



NAHU's Code of Ethics and the Anti-trust Laws

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February 2016

NAHU and the Antitrust Laws

- ❑ Our Code of Ethics – What is the purpose?
 - Can we prevent someone from becoming a member?
 - Can we revoke membership?
 - Can our Code of Ethics be punitive?

NAHU's CODE OF ETHICS

- ❑ Services and activities of an association like ours provide **economic benefits** to the professional.
- ❑ Expulsion from an association or denying the right to be a member in some way can be held to place the individual at an economic disadvantage relative to other association members.
- ❑ Such a denial can be construed as a restraint of trade and a violation of the antitrust laws.
- ❑ For this reason, NAHU holds its Code of Ethics to be aspirational – a code that we aspire to but not one that we actively enforce.

POTENTIAL DEFAMATION CLAIMS

- Claims of intentional infliction of economic harm and defamation of character claims can be brought whether statements are true or false.
- Section 373 of the Criminal Code defines defamatory matter as matter likely to injure the reputation of a person in his profession or trade.
- Even a dead person can be defamed.
- Penalties are severe with possibility of both civil and criminal penalties.

PENALTIES FOR VIOLATIONS

- An individual may be fined up to \$1 million and a corporation up to \$100 million if found to have violated the antitrust laws.
- If violations are considered egregious, jail sentences up to ten years can be imposed.
- Civil penalties available to government antitrust enforcement agencies include cease and desist orders up to a dissolution of our association.
- In addition to government enforcement, an individual that believes they have suffered injury can file a private suit against the violator and recover treble damages.

WHAT ABOUT MY COMMISSIONS?

- One very important thing to remember is that NAHU is a professional association, not a union.
 - **This also applies to state and local chapters.**
- Professional associations advocate for their members as a group but may not negotiate directly with insurers or other health plans.
- In addition, the antitrust laws do not allow our members to join together to do things like refuse to deal with certain carriers.

SO IS THERE ANYTHING WE CAN DO?

- ❑ If we believe a party in our industry is not behaving in an ethical manner, or that they have committed acts that are illegal, we can go to the relevant regulatory authority with a complaint.
- ❑ In fact NAHU has done this in comment letters to HHS relative to commission cuts during the Special Enrollment Periods.
 - We are in ongoing discussions with HHS regarding this matter.
- ❑ A number of our state chapters have gone to their insurance commissioners and several have written directly to HHS on this subject, particularly those who operate under the FFM.

THE BIGGER ISSUE

Why are these things happening now?

- ✓ Market Instability due to:
 - ❖ Guaranteed Issue and Adverse Selection.
 - ❖ Weak special enrollment rules.
 - ❖ Lack of validation of qualifying events.
 - ❖ High prices due to adverse selection and rating mechanisms.

NAHU ADVOCACY



- ❑ We advocate on behalf of all of our members with legislators and regulators.
- ❑ We have had some significant “wins” this past year but there is still much work to be done.
- ❑ Our strongest desire is to help our members be more successful.

RECENT ACCOMPLISHMENTS

- ✓ Signing of the PACE Act (small group at 50) by President Obama
- ✓ Repeal of auto-enrollment for groups of over 200
- ✓ Lobbied for **repeal of the free choice** voucher and were successful.
- ✓ Lobbied and were successful in getting the **small employer deductible cap repealed.**
- ✓ Dozens of small regulatory changes that have **made implementation improvements** for employers and individuals and the law less onerous for brokers

RECENT ACCOMPLISHMENTS

- ✓ Lobbied for and were successful in getting **greater transparency in Medicare** in SGR fix.
- ✓ Lobbied for and got **OE dates for 2016 to extend** into the coverage year and not completely line up with the Medicare AEP.
- ✓ 2015/2016 FFM includes **find an agent feature** and **SHOP exchange includes all NAHU requested broker features**.
- ✓ Dedicated Agent/Broker healthcare.gov **call center representatives**