEALTH IPA (SWBHIPA) ANTI-TRUST POLICY

Southwest Behavioral Health IPA (SWBHIPA) recognizes that antitrust violations can have extremely serious consequences. It is the intention of SWBHIPA to comply with all laws applicable to its operations, including the antitrust laws, and accordingly, an appropriate antitrust policy is consistent with this philosophy.

By becoming a SWBHIPA member and participating in the contracts administered by SWBHIPA, you shall need to abide by the establish guidelines for antitrust compliance.

As governed by the Federal Trade Commission's (FTC) rules and regulations, providers cannot collectively negotiate, hinder or boycott a Health Plan or Insurer from the ability to provide their services in any given area. Providers cannot collectively or individually prevent competition or restrict fair trade. Providers cannot discuss or share reimbursement rates nor collectively set rates or restriction on any given Health Plan.

**Therefore**, all SWBHIPA members, officers, directors, managers, employees, affiliates (hereafter, "affiliates" are defined as hospitals, provider organizations, or physician hospital organizations that are not full members of SWBHIPA) and providers must comply with antitrust laws.

**Therefore**, SWBHIPA will not condone any conduct which violates the antitrust laws. *Violation of the SWBHIPA Antitrust Policy by any SWBHIPA member, officer, director, manager, employee, affiliate or provider may result in immediate termination from SWBHIPA or loss of employment with SWBHIPA.*

**Therefore**, any SWBHIPA member, officer, director, manager, employee, affiliate or provider who has questions about the application of antitrust laws to past, present or future conduct of SWBHIPA should contact the SWBHIPA President, who will, in turn, consult with SWBHIPA's antitrust counsel.

**Therefore**, SWBHIPA employs the "messenger model". This method allows SWBHIPA to receive contracts and the total management of that contract is performed by an independent consultant, we call our messenger. Our messenger communicates with the Health Plan concerning the terms and rates of that contract. That information is then conveyed to the SWBHIPA members by our messenger through a ballot given to each provider. Each provider will independently decide whether to participate in the contract by choosing one of three alternatives. The provider has the option of asking for a counteroffer, negotiate, or reject the contract. Any negotiation with the Health Plan can be done by the member or messenger representing the member.

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

**Therefore,** the only exception to this policy is if SWBHIPA enters into a Risk Agreement with a Health Plan. All current agreements held by SWBHIPA are non-risk agreements. If a Risk Agreement is implemented, there will be detailed notice to SWBHIPA members.

**Therefore,** SWBHIPA members are allowed to discuss contractual management issues such as plan functions, claims, referrals, authorization procedures and general procedural processes. This does not include reimbursement and individual **payments** from the Health Plans.

I have read the foregoing statement of policy and agree to abide by the policies set forth therein. A hard copy is available upon request or you may print off a copy of this policy here.

**RETAIN FOR YOUR RECORDS**

**DO NOT RETURN**

**Southwest Behavioral Health IPA  
(SWBHIPA)**

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

**I. Background**

Southwest Behavioral Health IPA (“SWBHIPA”) has been formed to develop and provide the benefits of a health care delivery system. The goals of SWBHIPA 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, SWBHIPA consists of behavioral health providers. In the future, SWBHIPA may wish to extend membership to, or affiliate with other organizations or physician groups. Collectively, and for purposes of these Guidelines, the current and future members or affiliates of SWBHIPA shall be called “Providers.” SWBHIPA 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.

SWBHIPA intends to conduct its operations in strict compliance with state and federal antitrust laws. SWBHIPA expects and requires that its members, officers, directors, managers, employees, affiliates (as defined in SWBHIPA’s Antitrust Policy) and Providers do the same. Accordingly, SWBHIPA 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 SWBHIPA’s Antitrust Policy, to which all SWBHIPA members, officers, directors, managers, employees, affiliates and Providers have agreed in writing to be bound.

**II. Payor Contracting**

SWBHIPA 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>

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

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

### III. Messenger Model Procedures

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

SWBHIPA may ask each Provider to unilaterally determine its base reimbursement rates aka “floor prices” or conversion factor (a multiplier used by health plans to determine reimbursement amounts) for providing services under fee-for-service contracts. This information will be provided directly to SWBHIPA on forms and in the manner prescribed by SWBHIPA. Each Provider may also be asked to execute an agreement authorizing SWBHIPA 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.**” (A fee survey can be given to all members. Each person responds with what he/she would like for reimbursements in a contract. The messenger gathers this information, it is private, will not be shared with the providers. It helps the messenger know that when a contract is presented they can say “you can offer whatever reimbursement you like, but in general the membership seems to respond favorably or tends to join networks if the reimbursement is “X” amount”.) 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 SWBHIPA (including Providers acting in their capacity as directors or officers of SWBHIPA). The messenger may not **negotiate on a collective basis** on behalf of Providers or otherwise facilitate collective decision making by Providers. (After the ballot has gone to the members, the Messenger cannot go back to a plan and say a group of providers want a certain amount. The messenger can only go back and convey what an individual provider wants. The messenger has to do this with each individual that wants to negotiate.)

