

# NASDDDS TECHNICAL REPORT

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## Support Brokerage Issues in Self-Directed Services

by

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### Introduction

Traditionally, states have sought to ensure equity and fairness through a regulated fund allocation process and a strong relationship between the state and community service providers. The move to self-directed services and individual budgeting shifts control to the individuals receiving support, enabling them to choose those providers that offer the most attractive support alternatives. Under this approach, the provider now works *for* the individual who, as a *consumer* in control of portable funds, is empowered to select the individual or agency that offers the greatest return on his or her investment, in terms of services and supports. Individual budgeting makes it possible for individuals to control their resources, but people need more than budget flexibility to actually take charge over the supports and services they receive. People with disabilities need to be informed of their rights and responsibilities and to have the assistance of individuals with expertise to help them manage the services they receive, make decisions regarding the selection of supports and providers, assess quality, exert control and accomplish the goals they have set for themselves.

The term, *case manager*, reflects the historical influence of the medical model and its depersonalization of individuals as “cases” as examples of conditions or diseases. The original focus of case management was to organize and follow up on the medical treatment furnished to an individual with a specific disease or condition. When applied to long term care, the scope of the position has evolved to assume an ever increasing array of tasks, responsibilities and competing goals. Although virtually all case managers have responsibility for organizing support delivery, over time, the position has picked up additional responsibilities for a variety of activities including: (a) facilitating the development of the person-centered plan; (b) acting directly on behalf of the consumer as an advocate or friend; (c) approving funding for individual support

plans, (d) monitoring the quality of services provided and received; (e) supervising staff; (f) representing the agency's administration or management in its dealings with consumers, families and external organizations; (g) providing direct support during periods of staff shortage; (h) providing emergency support to individuals in crisis; (i) providing intake and assessment to new referrals, and; (j) authorizing services. In this process of expanding roles and responsibilities it is no surprise that to many staff and consumers alike, the job is truly ambiguous (Kane, Kane, & Ladd, 1998)<sup>1</sup>.

Shifting control to the individual requires significant modifications in the structure and functioning of traditional staff roles and responsibilities. The function of the *case manager*, in particular, is being redefined to more effectively support people to assume control over decisions that affect their lives. Job titles are changing to reflect new responsibilities and in many states the term *case manager* is being applied more narrowly to refer to staff who organize activities related to a particular service that is being provided – case management of dental care, for example. New job descriptions are being developed to focus on the needs of the individual for specific activities such as support coordination, brokerage and personal resource management. The various additional activities described in the list above are distributed among other staff depending on the structure and functioning of each state's service delivery system.

**Support Brokerage.** The key difference between self-directed supports and traditional systems of services is that the job of the staff is not necessarily to provide the care, but rather to help the person with disabilities locate assistance from community resources. In this sense, the staff functions as a *broker*, or a personal agent, working on behalf of the person and that person's support network under the direction of the individual and/or his or her representative. *Support Brokerage* in this context is a broadly defined activity that is designed to enable a program participant to manage an individual budget and locate, access and coordinate needed services. The *Support Broker* serves as a navigator, linking the individual to both natural community supports and funded services according to his or her person-centered plan and individual budget.

Developmental disabilities service system policies, procedures and operational practices differ, sometimes significantly, from one state to another. Depending on the jurisdiction, support brokerage tasks may be performed by staff employed by provider agencies, public employees of state, county or local governments, or by independent professionals. Because of the roles that support brokers play, the decisions that they make on behalf of the individuals they support can lead to conflicts of interest.

## Conflicting Interests

A system designed to foster self-direction must be able to support an individual in a manner that does not compromise his or her ability to freely choose among different alternatives. Case managers have often found it difficult to reconcile their competing responsibilities to the consumer, with those they have with respect to the service provider, the state or local government. Organizations and government agencies that are implementing self-directed services are working to disentangle the existing duties of case managers to prevent obligations that the staff might have to the organization that employs them from compromising decisions they may make or recommend regarding the person they are supporting. The move toward Support Brokerage seeks to change the focus to the needs of the individual. But how independent should the function be? Must support coordination be totally separate from service provision or support management? Are support coordinators who are employed by independent organizations or individual consumers free from conflict? What is the most effective organizational structure to have?

There are not obvious answers to these questions. It is clear that support brokerage requires an independent level of work and a primary allegiance to the consumer. It is less clear, however, that the only way this independence can be assured is through an organizational design that totally separates the various functions of funding, coordination of supports, and service provision. In regard to support brokers employed by agencies providing services, Figure 1 below outlines some of the more obvious strengths and concerns.

