Is Your Agreement Non-Exclusive in Name Only?

Recent case law and enforcement actions have made clear, contractual language addressing the issue of exclusivity, while obviously relevant, is not always determinative, write **E. John Steren** and **Patricia Wagner** for Epstein Becker & Green's **Antitrust Byte** blog.

The authors explain: "Instead, and regardless of the contractual language between the parties, the courts and enforcement agencies look at whether the parties operate, in practice, as if the relationship is exclusive or not. Regarding network participation, the enforcement agencies will look at whether competing networks exist and whether network members actually participate in those competing arrangements. For payor contracts, the enforcement agencies will look at whether payors actually contract with competing providers—and if not, why not.

Read the article.