1. Payors Proposed Fee Schedule. When a Payor asks that SWBHIPA enter into a fee-for-service arrangement and the Payor proposes the fee schedule, SWBHIPA 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 SWBHIPA believes will make the contracts more acceptable to its Providers. Thereafter, the messenger will follow the steps outlined in subsections (a) and (b) below:

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. (An example of a subset would be if the contract would only be open to LCSWs because it is a Medicare plan or if a plan was only

looking for prescribers.) Providers will thereafter be given ten (10) business days to review the offer and to notify SWBHIPA 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 by messenger in accordance with this provision; under no circumstances shall SWBHIPA or the messenger **collectively negotiate** fees or other competitively **sensitive** terms on behalf of Providers. (The messenger can only facilitate negotiations with a provider one at a time. An example of a sensitive term would be recoupment or termination period. The Messenger does not negotiate on behalf of the provider, they only convey or “messenger” the provider’s requests.)

All compensation and other competitively-sensitive information which SWBHIPA transmits to or from Providers in SWBHIPA’s capacity as messenger is confidential and will not be disclosed by SWBHIPA to any Provider. If a Provider rejects a contract opportunity primarily because of the Payor’s proposed compensation terms, Provider has the option to negotiate directly with the Payor instead of utilizing the messenger

a. 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, SWBHIPA 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, SWBHIPA 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 SWBHIPA to enter into a fee-for-service arrangement and the Payor does not tender a fee schedule to SWBHIPA, SWBHIPA will follow the steps outlined below:

At the written request of the Payor, SWBHIPA may review the forms of contract or terms proposed by such Payor, and negotiate changes unrelated to price or other competitively-sensitive terms that SWBHIPA believes will make the contract more acceptable to its Providers. SWBHIPA 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 SWBHIPA 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, SWBHIPA 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. Providers and Messenger will not discuss or share any information regarding their own contracts, either through the IPA or direct contracts, or their intent to join or withdraw from any contracts; 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. SWBHIPA'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 SWBHIPA who have authorized contracts at various price levels. In doing so, SWBHIPA and the messenger will observe the following guidelines:

- a. Only the messenger will gather and disseminate the information;
- b. Under no circumstances will SWBHIPA 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 SWBHIPA);
- d. In his or her capacity as such, the messenger will act independently of the officers and managers of SWBHIPA and will be free to consult SWBHIPA's legal counsel as he or she deems necessary, and to act on legal counsel's advice for protection of SWBHIPA 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. Messenger may discuss with SWBHIPA's officers and directors any market considerations affecting prices, but will not discuss specific prices, price levels or price proposals.

## Definition of terms in order of usage in Antitrust Policy

1. **Independent consultant** –otherwise known as messenger
2. **Dispositions** – final arrangement of settlement or payment
3. **Integrated agreements** –Member accepts financial risk as part of the agreement with insurance company. In turn, a lump sum is given to group of providers that accepts this condition. Providers agree to manage lives of subscriber in insurance group.
4. **Not integrated** – contract in which members accept fee for service
5. **Floor price/rate** –Bottom line of provider in which fee is acceptable to any given SWBHIPA member
6. **Conversion factor** – a multiplier some health plans/MCOs use with an RVU to establish the rate of reimbursement

The relative value unit (RVU) is the amount or value that is given to a procedure. Medicare is the usual determiner of an RVU. Health plans can use Medicare's RVU or they can make up their own. This is dependent on their own policies.

Some health plans use the RVU multiplied by a conversion factor to determine reimbursement. For example purposes only, if a health plan uses this method, then they would negotiate your conversion factor, say to \$10, and multiply that by their RVU for a 90837, which could be 3.1148 and you would get a reimbursement of \$31.15.

Medicare updates their RVUs at least once a year, but sometimes more. Health Plans can modify them at their will, but must give providers notification that they are doing so and when the changes will go into effect.

Again, not all health plans use this method, some determine their fee schedule by a percent of straight Medicare, either a current year or some other year that is defined in the contract. Others reimburse at a percent of billed charges.

7. **Independent fee survey** – Survey conducted by messenger to determine the floor rate of individual providers for purpose of streamlining contracting process
8. **Rate of conversion factor** - This individual rate negotiated by providers
9. **Negotiate on a collective basis** – Messenger cannot tell an insurance company that members, either as a whole or any portion thereof, want a differentiated reimbursement amount or term. All requests after the initial ballot have to be relayed on an individual basis.
10. **Subset of providers** – A subset could include certain licensures or providers that use certain modalities in their practice. For example, insurance company only wants to negotiate an agreement with SWBHIPA members that utilize hypnosis or another modality requested by insurance group. This would constitute subset of providers.
11. **Sensitive term/competitively sensitive information** – This includes rates or contract language. By way of example, but not limited to, termination or recoupment terms.