<b>Figure 1. Support Brokers Employed by Service Providers</b>	
<b>Strengths</b>	<b>Concerns</b>
<p>The Support Broker...</p> <ul style="list-style-type: none"> <li>• Can “work the organization” to actively intervene to resolve problems, develop creative alternative solutions, and change services to respond to the individual.</li> <li>• Knows the strengths and weaknesses of the organization and can steer the consumer to the best service and staff.</li> <li>• Can increase the effectiveness and flexibility of responsive provider organizations that support independence and independent action on behalf of the consumer.</li> </ul>	<p>The Support Broker...</p> <ul style="list-style-type: none"> <li>• Has a primary allegiance to his or her employer and may recommend only those services operated by the provider agency.</li> <li>• May be rewarded by the agency for referrals to its own services or may be penalized by the agency for referral practices that do not favor the organization.</li> <li>• Does not need to become familiar with or aware of other organizations or generic services alternatives that could benefit the consumer.</li> <li>• May be prevented by the employer from making program decisions that do not benefit the agency regardless of consumer need or preference.</li> </ul>

Support brokers employed by state or local governments have a number of advantages with respect to their ability to act on behalf of individuals receiving support, although such advantages can be significantly affected by the design and function of the position itself.

<b>Figure 2. Support Brokers Employed by State or Local Governments</b>	
<b>Strengths</b>	<b>Concerns</b>
<p>The Support Broker...</p> <ul style="list-style-type: none"> <li>• Is in a good position to influence state or local government to act on behalf of people receiving supports.</li> <li>• Is able to work effectively with different providers without conflict-of-interest.</li> <li>• Can define his or her role as working <i>for</i> the consumer, helping the consumer purchase the services he or she wants and needs.</li> </ul>	<p>The Support Broker...</p> <ul style="list-style-type: none"> <li>• May be prevented by Union contracts from changing job descriptions to adopt new responsibilities and relationships with consumers.</li> <li>• May be prevented from transferring decision-making authority to individuals by state or local governmental policy.</li> <li>• Who is responsible for approving funding or allocation requests find it difficult to reconcile their additional responsibility to the consumer to advocate on his or her behalf regarding the need for additional supports.</li> <li>• Support brokers may be less willing or able to appeal state decisions regarding individual Medicaid allocations or to bring legal action to better address the needs of the individual.</li> <li>• May be affected by workforce reductions or changes in caseload size occurring as a result of fiscal problems at the state or local level.</li> </ul>

Figure 2 outlines some of the strengths and concerns of this structural arrangement. To address these concerns, some states have changed their systems of support delivery to increase the independence of the support broker and further separate the functions of service brokerage from those of service provision by funding support brokerage through independent organizations (Maryland) or by developing the capacity to contract with independent support brokers (Florida). While this approach offers several advantages and the potential to significantly increase consumer direction (particularly when support brokerage is provided by independent agencies), it also can create opportunities for misuse. Figure 3 below identifies some of the strengths and concerns that can occur when support brokerage is furnished by independent agencies or independent professionals. The provision of support brokerage by independent professionals as a separate Medicaid is still the exception to the rule in developmental disabilities services.

<b>Figure 3. Support Brokerage Provided by Independent Agencies or Professionals</b>	
<i>Strengths</i>	<i>Concerns</i>
<p>Independent support brokers...</p> <ul style="list-style-type: none"> <li>• Work for the consumer, and are obligated to carry out his or her wishes.</li> <li>• Do not represent the service provider nor the payor of services and do not have a conflict-of-interest.</li> <li>• Are able to work solely on behalf of the consumer to carry out a range of duties and responsibilities.</li> </ul>	<p>Independent support brokers...</p> <ul style="list-style-type: none"> <li>• May compromise their ability to work on behalf of the consumer through special agreements with particular organizations providing services, mutual referral networks or by receiving incentives or “kick-backs” for referrals.</li> <li>• May seek to expand the number of people on their caseloads to increase revenue if they are funded on a fee-for-service basis.</li> <li>• May offer incentives to consumers or families to make particular choices or use specific agencies.</li> <li>• May extend themselves beyond the number of service recipients they can effectively serve to increase revenues.</li> <li>• Do not have the power to force agencies to change practice to better meet the needs of the individual. While the threat of moving to another organization may work in some areas where there are many service providers, it may be less effective in rural areas with fewer agencies.</li> <li>• Are vulnerable to provider agency policy and practice.</li> </ul>

**New Roles**

In developmental disabilities services, the various activities associated with support brokerage collectively serve to facilitate the transfer of control over services to the consumer. The functions and responsibilities of positions providing support brokerage must first, be carefully separated to address the ambiguities of the role as it has been traditionally defined and to reduce the potential of one responsibility conflicting with another. It should be clear, for example, that it is the consumer who primarily benefits from the actions of the support broker, and not the service provider, the state, local government, or the support organization. Second, the activities support brokers must accomplish to receive payment must be of direct benefit to the person receiving services

and add value to the individual's life. Third, the individuals selected to provide support brokerage must be assigned responsibility that is commensurate with the authority they have been given by the consumer, the state or the employing authority.

