

# Consumer Directed Care in Home Care Managing Brokerage Arrangements



**Presented by:**

**Alison Choy Flannigan**

Partner, Health, aged care & life sciences

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4228035

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LAWYERS

Subcontractor



Consumer directed care –  
Example of  
brokerage/subcontracting  
model

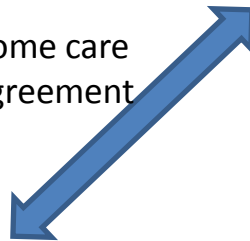


Aged care  
recipient/client -  
substitute decision  
maker/guardian/respon  
sible person and  
enduring attorney,  
family and friends

Brokerage  
Agreement or  
subcontract



Home care  
Agreement



Approved Provider  
Care planning, co-ordination,  
budgeting, overall  
responsibility



Commonwealth  
Department of  
Social Services



# Introduction

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- ❑ **Approved Provider Responsibilities**
- ❑ **Brokerage arrangements**
  - ❑ Types
  - ❑ Benefits
  - ❑ Risks
  - ❑ Challenges
  - ❑ Contract issues

# Approved Provider Responsibilities

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## □ Approved Provider Responsibilities

- Approved providers have a number of responsibilities under the Aged Care Act 1997.
- These responsibilities relate to:
  - Quality of Care Principles 2014 – Part 4.1 of the Act; which relate to the care and services that a provider of home care is to provide and the Home Care Standards that a home care provider is expected to meet as a part of quality review;
  - User Rights Principles 2014 – Part 4.2 of the Act, which covers the rights of the consumer; and,
  - Accountability Principles 2014 – Part 4.3 of the Act, which covers accountability for the care that is provided, including the suitability of their key personnel.

For those approved providers who do not meet their responsibilities, compliance action, including sanctions, under Part 4.4 of the Act may be taken.

# Types

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## □ Brokerage arrangements

### ■ Types

- Can be discrete service subcontract or a variety of services
- Can be a linkage or facilitation service only
- An arrangement where an organisation buys and sells services for the Approved Provider or the consumer/client
- Can be with an organisation which is already an Approved Provider or not an Approved Provider
- Can be longer term or per client or occasion

# Benefits

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## ❑ Brokerage arrangements

### ■ Benefits

- Can facilitate consumer choice, for example, if the consumer has an existing relationship with a certain provider
- Can be used as a “spare tyre”
- Can provide services which you do not have, for example specific care co-ordinators who speak a particular language
- Someone else may be able to do it better or and more efficiently
- May enable you to trial or pilot a new service

# Risks



## □ Brokerage arrangements

### ■ Risks

- Providers have an overarching responsibility to protect the health, safety and wellbeing of consumers, and independent contractors and health professionals should be subject to appropriate supervision
- Duty of care – vicarious liability and non-delegable duty of care, including qualifications and licensing and first aid
- Reputation
- Non-compliance with regulatory requirements of Approved Providers – can put your approval at risk
- Obtaining sufficient information to enable the Approved Provider to report to the Commonwealth

# Risks

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## □ Brokerage arrangements

### ■ Risks

- Insurance
- Police checks as required under the Aged Care Act
- Work, health and safety
- Insurance, including workers compensation – their claims history may affect your future workers compensation premiums
- Documentation, reporting including documentation, communication and significant event reporting
- Reliability
- Commercial/cost control and financial management
- Elder Abuse





# Challenges

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## ❑ Brokerage arrangements

### ■ Challenges for Approved Providers

- Continuity and consistency of care – orientation, policies, procedures and training
- Arrangements with informal carers, family and friends of the aged care recipient as service providers may be problematic with qualification and training issues and conflicts of interest
- Usually the Approved Provider selects its subcontractors – with CDC the consumer may have selected them – so the Approved Provider may be “forced” to deal with a person/organisation which they have not selected, had any experience with or have done due diligence
- Checking qualifications, training and references – some providers may be individuals with limited assets, and therefore qualification and reference checking and insurance are important

# Challenges

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## ❑ Brokerage arrangements

### ■ Challenges for Approved Providers

- It is difficult to monitor subcontractors in a home care setting
- Timing, with CDC there is often a need to put in arrangements quickly
- Websites such as Better Caring is a linkage site – how can you find the right needle in the haystack? Are the people on the websites what they say?
- Loss of business to the subcontractor
- Incurring unintended employment obligations, including redundancy
- Dealing with complaints and claims involving contractors and different insurers
- Administration time and expense of managing a wide variety of subcontractors

# Challenges

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## ■ Brokerage arrangements

### ■ Challenges for subcontractors

- Avoiding being the “meat in the sandwich” - Managing the expectations of both the Approved Provider and the client
- Being “thrown in” at short notice without adequate orientation and training
- Autonomy vs control
- Protecting your own staff, including work, health and safety issues
- Meeting service expectations
- Getting paid

# Checklist

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## □ Brokerage arrangements

### ■ Checklist

- Qualifications, registration, experience
- Contracting entity, including ABN
- Discuss values and approach to service delivery and code of conduct
- Police checks
- Work, health and safety – personal safety, equipment (including vehicle) and manual handling
- Insurance – including workers compensation or life and personal accident insurance
- References
- Policies – Aged Care legislation compliance, anti-bullying, privacy
- First aid
- Required communication, documentation and reporting – including hand-over
- Orientation
- Booking and cancellation processes



# Contract issues

## □ Brokerage arrangements

### ■ Contract issues *include*:

- Term of appointment
- Termination and cancellation
- Qualifications, orientation and training
- Reporting and monitoring
- Liability, indemnity and insurance
- Confidentiality and privacy
- Service description, hours, KPIs and availability – issues with “no shows”
- Fees and charges, including expenses and disbursements
- Compliance with law, including Approved Provider responsibilities
- Employee or independent contractor
- Intellectual property, including policies and procedures



# CDC – Brokerage arrangements

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## ❑ Related Articles:

### ❑ Employees vs Independent Contractors:

<http://holmanwebb.toledigital.com.au/publications/employees-vs-independent-contractors-and-the-risks-of-sham-contracting>

### ❑ Background checks in health and aged care:

<http://www.holmanwebb.com.au/blog/author/rachael-sutton-alison-choy-flannigan>

### ❑ Consumer Directed Care Want vs Need

<http://www.mondaq.com/australia/x/387686/Healthcare/Consumer+Directed+Care+CDC+Want+vs+Need>

## ❑ Questions?

### ❑ [Alison.choyflannigan@holmanwebb.com.au](mailto:Alison.choyflannigan@holmanwebb.com.au)

