

Business Associate Agreement

EFFECTIVE DATE: MAY 15, 2020

This Business Associate Agreement (“Agreement”) is entered into by and between McKesson Specialty Care Distribution, LLC d/b/a McKesson Specialty Health (“MSH” or “Business Associate”) and the Covered Entity named in the Regimen Profiler Account (“Practice”) and is effective as of the date indicated below. MSH and Practice may be individually referred to as a “Party” and, collectively, the “Parties” in this Agreement.

RECITALS

- A. MSH provides the use of Regimen Profiler, a web-based financial tool, to the Practice that accepts the Regimen Profiler Terms and Conditions of Use (“Terms and Conditions”), and the Practice wishes to disclose certain information to MSH pursuant to the Terms and Conditions, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. The Practice and MSH intend to protect the privacy and provide for the security of PHI disclosed to MSH pursuant to the Terms and Conditions in compliance with the HIPAA Regulations.

SECTION 1: DEFINITIONS

“**Breach**” will have the same meaning given to such term in 45 C.F.R. § 164.402.

“**Designated Record Set**” will have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

“**Electronic Protected Health Information**” or “**Electronic PHI**” will have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. § 160.103, as applied to the information that MSH creates, receives, maintains or transmits from or on behalf of Practice.

“**HIPAA Regulations**” means the Privacy Rule, the Security Rule and the HIPAA Final Rule, as each is defined herein, and may be amended from time to time

“**Individual**” will have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and will include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

“**Privacy Rule**” will mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E.

“**Protected Health Information**” or “**PHI**” will have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created, received, maintained or transmitted by MSH from or on behalf of the Practice.

“**Required by Law**” will have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

“**Secretary**” will mean the Secretary of the Department of Health and Human Services or his or her designee.

“**Security Incident**” will have the meaning given to such term in 45 C.F.R. § 164.304.

“**Security Rule**” will mean the Security Standards at 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“Unsecured PHI” will have the same meaning given to such term under 45 C.F.R. § 164.402, and guidance promulgated thereunder.

Capitalized Terms. Capitalized terms used in this Agreement and not otherwise defined herein will have the meanings set forth in the HIPAA Regulations, which definitions are incorporated in this Agreement by reference.

SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI

2.1 Uses and Disclosures of PHI Pursuant to the Agreement. MSH may use or disclose PHI to perform functions, activities or services for, or on behalf of, Customer as specified in the Terms and Conditions, provided that such use or disclosure would not violate the Privacy Rule if done by Customer.

2.2 Permitted Uses of PHI by MSH. MSH may use PHI for its proper management and administration of Business Associate or to carry out its legal responsibilities.

2.3 Permitted Disclosures of PHI by MSH. MSH may disclose PHI for its proper management and administration, provided that the disclosures are Required by Law. MSH may disclose PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.4 Data Aggregation. MSH may use PHI to provide Data Aggregation services for the Health Care Operations of the Practice as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

2.5 De-identified Data. MSH may de-identify PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data unless prohibited by applicable law.

SECTION 3: OBLIGATIONS OF MSH

3.1 Appropriate Safeguards. MSH will use appropriate safeguards and will comply with the Security Rule with respect to Electronic PHI, to prevent use or disclosure of such information other than as provided for by the Terms and Conditions. Except as expressly provided in the Terms and Conditions, MSH will not assume any obligations of the Practice under the Privacy Rule. To the extent that MSH is to carry out any of the Practice’s obligations under the Privacy Rule as expressly provided in the Terms and Conditions, MSH will comply with the requirements of the Privacy Rule that apply to the Practice in the performance of such obligations.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. MSH will report to the Practice any use or disclosure of PHI not permitted under the Terms and Conditions, Breach of Unsecured PHI or any Security Incident, without unreasonable delay; provided, however, that the Parties acknowledge and agree that this Section constitutes notice by MSH to the Practice of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below). “Unsuccessful Security Incidents” will include, but not be limited to, pings and other broadcast attacks on MSH’s firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

3.3 MSH’s Agents. As applicable, MSH will enter into a written agreement with any agent or subcontractor that creates, receives, maintains or transmits PHI on behalf of MSH for services provided to Provider, providing that the agent agrees to restrictions and conditions that are substantially similar to those that apply through this Agreement to MSH with respect to such PHI.

3.4 Access to PHI. The Parties do not intend for MSH to maintain any PHI in a Designated Record Set for the Practice. To the extent MSH possesses PHI in a Designated Record Set, MSH agrees to make such information available to Practice pursuant to 45 C.F.R. § 164.524, within a reasonable time of MSH's receipt of a written request from Practice; provided, however, that MSH is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Practice. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to MSH, or inquires about his or her right to access, MSH will either forward such request to Practice or direct the Individual to Practice.