Support brokerage plays a pivotal role in assuring the ongoing health and viability of self-directed services. The duties of the position are varied and collectively function to balance system accountability with consumer satisfaction, choice and control. Care needs to be taken to ensure the position does not become overloaded with responsibilities that effectively curtail the ability of the individual to work as the consumer's personal agent.

## **Structural Requirements**

Support Brokerage is a required component of self-directed services furnished under Medicaid Independence Plus waiver programs, but the specific components of a particular state's support brokerage service may vary depending on the design of the state's service delivery system. Support brokerage is perhaps best seen as an array of responsibilities and functions that can be used by people receiving support, their families and representatives to facilitate access needed services and supports, consistent with their person-centered plan. Specifically, support brokerage services should accomplish two objectives:

1. Ensure program participants have the information they need to understand how the system functions to assure and protect self-direction with respect to the following key areas (for example):
  - a) Person-centered planning
  - b) The risks and responsibilities of self-direction
  - c) The resources, choices and options that are available
  - d) Procedures used to report changes in support need or preference
  - e) Schedules for review and reassessment of the person-centered plan
  - f) Recognizing and reporting critical events
  - g) The availability and operation of state-wide emergency back-up systems
  - h) Procedures for addressing grievances and resolving disputes.
  - i) Choice of providers and staff
  
2. Ensure program participants receive assistance to plan, budget and manage self-directed services including assistance with (for example):

- a) Defining goals, needs and preferences
- b) Understanding the state's individual budgeting methodology
- c) Developing and managing the individual budget
- d) Identifying and accessing services, supports and resources
- e) Locating, selecting, hiring and managing qualified providers
- f) Providing training in practical skills related to personnel management, problem solving, etc.
- g) Providing training and assistance with employer of record issues including risks and employment, tax and liability responsibilities
- h) Dealing with personal or financial risk
- i) Requesting, accessing and understanding criminal background checks of potential employees
- j) Providing feedback to the state and others on the quality of the services received and future improvements.

As described above, support broker services may be provided in a variety of ways depending on the structure and operation of each state's service system. Federal regulators under Medicaid waiver programs are primarily concerned with assuring the functions are provided to individuals in a consistent and comprehensive manner and less interested in the specific distribution of duties among staff members or positions. It is important, however, that a state be able to demonstrate the manner in which each of the required areas are being addressed.

## **Implementation Issues**

Regardless of the particular format used to provide or ensure the provision of support brokerage, a state must accomplish three basic tasks in the implementation of brokerage services; (a) define the activities that will constitute support brokerage, (b) determine the minimum qualifications of staff authorized to provide broker services and, (c) determine the authority the individual receiving support will have to control decision making and both employ and supervise staff.

**Define Broker Responsibilities.** The specific tasks required by CMS to ensure beneficiaries have the information they need to understand how the system functions and receive assistance to plan, budget and manage self-directed services need to be organized into a collection or "package" of activities that constitute support brokerage. In other words, states need to identify the items listed in the above section (plus others determined by the state) that will be included within the definition of support

brokerage services and separate them from supports provided through other means. In addition, states should specify how the services are to be furnished to the individual. Whether, for example, brokerage services are to be (a) offered as administrative support available to all consumers and thus not necessarily a part of the individual budget, (b) provided by specialized organizations or credentialed professionals, or (c) offered as a part of other previously identified case management or service coordination services.

States also should clarify the role of support brokerage within the overall service delivery system and the general plan of operation with respect to other self-directed services, traditional Medicaid and local generic programs. State officials must determine, for example, whether support brokerage is to be a broad service available across eligibility groups and programs, or limited to people with developmental disabilities, individuals who are aging, and/or those with specific conditions such as brain injury, severe illness, Alzheimer's syndrome, or other condition. Decisions must be made as to whether support brokerage is to be a function of state or county government or a contracted service; whether it can be furnished to an individual by the same organization that also provides him or her with services and the conditions under which it is possible for the individual to directly employ the support broker.

