

NATIONAL ASSOCIATION OF ACOs

CONFLICTS OF INTEREST AND CONFIDENTIALITY POLICY

Article I

Purpose

The purpose of this conflicts of interest and confidentiality policy is to protect the interests of the National Association of ACOs (NAACOS) when it is contemplating entering into a transaction, arrangement, or operating practice that might benefit the private interest of a director, officer, member of a Board of Directors committee, or key employee of NAACOS. It is also intended to address situations in which a director, officer, member of a Board of Directors committee, or key employee may have a duality of interest, or a fiduciary duty to honor and protect the confidentiality of NAACOS information. This policy is intended to supplement but not replace any applicable state or federal law governing conflicts of interest and fiduciary duty applicable to nonprofit and tax-exempt organizations. This policy is not intended to cover other matters which may raise fiduciary duty or propriety issues, including, but not limited to, gift acceptance and nepotism, but shall be integrated with NAACOS's implementation of its policies affecting such matters.

Article II

Definitions

1. Interested Person

Any director, officer, member of a Board of Directors committee, or key employee who has a material direct or indirect financial interest with NAACOS, or who has a dual interest that may affect NAACOS, as defined below, is an interested person. NAACOS's Board Chair shall determine from time to time which employees of NAACOS, if any, are key employees, in accordance with applicable U.S. Treasury Regulations and Internal Revenue Service guidance, for purposes of this policy. Key employees who are not reportable on IRS Form 990 but meet the IRS definition of a key employee shall be subject to this policy.

2. Financial Interest

A person has a material financial interest if the person has, directly or indirectly, through business, investment or through a member of his or her immediate family:

a. a material ownership or investment interest in any entity with which NAACOS has a transaction or arrangement, or

b. a material compensation arrangement with NAACOS or with any entity or individual with which NAACOS has a transaction or arrangement, or

c. a material ownership or investment interest in, or material compensation arrangement with, any entity or individual with which NAACOS is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are material in nature.

The determination of materiality shall be made in accordance with an annual disclosure form to be completed and filed by persons subject to this policy. For purposes of this Conflict of Interest Policy and the disclosure form, an “immediate family member” shall include the parent, child, sibling, half-sibling, or spouse of the individual subject to the Policy. For purposes of the Conflict of Interest Policy and this disclosure form, the term “spouse” shall include a member of a civil union recognized under state law. Individuals subject to this policy and who must complete the disclosure form shall be responsible for using reasonable efforts to determine and report the financial and dual interests of their immediate family members.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate Board or committee or disinterested director decides that a conflict of interest exists.

3. Duality of Interest

A person has a duality of interest if the person, directly or indirectly or through a family member, serves in a substantial leadership or management role with another organization whose interests may be adverse to, in conflict with, or in competition with those of NAACOS. A substantial leadership or management role would include: serving on a governing body or advisory body to the organization; having a prominent public connection with the organization; and serving as an employee or independent contractor of the other organization with material management responsibilities, or in a senior position with or without management responsibilities. A duality of interest is not necessarily a conflict of interest. In some cases, it may be to the advantage of NAACOS for a director to have a substantial leadership role with another organization. Under Article III, Section 2, a person who has a dual interest may have a conflict of interest only if the appropriate Board or committee or disinterested director decides that a conflict of interest exists.

4. Confidential Information

Confidential Information shall mean any information, technical data or know-how relating to the business, research, services, benchmarking, customers, customer lists, members, membership lists, markets, software, developments, inventions, designs,

drawings, marketing, marketing plans, finances, financial statements or employment or consulting information, together with any analyses, compilations, forecasts, studies or other documents or information belonging to, prepared by, or prepared at the request of NAACOS of a confidential and/or proprietary nature (or that a reasonable person would deem to be confidential and/or proprietary) available to or disclosed to a party subject to this policy, whether disclosed orally or marked as confidential. The foregoing notwithstanding, Confidential Information shall not include: (a) information that is now or subsequently becomes generally available to the public, unless due to any unauthorized act or omission on the part of the party; (b) information that was rightfully in the party's possession or knowledge before it was received from NAACOS (provided that such information was not obtained, directly or indirectly, from a source that was bound by any confidentiality agreement or other obligation of secrecy with respect to such information), all of which can be shown by proper documentation; (c) information that is independently developed by the party without the use of any confidential information of NAACOS and which can be shown to have been so developed by proper documentation; or (d) information that the party rightfully obtains from a third party not subject to any confidentiality agreement or other obligation of secrecy with respect to such information.

Article III

Procedures

1. Duty to Disclose

In connection with any actual or possible financial conflicts of interest or dual interest, an interested person must disclose the existence of his or her financial interest or dual interest and all material facts to the Board of Directors or members of committees considering the proposed transaction or arrangement or interest. The disclosure required by this section shall be in writing, on a form prescribed by the Board, and shall be submitted no less frequently than annually. Disclosure forms shall be updated on an interim basis by the interested person whenever there has been a material change in the underlying facts and circumstances.

