



## HCBS/TBI Waiver

### Guidance Letter to Clarify the Appropriate Role of Service Coordinators

## Guidance Letter to Clarify the Appropriate Role of Service Coordinators / Case Managers

### Dear Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) Waiver Providers:

The Department is issuing this guidance letter as an update to the previous guidance letter issued on August 14, 2013. The guidance at that time was provided in response to ongoing issues regarding instances in which waiver services providers, specifically Traumatic Brain Injury (TBI) and/or Nursing Home Transition and Diversion (NHTD) service coordinators, had deviated from the defined role for providing service coordination/case management to waiver participants: assuring that participants and potentially eligible participants obtain the necessary level, frequency and amount of services they are approved to receive, in order remain at home. It had previously been brought to the Department's attention that there were instances in which Medicaid enrolled provider agencies and their staff exceeded their approved authority and participated as representatives for their clients in legal proceedings challenging decisions of the Regional Resource Development Center (RRDC) or the Local Departments of Social Services (LDSS) and this Department. The purpose of this letter is to continue to clarify the appropriate role of service coordinators/case managers and other waiver providers in these proceedings.

Oversight of the NHTD and TBI waivers is the responsibility of the Department of Health, with the assistance of the nine RRDCs under contract with the Department. The LDSS is responsible for Medicaid eligibility and the approval of state plan services included in the waiver participant's service plan. Once an applicant has been approved for Medicaid by their LDSS and a referral for waiver services is initiated, the applicable RRDC serves as their point-of-entry for assessment for waiver participation purposes and approval of waiver services.

The service coordinator/case manager's role involves assisting the participant in developing the initial and subsequent Service Plans, determining the quantity and frequency of those services, coordinating and monitoring all services and equipment provided in the Service Plan as well as initiating and overseeing the assessment and reassessment of the participant's level of care, and conducting an on-going review of the Service Plan.

Situations previously brought to the Department's attention involved service coordinators/case managers functioning beyond the provider's duties set out in the applicable provider/program manuals, provider agreement or administrative directives (ADM). Specific examples involve service coordinators/case managers: (1) representing clients in fair hearings and litigation in which the RRDC and/or LDSS and this Department has determined that a participant is no longer eligible for waiver services, or that the type or amount of assistance requested is not appropriate; and/or (2) appearing as a witness for a participant in a fair hearing, challenging an RRDC/LDSS/Department determination. In general, taking an adverse position against the Department.

Decisions regarding whether a participant remains eligible for waiver services, receives a particular

waiver service, or receives sufficient hours of services (frequency or duration) are made on the basis of documentation provided within the service plan and supported by the Community Health Assessment (UAS-NY/CHA.) The services designated in the service plan

must be supported; these services must be sufficient to maintain the safety of the individual in the community. The approval of the number, type of services, the frequency and duration of services are the responsibility of the RRDC/LDSS and the Department. While a service coordinator/case manager, other waiver providers or employing agency of the service coordinator/case manager may discuss and provide additional information in response to a decision with which the agency disagrees, once a Notice of Decision (NOD) to deny, discontinue, or reduce one or more waiver services has been made by the RRDC/LDSS or the Department, any representation or appearance on behalf of the participant by the waiver provider or parent agency to challenge such a decision is beyond the scope of the provider's functions. This is set forth in the applicable Provider/Program Manuals/Administrative Directives, provider agreement. Such activity constitutes a conflict of interest for the service coordinator/case manager or other waiver providers.

Providing representation for the participant against the RRDC/LDSS and/or the Department is not intended by the reference in the Provider/Program Manuals/ADM to the waiver provider's role as an "advocate" for the participant. In the case of service coordination, for example, the referenced duties help a participant obtain the necessary waiver and other services they need in order to be able to live in the community successfully. As the entity authorized to approve/deny services, once an RRDC/LDSS and or the Department has issued a Notice of Decision, the waiver provider agency is bound by that decision. The participant may then exercise their due process through case conference and or fair hearing.

A waiver provider, such as a service coordinator, may assist an applicant/participant and their family in certain aspects of the fair hearing process without providing actual representation. They may assist in seeking a case conference to help resolve a discrepancy, making a fair hearing request, and/or by referring the participant and their family to legal services providers. Waiver providers may also support the applicant/participant by performing tasks such as filing, mailing or managing paperwork for their participant's case and care. Other examples of allowable assistance include physically attending fair hearings in order to observe, having a case conference prior to or after a fair hearing, or to providing any necessary background information to participants or families to assist with their fair hearing preparation, upon request. Such assistance is appropriate and permissible, but the practice of representation by a Medicaid provider who is in the position to receive financial gain by the representation is a conflict of interest or an appearance of a conflict of interest.

All RRDC/LDSS are instructed to report to the Department any waiver provider's and/or their agency's appearance at a fair hearing as the representative and/ or witness for a participant or applicant, challenging an RRDC/LDSS and/or Department decision. The Department will review each instance reported to determine whether the waiver provider of the employing agency has engaged in unacceptable practices and/or failed to follow waiver policies and procedures. If you have questions, please feel free to contact me via: [tbi@health.ny.gov](mailto:tbi@health.ny.gov) or [nhtdwaiver@health.ny.gov](mailto:nhtdwaiver@health.ny.gov)

**If you are having problems viewing content within this newsletter, please email [emednyalert@gdit.com](mailto:emednyalert@gdit.com) for further assistance**

The Department has attempted to ensure that the information contained in these notifications is as accurate as possible. However, no e-mail transmittals or materials provided are intended to constitute legal or medical advice.