



**Memorandum of Understanding
Between the Antitrust Division of the U.S. Department of Justice and the Office of the
Inspector General of the U.S. Department of Health and Human Services**

I. Purpose and Scope

The Office of Inspector General (“OIG”) of the U.S. Department of Health and Human Services (“HHS”) and the Antitrust Division of the U.S. Department of Justice (“Antitrust Division”) (collectively referred to as “the Agencies”) recognize the value of strengthening our collaborative relationship to enhance and maximize the enforcement of the federal laws administered and enforced by the two agencies. The Agencies enter into this Memorandum of Understanding (“MOU”) to strengthen the Agencies’ partnership through greater coordination in information sharing, investigations and enforcement activities, trainings, education, and outreach.

This MOU is intended to memorialize this understanding between the Agencies regarding cooperation between OIG and the Antitrust Division. This MOU is a voluntary agreement that expresses good-faith intentions of the Agencies, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party. This MOU does not obligate and will not result in an exchange of funds, personnel, property, or services, or any kind of financial commitment. This MOU outlines procedures to be followed by both Agencies in working together to address the need for information sharing, coordinated investigations and enforcement activities, trainings, education, and outreach between the Agencies.

OIG provides independent and objective oversight of HHS. OIG’s mission is to protect the integrity of HHS programs and the health and welfare of the people served by those programs through its oversight and enforcement authorities. OIG’s authorities come from the Inspector General Act, Social Security Act, Health Insurance Portability and Accountability Act, American Recovery and Reinvestment Act, Patient Protection and Affordable Care Act, and other statutes. The Antitrust Division enforces the antitrust laws of the United States, including the Sherman Act, Clayton Act, and related statutes.

By entering into this MOU, the Agencies do not imply an endorsement or a promotion by either Agency of the policies, investigations, enforcement actions, programs, or services of the other. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the Agencies’ normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the Agencies from participating in similar activities or arrangements with other entities.

The Agencies share an interest in protecting Federal healthcare programs and the people they serve and promoting competition in healthcare markets, including through the protection of American healthcare consumers and workers. The Agencies specifically share an interest in holding individuals or entities accountable for violations of the law, while preventing further harm to the healthcare system and patients. The Agencies therefore enter into this MOU to advance these interests and promote interagency collaboration to the fullest extent desired by the Agencies and permitted by law.

II. Coordination Activities

Agency Liaison

Each Agency will designate one or more points of contact responsible for ensuring effective, ongoing collaboration (“Agency Liaisons”). The Agency Liaisons will meet with sufficient regularity to carry out the purposes of this MOU. The Agency Liaisons will meet on a regular basis, at least quarterly, to discuss topics of mutual interest to the Agencies that further the purposes of this MOU and, when appropriate, establish procedures for the coordination of efforts related to such topics.

These topics may include (but are not limited to):

- (i) Interagency collaboration, including coordinating resources;
- (ii) Approaches to identifying and remedying anticompetitive conduct or deceptive trade practices that may implicate OIG’s exclusion authority and activities;
- (iii) Access to and exchanges of information;
- (iv) Training programs;
- (v) Public outreach; and
- (vi) Technical assistance.

Each Agency shall endeavor to update the other if it designates a new Agency Liaison.

Information Sharing

Consistent with the purpose of this MOU, and to the extent permitted by law, regulation, Agency policy, and this MOU, each Agency may share information, including complaints, investigative files, reports or analyses prepared by either Agency, or data procured by either Agency, and provide technical assistance, including guidance on policy and enforcement matters.

Requests for information under this MOU shall be made through each Agency Liaison, or others designated by them as necessary, and each Agency shall promptly respond to these requests as

appropriate and as soon as practicable, consistent with the availability of the responding Agency's staff, resources, and priorities.

The Antitrust Division and OIG will review this MOU quarterly to evaluate the existing information sharing, examine the continuing need for information sharing, discuss the utility of categories of data heretofore shared, and determine whether the provisions of this agreement require amendment or revision.

Training, Education, and Outreach

Where the Agencies mutually determine it to be appropriate, the Agencies shall provide training to each Agency's staff in identifying cases and issues that may arise under the other Agency's jurisdiction; engage in outreach and public education; share or co-develop training materials and programs; and develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the Agencies enforce. The Agencies' training, outreach, and education efforts may include coordination on the experiences and enforcement perspectives of each Agency in identifying and investigating the legal implications of complex healthcare market structures and exploitative business models, when appropriate. The Agencies may also meet periodically, and otherwise routinely share information as otherwise provided for by this Agreement.

All public materials bearing the DOJ or Antitrust Division name, logo, or seal must be approved in advance by the Antitrust Division. All public materials bearing the OIG name, logo, or seal must be approved in advance by OIG. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the Agency carrying out the activity do not necessarily represent the opinions, interpretation, or policy of the other Agency.

