

Governing law/compliance with laws

Provider Agreements will include some language addressing compliance with state and federal laws. As to state laws you always want to see a statement that the agreement will be governed under (controlled by) the laws of **your** state or the state where care is delivered if the agreement covers more than one. What you do not want to see is a statement that your agreement and your responsibilities will be governed by the laws of another state. Let me give you an example.

This is from a national vision plan's Provider Agreement for a practice in the **Northeast**. It's among provisions wherein the doctor agrees to:

State/Federal Laws. *comply with all state and federal laws, including applicable Medicare Laws, rules, and CMS instructions, pertaining to Network Doctor and Network Doctor's practice. Network Doctor agrees to indemnify and hold harmless <name of vision plan> from and against any and all liability, damages and/or claims it may suffer, including attorney fees and costs, resulting from Network Doctor's failure to comply with state and/or federal laws.*

Now focusing only on these words, note that the doctor agrees to "...comply with all state and federal laws..." and, further, that there are some potentially serious consequences "...resulting from Network Doctor's failure to comply with state and/or federal laws."

The Issue: OK, so compliance with federal laws is required. And you're not going to negotiate anything different on that. But as to compliance with state laws? Which state's laws? **Remember, this agreement is for a practice in a Northeastern state.** A little farther down in that agreement is this.

Applicable Law. *To the extent allowable so as not to invalidate application of the Federal Arbitration Act, this Agreement shall be governed by the laws of the state of California.*

Wait a minute! If your practice is outside California it's likely that you and your attorney are not up to speed on the laws of that state. But here (**and you'd certainly want your attorney's input**) it seems as if you'd be agreeing to be bound, at least in part(?), by the laws of a state **other than where the care is delivered**. Given the potential consequences of not complying with another state's (California's) laws would your attorney find this potentially problematic?

Remember, any agreement should be governed by the laws of the state where care is delivered, not by the laws of some far away locale. And I've **always** found that payors are willing to change their agreements to make it so. (Note: But I've never tried to negotiate with this vision plan.)

Possible Solutions: To that end if you are presented with language stating that the contract and your responsibilities and obligations there under are to be governed by the laws of another state **then with your attorney's review and comment I recommend seeking something along these general lines.**

***Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable laws of the state in which health care services are provided. The parties agree that applicable state and/or federal laws and/or regulations may make it necessary to include in this Agreement specific provisions relevant to the subject matter contained herein. Such state law provisions, if any, are set forth in the state law coordinating provisions attachment hereto.*

or,

***Controlling Law.** This Agreement shall be governed by and construed under, and any dispute between the parties based on or arising out of this Agreement shall be determined under, the laws of the State of <your state>, excluding any provisions concerning conflict of laws and the laws of the United States of America.*