

The worst provision ever?

I was reviewing an agreement for a client when I read what must be the most outrageous provision I've encountered in my many years in the business. Regarding renegotiations and sending appropriate Notice to the payor it said in part:

If Provider sends <name of plan> such notice for the purpose of renegotiating compensation rates prior to the renewal date of this Agreement, Provider shall pay <name of plan> a rate renegotiation fee in an amount equal to 3% of the total compensation paid by <name of plan> during the immediately preceding 12 months.

Yes, read that again. Let it sink in.

If one wished to renegotiate the compensation rates and informed the payor of this prior to the renewal (anniversary) date then with the above in the agreement you'd be required to pay a renegotiation fee just to get to the table. And the fee to discuss changing compensation would be 3% of your previous year's payments.

But then the unspoken part. Having paid this pay-to-play "surcharge" (that's a very polite way of describing what it really is), there's no assurance you'd get positive results that more than made up for the 3% fee. Simply unbelievable.

I had to assume(??) that for other practices in the state either:

- 1) No one at those practices read the agreement through and through, looking only at the reimbursement pages or,
- 2) Others did read the agreement but missed the possible significance of the paragraph or,
- 3) Others really wanted the deal and signed anyway.

I had reviewed Provider Agreements from this same payor in other states and the provision was not included in those. So since Provider Agreements are supposed to be reviewed and approved by the regulating authority perhaps it was OK in this state but not in those others? I'm just making a guess here.

Remember I said back on **page 4** that "*Laws regarding contracting are intended in part to protect parties from unenforceable (illegal) contractual terms.*" And further, "*So while one can reasonably expect protection from certain terms and conditions, do not expect the law to protect you from entering into a financially disadvantageous deal.*"

Ultimately this provision was pulled from the final document. You just have to be very careful and know what you're signing.