# DSM Implementation Contracts and Stakeholder Advisory Groups: Considerations for DSM Program Managers

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## ABSTRACT

Increasingly, DSM administrators are electing to use third-party DSM implementation contractors for program launch and on-going delivery. For those administrators deciding to outsource DSM implementation, a series of key initial decisions must be made, including: 1) should sector-specific implementation contracts be issued; 2) should contracts be awarded by program or groups of programs within a sector; or 3) should a master umbrella implementation contract be issued to a prime contractor, with supporting sub-contractors, for delivery of all programs. Additionally, DSM program administrators are often faced with an equally daunting task of managing a diverse set of stakeholders, all desiring to influence DSM program design and operations. This paper is intended to help guide the early decision making process for new DSM program administrators by focusing on design considerations for the structure of third-party implementation contracts and stakeholder advisory groups. This paper reviews three options for DSM implementation contract design and three different stakeholder design options. An overview of the various options, followed by a discussion of the pros and cons of the different approaches is presented.

## Introduction

Throughout North America, rising energy costs and increased concern about climate change are resulting in the launch of new DSM programs where investments have heretofore been negligible or non-existent. In areas with established DSM programs, budgets are also increasing either because utilities are attempting to offset future load growth substantially or completely, or at the behest of regulators or legislatures for climate change mitigation purposes. To compound the challenge, often inexperienced administrators are being ordered to design and launch these programs with aggressive budgets and timelines. In some instances, these regulatory orders include financial penalties for failure to achieve DSM goals.[1]

Because new DSM program administrators feel the dual pressures of deadlines and inexperience, a threshold decision is often made to outsource program delivery to third-party implementers. This paper provides an overview of the options to assist future DSM program administrators in evaluating how to structure their implementation contracts in the context of their specific circumstances.

Similarly, the role of stakeholders and how to structure their engagement is another challenging and time consuming endeavor for DSM administrators. This paper provides an overview of three different stakeholder group designs. Combined, we hope this paper provides guidance for advanced and more informed discussion among DSM administrators, contractors,

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[1] For example Ameren Illinois Utilities faces penalties of over $650,000 if statutory savings goals are not meet over a three year period (2008-2010) coincident with the initial start-up of their DSM programs. http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0481

and stakeholders, as they work through the necessary steps to craft implementation contracts and stakeholder group designs most appropriate for their jurisdictions.

## Part One: Implementation Contracts

For DSM program administrators, an initial threshold question is whether to deliver DSM programs with internal staff or to issue requests for proposals (RFPs) for third-party implementation contracts. If the later course is chosen, a critical next decision involves how to design these third-party contracts. While regulatory agencies are generally heavily involved in reviewing and approving proposed DSM program designs, cost-effectiveness, and cost-recovery structures, they only sometimes provide firm direction or mandate to the program administrators on how they should proceed with program implementation. To frame this decision point, we present three general contract design options by: 1) sector-specific contracts; 2) program-specific contracts; and 3) master umbrella contracts.

### Option 1: Sector-Specific Implementation Contracts

One approach to structuring DSM third-party implementation contracts is to bundle program implementation by sector (for example, grouping implementation of programs by the residential sector and then seeking an implementation contractor team to deliver all the programs for that sector). A residential sector portfolio typically includes programs such as ENERGY STAR® Products (lighting and appliances), ENERGY STAR Homes, Home Performance with ENERGY STAR, residential HVAC, Low Income, etc.. With the increased emphasis on integration of demand response with energy efficiency, one might decide to incorporate demand response programs within the appropriate sector as well. Typically, the DSM sectors are residential, commercial and industrial, and demand response. Firms responding to this type of RFP would be required to designate a prime contractor and supporting subcontractors. The sector-specific approach can work well when utilities are issuing the RFPs for all of their programs at one time, versus a gradual design and roll-out of programs over two to five years.

Our experience has shown that a sector-specific implementation contract approach works well for administrators that have limited in-house expertise or time to review and manage multiple contracts. Sector-specific contracts are attractive for those DSM administrators who seek the simplicity of managing just two or three major prime contractors, operating in a highly turn-key fashion. In our opinion, under a highly turn-key, sector specific scenario, internal DSM staff should ideally limit their role to managing the contract and making decisions on major policy issues and significant topics requiring contract amendments. The contract manager ensures that high-level goals are being met within budget, manages stakeholders and regulatory communications, and helps to market and promote the programs as the official DSM program administrator. In turn, this allows the implementation contractors a high degree of empowerment to deliver turn-key programs to achieve results within budget. This crisp delineation of roles is critical to the success of this model. Program delivery and implementation details can not be in the hands of two masters. If so, the confusion and inefficiency that results is a recipe for DSM program administrator and contractor frustration, unnecessary costs, and program underperformance. The DSM program administrator must either elect to accept the responsibility for delivery and engage with sufficient experienced and capable staff resources and expertise to

truly be a program manager, or delegate the details to the contractor and serve as a high-level contract manager; in our opinion, it is difficult if not impossible to successfully do both.