3.5 Amendment of PHI. The Parties do not intend for MSH to maintain any PHI in a Designated Record Set for the Practice. To the extent MSH possesses PHI in a Designated Record Set, MSH agrees to make such information available to Practice for amendment pursuant to 45 C.F.R. § 164.526 within a reasonable timeframe but no less than twenty (20) days of MSH's receipt of a written request from Practice. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to MSH, or inquires about his or her right to amendment, MSH will either forward such request to Practice or direct the Individual to Practice.

3.6 Documentation of Disclosures. MSH agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Practice to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. MSH will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

3.7 Accounting of Disclosures. MSH agrees to provide to the Practice, within twenty (20) business days of MSH's receipt of a written request from Customer, information collected in accordance with Section 3.5 of this Agreement, to permit the Practice to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. If an Individual submits a written request for an accounting of disclosures of PHI pursuant to 45 C.F.R. § 164.528 directly to MSH, or inquires about his or her right to an accounting, MSH will direct the Individual to the Practice.

3.8 Governmental Access to Records. MSH will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by MSH on behalf of, the Practice available to the Secretary for purposes of the Secretary determining the Practice's compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, MSH will cooperate with the Practice's efforts to mitigate a harmful effect that is known to MSH of a use or disclosure of PHI by MSH that is not permitted by this Agreement.

3.10 Minimum Necessary. MSH will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 45 C.F.R. § 164.514(d), and any amendments thereto.

SECTION 4: OBLIGATIONS OF PRACTICE

4.1 Notice of Privacy Practices. The Practice will cease using Regimen Profiler if any limitation(s) in its notice of privacy practices affect MSH's use or disclosure of PHI.

4.2 Individual Permission. The Practice will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to the patient accessing the Regimen Profiler application.

4.3 Permissible Requests by Practice. The Practice will not request MSH to use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Practice, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4 and 2.5 of this Agreement.

SECTION 5: TERM AND TERMINATION

5.1 Term. The term of this Agreement will commence as of the Effective Date of the Terms and Conditions, and will terminate when Practices ceases using Regimen Profiler, and all of the PHI provided by the Practice to MSH, or created or received by MSH on behalf of the Practice, is destroyed or returned to the Practice. If it is infeasible to return or destroy PHI, MSH will extend the protections to such information, in accordance with Section 5.3.

5.2 Termination. MSH may suspend or discontinue providing the Regimen Profiler to Practice without notice or cause. MSH may pursue any other remedy legally available if Practice fails to comply with any of the obligations hereunder.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Agreement for any reason, MSH will return or destroy all PHI received from the Practice, or created or received by MSH on behalf of the Practice, at the Practice's expense, and will retain no copies of the PHI.

5.3.2 If it is infeasible for MSH to return or destroy the PHI upon termination of the Agreement, MSH will: (a) extend the protections of this Agreement to such PHI and (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as MSH maintains such PHI.

SECTION 6: COOPERATION IN INVESTIGATIONS

The Parties acknowledge that certain breaches or violations of this Agreement may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party will cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

SECTION 7: SURVIVAL

The respective rights and obligations of MSH under Section 5.3 of this Agreement will survive the termination of this Agreement.

SECTION 8: AMENDMENT

This Agreement is subject to the Terms and Conditions only. The Terms and Conditions may be changed from time to time without notice. Continued use of the Regimen Profiler following any change constitutes acceptance of the change, and this Agreement.

SECTION 9: EFFECT OF AGREEMENT

In the event of any inconsistency between the provisions of this Agreement and the Terms and Conditions, the provisions of this Agreement will control. In the event that a court or regulatory agency with authority over MSH or Practice interprets the mandatory provisions of the HIPAA Regulations, in a way that is inconsistent with the provisions of this Agreement, such interpretation will control.

SECTION 10: LIMITATION OF LIABILITY

Under this Agreement, MSH's liability shall be limited to (1) any fines levied against the Practice by a federal or state agency due to a breach of PHI caused by MSH or (2) the actual costs of notifying affected individuals in the event of breach of PHI caused by MSH. In no event shall MSH or its affiliated parties be liable for any damages, costs or expenses including but not limited to special, indirect, incidental, or consequential damages of any kind whatsoever (including, without limitation, attorneys' fees) in any way due to, resulting from, or arising in connection with use of the Regimen Profiler and materials or use of a third party website.

SECTION 11: COMPLETE AGREEMENT

This Agreement along with the Terms and Conditions constitutes the entire agreement governing the use of Regimen Profiler. This Agreement is the complete, final, and exclusive embodiment of the agreement between the parties with regard to this subject matter and supersedes any prior oral discussions or written communications and agreements

SECTION 12: AUTHORITY TO AGREE

By agreeing to this Agreement and using Regimen Profiler, you warrant and agree that you are authorized to agree to these terms on behalf of the Practice.