



Counselor fees and antitrust laws

Question: A colleague across town suggested that we not post our fees on our websites or participate in online discussions about fees or we may be in violation of antitrust laws. Is this true? I thought antitrust laws were designed to protect consumers from big monopolies such as oil companies and large telephone companies, not solo counselors.

Answer: It sounds like you have good recall of your U.S. history course in high school. At the beginning of the 20th century, President Teddy Roosevelt led an effort to “bust trusts,” which were essentially large oil, steel and railroad conglomerates, among others. Federal laws were passed to promote competition and protect consumers. Although the laws originally were designed to break up large monopolies and prevent price fixing, some of the same laws apply today to small competitors, including health care professionals.

Although antitrust laws are extremely complex, I can make a few general suggestions and share some resources with you. When individual counselors post their own fee schedules on their professional websites, that alone will not typically invite antitrust scrutiny or a lawsuit. In fact, one could argue that posting fees on one’s professional website is pro-competitive and aids the consumer in choosing a mental health provider.

However, if other evidence exists to demonstrate collusion between the counselor and other local providers in setting fees, that evidence, coupled with the fee posting on the website, could invite an antitrust challenge. For example, if two or more unrelated therapists meet in person, speak on the phone, communicate via email or chat online (including via Listservs) and discuss their fees, agree to share fee schedules or impose minimum or maximum fees, such actions

could lead to an antitrust complaint (see fic.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing). In short, the setting of rates and fees should be done individually unless the providers are part of an integrated network or joint practice, such as a professional corporation.

If you decide to post your individual fees on your website, you might consider placing them on a section devoted to clients and potential clients. You might also include your informed consent document, HIPAA notice of privacy practices and other documents that are tailored to clients, not directed to competing professionals, on this section of your site. Again, make sure that all actions and decisions regarding fees are truly your own, not part of a joint decision with other independent providers. Alternatively, you could invite prospective clients to call you to discuss fees and then provide the written documentation at the time you engage in the informed consent process.

Additionally, you should be aware that if a group of independent counselors decides to boycott a managed care company because of perceived low reimbursement rates, that activity could pose antitrust problems. (For further information, see fic.gov/tips-advice/competition-guidance/guide-antitrust-laws/dealings-competitors/group-boycotts.)

You should also be mindful that Listservs, when used to discuss fees, might be especially problematic for counselors, other providers and professional associations composed of health care providers. Listservs can provide ready evidence of collusion among professionals regarding price fixing. Some associations have their own rules regarding Listservs. American Counseling Association members participating in the social media platform ACA Connect should review the

code of conduct available at community.counseling.org/codeofconduct.

Application of the antitrust laws to you depends on specific facts and the relevant market in which you practice. Both criminal and civil action against a violator is possible, and both the U.S. Department of Justice and the Federal Trade Commission may be involved in antitrust enforcement action. State agencies or offices of the various state attorneys general may also weigh in on actions by health care providers or associations that pose a potential restraint of trade. For all these reasons, you may wish to discuss your specific situation with a local health care or antitrust attorney.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented for educational purposes only. For specific legal advice, please consult your own local attorney. To access additional risk management Q&As, go to counseling.org/ethics and scroll to the bottom of the page for the ACA members-only link to the Risk Management section of the website. ♦

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