**Determine Criteria and Qualifications.** While support brokerage includes a number of services that are technical in nature and require particular expertise, the ability to carry out one of the major functions, navigating the human service delivery system, may rely more on a person's background, history with the community, or relationships with particular individuals, organizations or groups than any advance training or certification. It is not necessary for all activities to be packaged into a single job description. States need to identify the responsibilities require particular expertise or specialized expertise, those that logically fit together into a coherent set of tasks and duties and those that can be performed by staff with little direct experience. In addition, provision should be made for the following:

- The use of alternative providers who have the necessary background and expertise, but have not been typically utilized by the traditional service delivery system. For example, contracting with banks, private accountants or local organizations to provide training and assistance with financial management; or developing relationships with community groups such as the "Welcome Wagon," newcomers clubs or civic organizations to help people learn and take advantage of available community resources.
- The provision of training to enable individuals to become brokers by improving their existing skills and building new competencies. Offering technical assistance

and ongoing support to ripen the skills of individuals new to the field who have equivalent expertise or talent, or who have had a previous relationship with the individual receiving support.

- Identifying the standards of quality and performance expected and required of support brokers. In addition to functional job duties, the position description should include a statement of professional/nonprofessional ethics, a code of conduct, an explanation of purpose and rationale for the position, a description of the responsibilities of support brokers for assuring the quality and responsiveness of services, and a mechanism for providing ongoing evaluation and performance improvement.
- The provision of ongoing supervision, support and assistance to support brokers to ensure they have the capacity to provide the services required. This is particularly important if the support broker is a “lay” individual without prior experience with the service system. The experience of one state provides an example. Officials in Dane County Wisconsin arranged for support brokerage to be provided through three mechanisms. In the first approach, support brokers provided services as independent professionals providing a billable Medicaid service. The second method offered support brokerage through agencies that offered only brokerage or case management and did not provide direct support. The third approach provided support to any individual chosen by the participant to provide support brokerage. A number of strengths and concerns are identified with each method (see Figures above). By structuring support brokerage provision in different ways, the county gained an understanding of the different factors affecting each methodology and the steps that needed to be taken to improve and maintain quality.
- The development of performance assessment methodologies that include the person receiving support, people the support broker interacts with on a regular basis and supervisory assessment.
- Recruitment, training and job development to ensure an adequate number of support brokers is available to meet the ongoing and emergent needs of individual beneficiaries.
- Determination of appropriate caseload size. Regardless of the configuration of support broker responsibilities, a consistent theme among both the Self-Determination and Cash and Counseling demonstration projects was that the effectiveness of support brokers was influenced by caseload size. Caseloads that consisted of a single or only a few individuals did not seem to involve the support

broker enough in the process of brokerage to fully develop their skill and competence, while caseloads with large numbers of individuals forced the worker to focus on the needs of only those individuals in crisis to the exclusion of those persons who needed consistent, albeit less intensive assistance.

**Resolving Competing Objectives.** Although support brokerage is described as a discrete collection of activities, given the current financial climate, many states, counties, local agencies and service providers will not have the ability to hire new staff to perform this role. Some states may provide the service by adjusting the responsibilities of current staff or even reconfiguring the existing system structure through more comprehensive reform strategies. Support broker services can be “bundled” with traditional case management, service coordination, flexible support or other similar position/activities. Regardless of how the position is configured or where the support broker “sits,” it is important to ensure that the person in the support broker role does not have a conflict of interest with other duties or responsibilities he or she is expected to perform (see above). The support broker needs to be able to work in an independent manner on behalf of the individual receiving support, serving the best interests of the person as determined by that person. The participant must be able to freely choose the support broker who best meets his or her needs.

But what does this mean at a practical level? What if support brokerage or case management has been traditionally provided by the service provider, by staff at the state or county level in conjunction with other duties, or through a single organization or network of agencies. States involved in self-determination demonstration projects funded by the Robert Wood Johnson Foundation during the late 1990s approached this issue in a variety of ways in an effort to identify and resolve potential conflicts of interest and enable to exercise free choice in the selection of their support broker. In Vermont, case management was traditionally provided by regional designated developmental disability agencies, which were additionally responsible for providing the full range of community residential, vocational and therapeutic services. For a variety of reasons the state chose to keep the existing format, but open the door to incorporate new service providers and the free choice of support brokers. As a part of a comprehensive redesign of the state’s DD system, individuals who decided to direct the services they received themselves (through self-determination) were empowered to use funds from their individual budget to employ a person of their choosing not necessarily affiliated with the designated agency to perform support brokerage or any number of other duties. The individual can also choose to receive some or all of their plan services through separate organizations or individuals.

