

# Healthy competition

Information for  
Affiliated Providers

## Helping you

This leaflet aims to assist medical practitioners to understand and comply with laws designed to promote fair competition among businesses.

Medical practitioners in private practice are regarded as running a business so must comply with the competition laws contained in the Commerce Act 1986.

Entering into an Affiliated Provider agreement with Southern Cross Health Society can be done easily and safely - agreements of this sort are quite normal between suppliers and purchasers (or funders) of services.

These important tips are designed to help you avoid legal issues that could arise either in the context of putting in place an Affiliated Provider agreement with Southern Cross, or more generally in managing your practice.

In short, you must avoid entering into discussions, understandings or agreements with medical practitioners who are competitors to you about the prices you or they will charge, the services you or they will or won't provide, or the areas / patients / funders you or they will service.

## Affiliated Provider agreements are tried and true

Southern Cross is New Zealand's leading health insurer. The Affiliated Provider programme has been around since 1997. Our continued objective to deliver better value healthcare to our members relies on a healthy and competitive private healthcare sector.

Our general approach is to contract with healthcare providers on an inclusive rather than exclusive basis, on terms designed to encourage market competition.

Contrary to some perceptions, Southern Cross, the health insurer, does not own private hospitals. Southern Cross Healthcare Ltd is a separate legal entity that operates separately from Southern Cross the health insurer.

Our purpose in seeking Affiliated Provider agreements is to achieve certainty of prices for Southern Cross members. The Affiliated Provider programme provides peace of mind for our members and delivers benefits to medical practitioners. These benefits are outlined in our Healthy Partnerships brochure.

## For more information

You can contact us by email at [provider@southerncross.co.nz](mailto:provider@southerncross.co.nz) or visit our website [www.southerncross.co.nz/society/for-health-professionals](http://www.southerncross.co.nz/society/for-health-professionals)

## Beware of collective negotiation, discussions, or information exchanges between providers

In the context of your discussions with us, please note that competing medical practitioners cannot negotiate collectively for services that might be supplied. Nor can they agree amongst themselves, terms, conditions, prices, target patients, target funders, or target territories, nor share information about those topics. Any commercial agreements you are considering with us should be negotiated individually to avoid the risk of breaching the Commerce Act (Sections 27-30).

Practitioners working together in a practice within a single legal entity (such as a company or partnership) are less likely to be considered to be competing with each other, so the company or partnership may enter commercial negotiations on its own behalf.

In some instances, a "lead healthcare provider" (such as a private hospital) may initiate agreements with Southern Cross on behalf of a number of independent practitioners / practices. This may be acceptable provided that the independent practitioners / practices negotiate individually with the lead healthcare provider and the lead healthcare provider is not in competition with the independent practitioners / practices.

### So, the activities you must avoid include:

- discussions, understandings, agreements, or information exchanges with practitioners outside your own individual practice about prices, provision of services, or which patients, funders, or territories will be supplied
- using professional associations or third-party representatives to negotiate on behalf of a group of competing practitioners
- entering understandings or agreements with other practitioners that have the purpose or effect of lessening competition between them or preventing or inhibiting other practitioners from competing with them.

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## Competing providers

Agreeing prices between a supplier and purchaser (or funder) of a service is fine. For example, independently negotiating a fee as part of your Affiliated Provider agreement with Southern Cross is acceptable.

However, agreeing prices between competing providers (such as your practice and another practice supplying the same or similar healthcare services), or agreeing with competing providers which funders you will deal with or which area territories you will supply will risk breaching the Commerce Act – including the prohibitions on "cartel conduct" (Section 30). In addition to significant financial penalties for cartel conduct, from April 2021 onwards individuals can face imprisonment for cartel conduct.

In general terms it is okay to be aware of the prices other practitioners charge if that is information obtained from publicly available sources and not from discussions or information exchanges with competitors. However, any direction information exchange will risk breaching the Commerce Act. It is okay to disclose fee information to patients as they are not your competitors, and that is necessary to obtain

their informed consent. However, competing practitioners cannot agree with each other, or develop "an understanding" about, what fees they will charge or any discount or rebate arrangement they may offer to patients or insurers. You must set your fees independently of competing practitioners, and you must decide which patients, funders, and territories you will deal with independently of competing practitioners.

As noted above, practitioners working within a single legal entity (such as a company or partnership) are less likely to be considered to be in competition with each other, so may agree what prices that entity will charge, or who they deal with. However, you should not agree with one or more competing practitioners what fees to charge or who you will deal with or use any kind of fee schedule that is recommended or discussed between you and your competitors.

This information has been prepared by us in good faith and has been reviewed by our legal advisors. However, it should not be used as a substitute for legal advice. If you have concerns about matters raised here, you should seek your own independent legal advice.