2. Determining Whether a Conflict of Interest Exists

When the potential for, or appearance of, a conflict or duality of interest arises, any director or NAACOS executive staff member may request a review of the matter by the Board, which may delegate the review to a Board committee. After disclosure of the financial interest or dual interest and all material facts, and after any discussion with the interested person desired by the Board or committee, he or she shall leave the Board or committee meeting if requested by the disinterested director(s) while the determination of a conflict of interest is considered and voted upon. The remaining disinterested director(s) shall decide if a conflict of interest exists. If a conflict of interest is found to exist, it shall be addressed as set forth below. If no conflict of interest is found to exist,

the transaction or arrangement or dual interest may be approved by the Board if it is fair and reasonable and in the best interests of NAACOS. If no conflict of interest is found to exist, but the Board believes the financial or dual interest nevertheless poses the appearance of a conflict of interest that may reflect unfavorably on NAACOS, it may be addressed using the procedures set forth below.

3. Procedures for Addressing the Conflict of Interest

a. An interested person may make a presentation at the Board or committee meeting, but after such presentation he/she shall, if requested by the disinterested director(s), leave the meeting during the consideration of, and the vote on, the transaction or arrangement or dual interest that results in the conflict of interest.

b. The remaining disinterested director(s) shall consider the conflict and its effect on NAACOS. The remaining disinterested director(s) may, if deemed appropriate, appoint one or more additional disinterested persons or a disinterested committee to investigate alternatives to the proposed transaction or arrangement.

c. After consideration and exercising any due diligence that may be necessary or appropriate, the remaining disinterested director(s) shall determine whether the conflict is sufficiently insubstantial that it may be waived. If the remaining disinterested director(s) determine(s) that further inquiry is appropriate, said director(s) may proceed to determine whether NAACOS can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest or, in the case of a dual interest, whether one of the dual interests must be eliminated.

d. If a more advantageous transaction or arrangement, or a mitigation of the dual interest, is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the disinterested director(s) shall determine whether the transaction or arrangement or dual interest is fair and reasonable and in NAACOS's best interests, and whether the transaction would bring compelling benefit to NAACOS, and shall then make a decision as to whether to enter into the transaction or arrangement, or permit the dual interest to continue, in conformity with such determination.

4. Duty to Honor and Protect Confidentiality

Directors, officers, members of a Board of Directors committee, and key employees have a duty to honor and protect the confidentiality of NAACOS's confidential information that is made available to them, or to which they have or may have access both during and following their service to and/or employment with NAACOS. Directors, officers, members of a Board of Directors committee, and key employees shall use reasonable efforts to protect the confidentiality of all Confidential Information they receive from NAACOS, or have access to through NAACOS, using the same degree of care that they use to protect their own proprietary and confidential information of like kind, which will be at least reasonable care. Without limiting the generality of the foregoing, the

directors, officers, members of a Board of Directors committee, and key employees shall not disclose any Confidential Information to any unaffiliated third party.

Directors, officers, members of a Board of Directors committee, and key employees shall use NAACOS's Confidential Information only to perform their duties for NAACOS, or for such other authorized use as NAACOS may explicitly permit pursuant to a separate signed, written agreement. Directors, officers, members of a Board of Directors committee, and key employees shall not use Confidential Information for any personal or business purpose.

Directors, officers, members of a Board of Directors committee, and key employees may disclose NAACOS's Confidential Information to other directors, officers, key employees, members, representatives, or advisors who have a "need to know" such information to accomplish the work of NAACOS and who, prior to being provided with such Confidential Information, are advised of the confidential nature of the Confidential Information and the terms of this Policy, and who either agree to be bound by the terms of this Policy or are otherwise subject to obligations of secrecy no less restrictive than those set forth in this Policy.

Directors, officers, members of a Board of Directors committee, and key employees shall honor the confidentiality of Confidential Information to which they do not have access and shall make no effort to obtain such access.

5. Violations of the Conflicts of Interest and Confidentiality Policy

a. If the Board or committee has reasonable cause to believe that an individual subject to this policy has failed to disclose actual or possible conflicts or dualities of interest, or has failed to honor and protect confidential information, it shall inform the individual of the basis for such belief and afford the individual an opportunity to explain the alleged failure.

b. If, after hearing the response of the individual and making such further investigation as may be warranted under the circumstances, the Board or committee determines that the individual has in fact failed to disclose an actual or possible conflict or duality of interest, or has failed to honor and protect confidential information, without good cause, it shall take appropriate disciplinary and corrective action.

Article IV

Records of Proceedings

The minutes of the Board and all committees shall contain--

1. the names of the persons who disclosed or otherwise were found to have a material financial interest or dual interest in connection with an actual or possible conflict of interest, the nature of the financial or dual interest, any action taken to determine whether a conflict of interest was present, and the remaining disinterested director(s) decision as to whether a conflict of interest in fact existed.

2. the names of the persons who were present for consideration and votes relating to the transaction or arrangement or dual interest, the content of the consideration, including any alternatives to the proposed transaction or arrangement, a description of the compelling benefit presented by the transaction, and a record of any votes taken in connection therewith.

3. the names of the persons who failed to honor and protect confidential information, the nature of the confidential information, any determination of whether good cause was present, and a record of any action and votes taken in connection therewith.

Article V

Annual Statements

Each director, officer, member of a Board of Directors committee, and key employee of NAACOS shall annually sign a statement which affirms that such person--

- a. has received a copy of the conflicts of interest and confidentiality policy,
- b. has read and understands the policy, and
- c. has agreed to comply with the policy.

ADOPTED: October 22, 2015