Both Connecticut and Massachusetts traditionally provided case management and support coordination through state staff whose job it was to perform many of the support brokerage duties and responsibilities outlined above. As a part of the state's self-determination project, Connecticut officials redesigned the roles and responsibilities of a select number of state case managers to incorporate the principles of self-determination to enable them to work for the person receiving support. Participants were able to choose the broker whom they desired and the role of the broker changed to reflect a primary focus on the individual. Massachusetts made similar changes in the roles and responsibilities of their state case managers, pushing decision making authority down to the team level and making the support broker responsible for ensuring the person and his or her circle of support were able to access the services they desired and needed. The Developmental Disabilities Administration in Maryland, in response to similar concerns, made the decision to separate support brokerage/case management from service provision. The state will no longer contract for both support brokerage/case management and direct service from the same agency.

Regardless of the structure of the state's service system, if the various support brokerage activities are dispersed among a number of different positions and authorities, it is of utmost importance that the roles, responsibilities and outcome expectations are clearly understood by all parties. The state must be able to describe how the various components fit together into a coherent whole to accomplish the outcomes and meet the requirements outlined in the above section, CMS Requirements. The state should also demonstrate the steps it has taken to reduce the likelihood of a conflict of interest, and the means by which such conflicts will be discovered and resolved. One state's innovative response to this issue was to establish a "Conflict of Interest Committee" comprised of state staff, providers, families and consumers to identify potential issues of concern and negotiate their successful resolution. The bottom line is that the participant must be able to access all of the identified support brokerage services when they are needed in the manner desired by the person, his or her representative and the planning team.

### **Identify Individual Authority: Who is the Self?**

States share with the federal government the responsibility for assuring that the services furnished to people with disabilities under the Medicaid program protect health and welfare. When service recipients control or have substantive influence over the nature, extent and scope of the support provided, this responsibility must be shared. While self-directed systems of services are designed to maximize the control participants have over the decision making process and the support that is provided, the experience of the

Self-Determination and Cash and Counseling projects demonstrates that self-direction is more an evolutionary than a revolutionary process. Some individuals are ready, willing and able to take charge over their supports from the time they enter the system and may be frustrated that the pace of bureaucratic decision making cannot keep pace with their interest in moving forward. For many, however, the process is more incremental in nature, with the individual assuming greater control over time on a gradual basis as he or she becomes more comfortable with the process of self-direction, individual budgeting, provider selection, etc.. During this period of increasing readiness, participants may elect to take complete charge of some aspects of their person-centered plan and individual budget, delegate to others the responsibility for performing other tasks and rely on service providers to meet their needs in still other areas. Decision making authority may vary depending on the circumstance and the responsibilities of support brokers need to be able to change to meet the needs of both groups, flexing as required to support, assist, train and provide as necessary. At the same time, the Support Broker must be able to integrate respect for individual choice and control with the need to protect the person's health and welfare, and to remain accountable for the appropriate use of public funds.

The capacity of the support brokerage system to meet the many objectives outlined above requires a delineation of the authority, roles and responsibilities of all parties, including the individual and his or her representative, the service provider, the support broker, members of the planning team and others relevant to the participant's life. Specifically, this means that the individual receiving support and the planning team must identify the "self" in self-direction by:

- Setting the authority for decision making and the methodology for ensuring the individual is empowered to exercise authority commensurate with his or her capacity and personal preferences.
- Describing the standards used to guide decision making and the circumstances under which an individual can gain increased authority over the services received.
- Assigning responsibility and accountability for making decisions regarding sentinel activities or events.
- Setting the process for transferring increasing levels of authority to the individual.
- Setting the methodology for monitoring activities, evaluating outcomes and improving performance.

- Identifying a procedure for “negotiating” risk and responsibility.

The discussion of the authority for exercising direction and control is central to the process of self-directed services and should be included as a regular part of the person-centered planning process, team meetings and other discussions regarding the supports a person receives. At a practical level this means that the team must set the authority and responsibility of the individual receiving support to select, hire and control the support broker, the service provider and the array of additional direct and ancillary supports the person might need. It also means that participants are offered: (a) training to learn how to manage staff, an individual budget, and the delivery of services identified in the person-centered plan; (b) support, to compensate for incapacity or the absence of skills to enable them to access services and control the supports provided, and; (c) regular feedback on skill development, and the progress of the plan of care. Finally, the system of support brokerage should be designed to directly involve the participant to the fullest extent desired in the assessment of the quality of the decisions made, the procedures used, the supports received and the staff hired to perform the work.

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<sup>1</sup> Kane, R.A., Kane, R. L., & Ladd, R. C. (1998). The Heart of Long-Term Care. pp. 3-29. New York: Oxford University Press.

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