Consultation and Coordinated Enforcement Program

The Agencies shall establish procedures for consulting and coordinating various stages of their respective investigative and enforcement activities with respect to potential violations of the antitrust laws or laws administered and enforced by OIG to promote coordinated enforcement initiatives, increase efficiency, and minimize duplication.

This may include, but is not limited to, staff at each Agency periodically consulting on specific complaints, including reviewing information obtained during the course of investigation or coordinating requests for information, as permitted by law, regulation, agency policy, and this MOU. Staff may also exchange information about general patterns of conduct that may be anticompetitive or otherwise harm healthcare consumers, workers, or others.

In the event that a person or an entity resolves a criminal antitrust investigation through a plea agreement, deferred prosecution agreement, non-prosecution agreement, or other form of resolution and is subject to OIG's exclusion authority, OIG and the Antitrust Division will work together to ensure that exclusions are imposed where appropriate and Federal healthcare program beneficiaries maintain access to healthcare products and services. For example, the Agencies

may consider permitting an excluded party to complete an orderly winding down or a divestiture of assets to a qualified third party. The Agencies may also consider divestiture to restore or increase competition in the market. Through such coordination, the Agencies may work to ensure, to the extent possible, that Federal healthcare program beneficiaries have access to care, healthcare assets remain in the market, and competition is preserved and enhanced.

Referrals

When OIG detects potential antitrust violations while investigating conduct, it will evaluate and, as appropriate, refer the matter to the Antitrust Division.

Following a referral from OIG, the Antitrust Division will determine whether to open a civil or criminal investigation into the conduct and, after investigation, whether to bring a lawsuit based on the complaint. If the Antitrust Division decides against accepting the referral, it will promptly notify OIG. Accepting the referral does not indicate the Antitrust Division will open a civil or criminal investigation into the conduct.

When the Antitrust Division detects potential violations of law or regulations within OIG's jurisdiction, the Antitrust Division will evaluate and, as appropriate, refer the matter to OIG. If OIG decides against accepting the referral, it will promptly notify the Antitrust Division. Accepting the referral does not indicate that OIG will open an investigation or pursue litigation regarding the conduct.

III. Non-Public Information

When one of the Agencies provides Non-Public Information pursuant to this MOU (the "Providing Agency") to the other Agency (the "Receiving Agency"), the Receiving Agency shall presume the information so provided to be confidential Non-Public Information and will maintain the confidentiality of such information in accordance with the terms of this MOU, unless and until the Providing Agency designates otherwise in writing.

For purposes of this MOU, "Non-Public Information" means any information shared pursuant to this MOU that has not been designated as public information. Such Non-Public Information includes the information itself, in any form (including written, oral or electronic), and any document to the extent it contains such information.

IV. Protecting the Confidentiality of Non-Public Information

All Non-Public Information transferred from the Providing Agency to the Receiving Agency remains the records of the Providing Agency. The Receiving Agency shall maintain the confidentiality of the Non-Public Information and, except as specifically provided in this Section IV, or with the written approval of the Providing Agency, will not disclose or otherwise make public any Non-Public Information to a third party. Unless otherwise authorized in writing by the Providing Agency, Non-Public Information may be shared only with officials and employees of the Receiving Agency who have a need to know the information in the performance of their official duties, consistent with applicable law. The Receiving Agency will establish and maintain

such safeguards as are necessary and appropriate, including appropriate administrative, technical, and physical safeguards, to protect the confidentiality, data security, and integrity of any Non-Public Information obtained from the Providing Agency. All officials and employees of a Receiving Agency with whom Non-Public Information is shared must comply with the terms of this MOU. The Receiving Agency will promptly notify the Providing Agency in the event of an unauthorized disclosure of the Providing Agency's Non-Public Information, including identifying, where possible, any recipient of information outside of the Receiving Agency or Providing Agency.

If a Receiving Agency receives a legally enforceable request or demand from a third party for Non-Public Information of a Providing Agency including, but not limited to, a Congressional request or Freedom of Information Act request, the Receiving Agency will:

- (i) Unless prohibited by law, promptly notify the Providing Agency in writing of such request or demand for any Non-Public Information of the Providing Agency and furnish to the Providing Agency copies of any such demand or request as well as any documents related thereto;
- (ii) Afford the Providing Agency a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the Non-Public Information or any privileges associated therewith;
- (iii) Consistent with law, notify the requestor seeking the Non-Public Information that requests for such information should be made directly to the Providing Agency in accordance with applicable law;
- (iv) Cooperate fully with the Providing Agency to preserve, protect, and maintain the confidentiality of the Non-Public Information and any privileges associated therewith, including asserting any legal exemptions or privileges on the Providing Agency's behalf that the Providing Agency may reasonably request to be asserted, including withholding Non-Public Information from disclosure and not disclosing except as provided in this Section IV; and
- (v) Consent to an application by the Providing Agency to intervene in any related action solely for the purposes of asserting and preserving any of its privileges or claims of confidentiality with respect to Non-Public Information shared pursuant to this MOU.

