Many psychologists in small independent practices have been seeking a “holy grail” of being able to legally join with other small practices to jointly negotiate fees with large insurance companies, says Alan Nessman, JD, senior special counsel in the APA Practice Directorate’s Office of Legal and Regulatory Affairs. These negotiations would change the balance of power with big payers. The problem is that joint negotiation requires the independent practices to agree upon a price they would accept, and “price fixing” is usually a clear antitrust violation.

“Price fixing is normally considered bad because it decreases competition, increases prices and brings higher costs to consumers,” says Nessman. Done properly, however, collaborations can improve quality, lower costs and promote cost-effectiveness. Plus, some collaborations need to be able to jointly negotiate to stay viable.

As a result, the antitrust enforcement agencies have issued various guidance on how collaborations can jointly negotiate without problems. This guidance has been synthesized by Patricia Wagner, an antitrust expert at the Epstein, Becker & Green law firm.

The key is sufficient financial or clinical integration. Examples of financial integration include capitated rate arrangements with health insurers or risk pools that withhold substantial portions of compensation unless the group as a whole meets cost-containment goals.

For most psychologists, clinical integration is a more attractive route, says Nessman, who adds that psychologists considering a collaboration that would jointly negotiate fees should consult with an antitrust attorney. In addition to achieving higher quality, lower costs and more efficient service delivery, clinical integration should include most, and ideally all, of the following elements:

- **Clinical protocols.** The collaboration must develop clinical protocols that apply to most of their patient population and reflect current developments in treatment.

- **Measurable quality and utilization goals.** The collaboration must develop goals for monitoring the quality of the treatment it provides and appropriate utilization of services.

- **Assistance in meeting goals.** The collaboration must develop procedures for actively educating, reviewing and helping providers achieve those quality and utilization goals.

- **Disciplinary procedures.** The collaboration must discipline or remove providers who can’t or won’t meet the goals the collaboration has established.

- **Case and disease management programs.** The collaboration must implement specific case and disease management programs.

- **Credentialing procedures.** The collaboration must implement credentialing procedures.

- **Integrated information technology system.** The collaboration must develop an integrated information technology system to disseminate practice standards and other communications and allow providers caring for the same patients to share clinical information more easily.

- **Nonexclusive network.** If the collaboration will have a significant market share, it should allow the various practices in the collaboration to contract separately with payers.

- **Performance monitoring.** The collaboration must adopt practice protocols, standards and performance monitoring procedures that would only be feasible with joint negotiation to ensure the participation of sufficient numbers of providers.

- **Collaboration.** The practice must facilitate cooperative interaction and collaboration among providers to help ensure they provide the right care at the right time.

- **Significant investment.** Providers must invest a significant amount of time and money in the infrastructure necessary to implement the program.

Although a small collaboration may be considered a less important target by enforcement agencies, don’t think you can ignore these rules just because your collaboration is small, warns Nessman. “Many antitrust rules apply the same way to two practices working together as they would to Apple and Microsoft collaborating.”

For more information, watch for additional guidance from the APA Practice Directorate. In addition, Div. 42 (Psychologists in Independent Practice) will conduct a panel presentation on antitrust issues during the American Psychological Association’s annual convention in August 2014 in Washington, D.C.