

David Gonen on Increased Federal Scrutiny of Hospital Contract Provisions

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The Healthcare Financial Management Association's (HFMA) *FastFinance* newsletter spoke with Antitrust and Competition Partner David Gonen about the Trump administration's tightening scrutiny of hospital contract provisions with payors, following a June 18 White House Council of Economic Advisers memo targeting anti-steering, anti-tiering and all-or-nothing clauses in health system contracts.

The White House memo signaled to legal observers that these contract provisions are drawing heightened attention from federal officials. David noted that the memo "underscores that the administration as a whole, beyond just the US Department of Justice (DOJ), is focused upon these contract provisions."

On the question of which health systems face the greatest risk, David observed that recent federal enforcement actions have targeted systems with smaller market shares than in earlier cases, but systems with a market share below 20 percent remain less likely to face DOJ scrutiny. "It's larger hospital systems that are more likely to be scrutinized. For providers whose share is above 25 percent or 30 percent in a given market or where it's dominant or where it's the only hospital in a certain market, these clauses require careful consideration," David said.

David also recommended that health systems take proactive steps to prepare for increased legal scrutiny. If payors are requesting such contract provisions, health systems should document that at the time of the negotiations.

"White House zooms in on hospital contracts," HFMA *FastFinance*, June 30, 2026

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