Nothing in this MOU shall prevent a Receiving Agency from complying with a legally enforceable obligation including a valid and enforceable order of a court of competent jurisdiction or, if compliance is deemed compulsory, a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information or testimony thereto if:

- (i) In the case of a legally valid enforceable subpoena of a court or order by a court of competent jurisdiction, the Receiving Agency reasonably determines that efforts to

quash, appeal or resist compliance with the subpoena or order would be unsuccessful; attempts, to the extent practicable, to secure a protective order to preserve, protect and maintain the confidentiality of the Non-Public Information and any privileges associated therewith; and immediately notifies the Providing Agency of its intent to comply with the subpoena or order and of any actions taken in compliance with the subpoena or order; or

- (ii) In the case where the Receiving Agency must comply with a legally enforceable obligation, such as an obligation to provide discovery in a criminal investigation, including when there is no order by a court of competent jurisdiction, the Receiving Agency will notify the Providing Agency of its intent to comply with its legal obligation and it will seek a protective order to preserve, protect, and maintain the confidentiality of the Non-Public Information disclosed when possible; or
- (iii) In the case of a request or demand from a duly authorized committee of the United States Congress with authority to require and receive the Non-Public Information, the Receiving Agency must advise the committee that the Non-Public Information belongs to the Providing Agency and direct the committee to obtain the Non-Public Information directly from the Providing Agency.

In the event of a public proceeding, such as a trial, in which certain records may be used or testimony of the Antitrust Division's employees sought, OIG will notify the Antitrust Division.

Neither Agency shall have authority to waive any applicable privilege or doctrine on behalf of the other Agency, nor shall any waiver of an applicable privilege or doctrine by the conduct of one Agency be construed to apply to the other Agency.

The Agencies will notify one another upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOU.

The Agencies intend that information shared under this MOU will not constitute a waiver of the deliberative process, attorney-client, work-product, or any other applicable privilege. The Agencies also intend that information shared under this MOU will not constitute a public disclosure, a waiver of confidentiality, or a waiver of any other applicable exemption. At the conclusion of an investigation and prosecution or litigation by either party, the Receiving Agency will return any and all confidential information to the Providing Agency, except as required by law, including the Federal Records Act, or the Receiving Agency will destroy any and all confidential information no later than thirty (30) days after its use (which includes the time period required for compliance under federal records retention laws).

For information security purposes, a Providing Agency will be responsible for the security of information (including paper-based documents, electronic information, such as emails, and electronic information stored on physical media, such as CDs) exchanged pursuant to this MOU, including those in transit and those sent electronically. The Agencies agree to establish a

communication protocol for notifying each Agency Liaison when information is sent to or received from that agency, including information on the form of the transfer and the media type and quantity (when appropriate). A Receiving Agency expecting to receive information will notify the Providing Agency if the information is not received as of the next business date following the agreed upon delivery date. Confidential data may be transmitted via secure FTP. Confidential data will not be electronically mailed, unless encrypted using Federal Information Processing Standards (“FIPS”) 140-2 and National Institute of Standards and Technology (“NIST”) compliant.

For information security purposes, upon receipt of the transmitted information, the Receiving Agency becomes responsible for any security incidents, inadvertent disclosure, and the physical and information technology safeguards in place for protecting that information.

However, in the event that the agency receiving the information experiences a security incident or disaster that results in the suspected or confirmed inadvertent disclosure of the information exchanged pursuant to this MOU, the agency experiencing the incident or disaster will send formal written electronic notification to the Providing Agency’s Liaison within three (3) days after detection of the incident or disaster. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU may have been inadvertently disclosed.

V. Other Matters

This MOU will take effect immediately upon signature by both Agencies and will remain in effect until terminated by the Agencies. This MOU may be modified in writing by mutual consent of both Agencies. This MOU may be terminated by either Agency by giving ninety (90) days advance written notice to the other Agency prior to the date of termination. Provisions related to the confidentiality and handling of information exchanged pursuant to this MOU shall survive the termination of this MOU.

This MOU and all of its terms and conditions are not intended to relieve either a Providing Agency or a Receiving Agency of the requirements of any applicable law, including the Privacy Act of 1974, 5 U.S.C. § 552a, or the Right to Financial Privacy Act, 12 U.S.C. §§ 3401–3422.

This MOU does not create legally binding obligations on the Agencies and does not create any right enforceable against the Agencies or any of their officers, employees, or any other person. This MOU also does not confer upon any third-party the right or ability, either directly or indirectly, to obtain, suppress, or exclude any information, or to challenge the execution of a request under this MOU. This MOU does not modify the ability and responsibility of the Agencies to enforce their respective statutes and regulations.

This MOU may be executed in separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same agreement.

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AGREED:

U.S. DEPARTMENT OF JUSTICE

By: *Jon S. Kanter* Date: *12/9/22*

Name: JONATHAN KANTER

Title: ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION

OFFICE OF INSPECTOR GENERAL,
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: *Christi A. Grimm* Date: *12/9/2022*

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