

Subrecipient Arrangements: Introductory Guidance

Background

Under certain circumstances, a health center may secure a federal award under which it enters into arrangements with third-parties to carry out all or a portion of the substantive work under the award. Alternatively, a third-party (e.g., a state or local government entity, a primary care association, or another health center) may receive a federal grant award which it in turn disburses to the health center to operate and/or perform the funded activities. Under either scenario, one party is the “recipient” of the grant funds while the other party is the “subrecipient.”

Subawards/subrecipient arrangements are distinct from the contract/vendor model, chiefly because of the nature of the “deliverable” under the operative agreement. Whereas a subaward will, in effect, delegate responsibility for implementing program purposes, a contractor or vendor relationship involves the purchase of goods or services by an awardee for the benefit of the awardee. This leaves the awardee to perform the grant-funded activities.¹

Administrative regulations promulgated by the U.S. Department of Health and Human Services (“DHHS”)² define a “subrecipient” as a “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program” Further, a “subaward” is defined as “an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity.”

The requirements of 45 C.F.R. Part 75 apply to all subawards that a health center either receives or makes under a DHHS award.³ As such, a Health Center serving as a subrecipient for DHHS grant funds must comply with the administrative requirements and cost principles contained in 45 C.F.R. Part 75 as though it has received the award directly from DHHS. When acting as a pass-through entity distributing DHHS dollars to subrecipients through subawards, a health center assumes responsibility for monitoring and oversight to ensure that subrecipients comply with their obligations under the law and the terms and conditions of the subrecipient agreement with the health center. The recipient must:

- Advise all subrecipients of the requirements imposed on them by federal law and regulation and by the terms of contracts and grant agreements (as well as additional requirements imposed by the recipient).
- Monitor the activities of the subrecipient and its use of federal grant funds to ensure compliance.

¹ See generally [45 C.F.R. § 75.351](#) (listing of factors to determine whether an agreement creates a contractor or a subaward).

² [45 C.F.R. § 75.2](#).

³ An award by a component agency within DHHS, such as HRSA, constitutes a DHHS award.

- Ensure that any subrecipient expending more than the applicable threshold (see [Federal audit requirements: Introductory Guidance](#)) in federal grant funds during the entity's fiscal year conducts an annual audit in accordance with the requirements set forth in either OMB Circular A-133 or 45 C.F.R. Part 75 Subpart F.
- Require the subrecipient to permit the recipient and the auditors to have access to records and financial statements as necessary to comply with applicable audit requirements.

Advice and Recommendations⁴

As discussed above, under a subrecipient arrangement, the recipient “passes-through” a portion (or all) of its federal grant funds to the subrecipient entity; accordingly, all federal rules, regulations and policies that apply to the recipient in connection with such funds (including 45 C.F.R. Part 75 and specific grant terms and conditions) apply equally to the subrecipient entity.

As the entity to which the government directly awards the grant funds, the recipient remains accountable and fully liable to the Federal Government for the subrecipient's expenditure and use of such funds. Accordingly, the recipient and the subrecipient should negotiate a subrecipient agreement containing terms and conditions ensuring the accountability and integrity of the recipient relationship in accordance with federal requirements.

- [Terms for subrecipient arrangements: Checklist](#)

Generally, the subrecipient agreement should recognize that the recipient received the grant from a third party for a defined purpose, which the subrecipient desires to promote and support by performing ministerial duties and providing services consistent with the scope of the grant award. In consideration of the subrecipient's performance, the recipient agrees to make the grant funds available to the subrecipient, in accordance with a budget that is consistent with the recipient's approved budget and has been approved by the recipient prior to implementation.

Because the recipient has an affirmative obligation to monitor the performance of the subrecipient to assure compliance with the provisions of the subrecipient agreement, as well as all applicable federal laws, regulations and policies, the subrecipient agreement should contain provisions by which the recipient maintains appropriate oversight. Further, the subrecipient should provide assurance that it will comply with the terms and conditions of the grant award, as well as applicable federal laws, regulations and policies. All federal rules and requirements that will be “passed-through” to the subrecipient should be imposed explicitly via the subrecipient agreement.

⁴ The Authors of these materials include attorneys at the law firm of Feldesman Tucker Leifer Fidell LLP. The advice and recommendations consist of general guidance based on federal law and regulations and do not necessarily apply to all Health Centers under all facts and circumstances. Further, these materials do not replace, and are not a substitute for, legal advice from qualified legal counsel.

As with all contracts, subrecipient agreements should include termination clauses that permit termination “with cause” and termination for convenience, as well as immediate suspension. Since most termination clauses are bilateral, the Authors do not recommend provisions allowing termination “without cause,” which may leave the recipient “holding the bag” if the subrecipient terminates without cause. At a minimum, the agreement should permit termination if the recipient’s federal grant funds are terminated, suspended or materially reduced. In addition, the agreement should allow for immediate termination and/or suspension if recipient reasonably believes that federal funds are being, or will be, used for purposes other than as intended.

Lastly, there are certain features that are common to all cogent and enforceable contractual arrangements that, as a matter of good practice, recipients should include in their subrecipient agreements. These provisions include indemnification; insurance; confidentiality; governing laws; assignment; amendments; severability; and entire agreement. [See Fraud and abuse considerations for contracting in the health care industry: Introductory guidance.](#)