

Data Use Agreement: Simplification of Requirements for Shared Savings Program ACOs

Over the past few years, Wilems Resource Group, LLC has asked the Centers for Medicare & Medicaid Services (CMS) to simplify the process for adding subcontractors to the Data Use Agreement (DUA). Specifically, we hoped that CMS would align requirements within the Medicare Shared Savings Program with the processes utilized under the Next Generation ACO Model. In a move toward this simplification, CMS recently announced that Shared Savings Program ACOs will no longer be required to submit DUA addenda to manage changes to their DUAs.

This is excellent news for ACOs. This simplification will help ACOs avoid many of the operational delays experienced while awaiting formal approval of a subcontractor addition. Perhaps most importantly, ACOs entering the program will be able to begin sharing information with vendors and building programs prior to receipt of the formal DUA Number, which was necessary for submission of a DUA addenda under the previous process.

While the benefits of removing the DUA addenda requirement are obvious, many organizations may be struggling with how to mitigate compliance risks and operationalize processes now that formal approval of subcontractors by CMS is not required. ACOs are now responsible for tracking their own subcontractors and must be able to provide the following information to CMS, if asked:

- Organization name;
- Organization full address;
- Date the ACO started sharing data with the subcontractor;
- Date the ACO stopped utilizing any subcontractor; and
- Confirmation that any subcontractor they no longer work with has destroyed any data given to them by the ACO.

Wilems Resource Group recommends ACOs consider adopting one of two processes to document compliance with DUA requirements:

Document Acceptance of DUA Requirements within Business Associate Agreements. Perhaps the simplest option, from an administrative perspective, is to update your ACO's Business Associate Agreements (BAA) to include language sufficient to cover the additional safeguards within the DUA. If selecting this path, we recommend adding a Shared Savings Program paragraph specifically calling out the additional requirements of the DUA and incorporating that document by reference.

While administratively simple, including a paragraph in the BAA does not do much to highlight the additional requirements of the DUA. This may inadvertently lead to non-compliance by a vendor who assumes compliance with HIPAA requirements is all that is necessary in order to comply with the DUA. Moreover, this process does not document all of the required information specifically detailed by CMS in their announcement of the new DUA process, thus requiring an additional tracking system in order to successfully respond in the event of an audit. Still, the addition of a data sharing log could ensure the ability to respond to an audit without requiring an additional signature from a vendor.

Develop and Utilize a Shared Savings Program Data Use Agreement Acknowledgment Form. We consider this the best practice for ensuring compliance with data requirements as well as the ability of the ACO to respond to an audit. The Data Use Agreement Acknowledgement Form would be a one-page form, similar to the DUA Addendum previously required, including all of the data elements specified by CMS. The form should be included in the onboarding process; either as a distinct document or as an addendum to the BAA. The subcontractor would execute the document, specifically acknowledging their responsibility to comply with the requirements of the DUA, and provide the Organization name, full address, and the date the ACO started sharing data with the subcontractor.

The form should also include a section to be completed upon termination of the contract which would include the date the ACO stopped sharing data with the subcontractor and confirmation that the subcontractor had appropriately destroyed any data given to them by the ACO.

While a bit more burdensome at the outset, this process ensures the subcontractor understands the additional requirements found in the Data Use Agreement and provides clear documentation of all data elements the ACO will need in order to successfully respond to an audit.

Regardless of the path your organization takes to ensure compliance, this is an ideal time to review the Data Use Agreement and ensure your ACO-MS contacts understand their new responsibilities. ACOs should consider:

- Requesting a copy of the ACO's current DUA from CMS via the SSP mailbox, if you do not have a copy in your records;
- Reviewing all ACO-MS contacts to verify the right individuals have access and providing training for those individuals to ensure they understand their responsibilities as DUA Custodians; and
- Reviewing ACO P&Ps to ensure they appropriately reflect any new processes related to the DUA and implementing monitoring processes to ensure compliance with those processes.

If you have any questions or concerns about how to ensure compliance with the DUA process or how to implement an appropriate monitoring program, please contact Kimberly at kwilems@wilemsrg.com.