If a program administrator proceeds with the sector implementation approach, we recommend that program marketing and data tracking also be a prime contractor responsibility. These two critical areas of responsibility, in our opinion, can best be carried out by each prime contractor team since they are closer to the programs and data and will be able to identify issues or inconsistencies earlier in the process than if the function was awarded to a different entity. To assist with marketing and ease of participation, even with a two-sector approach, effort should be made to ensure the look and feel of marketing materials, branding, and program website and toll-free telephone number serve both sectors seamlessly.

The benefit of launching programs by sector is the administrative ease of contract management for the short-staffed DSM administrator. Additionally, this approach stands to benefit by having one contractor in charge of implementing multiple programs. This creates increased cross-program promotion opportunities, because the prime contractors will not have silo thinking with regard to the individual programs delivered. The downside to this approach is that in most instances, prospective bidders will form a team of partners (comprised of the subcontractors who otherwise might have bid for the master contract.) The DSM administrator will be left to choose between bidding teams that may represent a mix of firms that are recognized industry leaders and others that it might not select based on merit if they were looking at an unbundled program-specific solicitation. Ultimately, this is one of the many trade-offs to consider when designing DSM implementation contract structures. Examples of sector-specific implementation contracts include DSM programs in New Jersey, and the recently launched Ameren Illinois Utilities and AmerenUE programs.

**Option 2: Program-Specific Implementation Contacts**

Another option for launching DSM programs, especially if a multi-year staggered approach for implementation is planned and the programs are relatively few, is to release RFPs by individual program or closely-related program areas (such as ENERGY STAR Homes and Home Performance with ENERGY STAR). In the spectrum of DSM programs and third-party delivery firms, there are several program areas that have niche contractors. Examples include residential lighting and appliances, refrigerator recycling, and demand response programs. As a consideration for DSM administrator staff, more RFPs issued will necessitate greater contractor oversight, management, and coordination. This will necessitate a higher level of involvement for internal DSM administrator staff as reporting and decision making on program designs and roll-out will not be as centralized as in the sector-specific approach. The benefits of a program-specific approach is that it increases the likelihood of more competitive RFP responses, as well as selecting the most appropriate and specialized contractor for a specific program area.

Our experience shows that this approach helps to diversify contractor risk, which is the chance that the selected team underperforms, resulting in failure to meet goals for an entire sector versus perhaps just for one program area. Additionally, when the time comes to competitively re-bid program delivery, typically every three to six years, the incumbency of the contractor is not as all encompassing which tends to result in fewer competitive responses.[2] We tend to see this contract design more typically with well-established and experienced DSM

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[2] For example, for the 2005 Efficiency Vermont contract, an umbrella contract structure, aside from the incumbent, only one other firm competed for the contract.

administrators, including those that are implementing entire other program areas directly by themselves.

**Option 3: Master Umbrella Implementation Contract**

A third major option for DSM program implementation is to issue a single comprehensive master umbrella implementation contract to provide DSM programs for all sectors. This approach empowers a single contractor (and their selected subcontractors) to be responsible for all aspects of program design, marketing, delivery, data tracking, and reporting across the entire portfolio of DSM programs. While at first blush this approach might be appealing for the chance of a single consistent look and feel to all programs, this is generally an illusory benefit. Residential and non-residential markets are sufficiently different in programmatic approach, technologies, customer motivations, and marketing approaches that this benefit, in our opinion, is often not realized fully. A more severe negative is that it may force partnerships between firms, who would rather not work together, just to achieve a common objective of securing the prospective contract. The program administrator may be faced with bids of artificially-bundled firms which may present a continuum of expertise and talent that may not represent the best available in either sector. On the other hand, it is possible that the rare contractor may possess all of the requisite skill sets and competence, or form the dream team of implementation contractors, to fully handle delivery in the master umbrella contract arrangement. However, in our experience, this alignment of the DSM stars is rare.[3]

When faced with this option, we suggest that entities considering a single RFP for implementation structure the RFP process by the two major sectors and invite contractors to bid on either sector or both. If it becomes apparent that a single contractor prime team has the capability to address both sectors, then they may be awarded the contract. If not, then, the contract is split by the most qualified prime by sector. Currently, the single prime contractor model is being used by statewide SBC-funded programs such as Efficiency Vermont, Efficiency Maine, and Wisconsin Focus on Energy.

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[3] One exception is the Vermont Energy Investment Corporation, which in our opinion, was uniquely well suited to successfully launch and deliver the Efficiency Vermont contract under this master implementation contractor scenario.

Table 1 presents a summary of the three different approaches to DSM implementation contracts.

## Table 1. DSM Implementation Contract – Options

| | Issue | 1. Sector-Specific<br>Two Sectors:<br>Residential and<br>Commercial /<br>Industrial | 2. Program-Specific<br>Multiple Programs<br>in Both Sectors | 3. Master Umbrella<br>All<br>Sectors |
|---|---|---|---|---|
| 1 | Programs bundled by sector | yes | sometimes | yes |
| 2 | Demand response included in bundle | yes | sometimes | yes |
| 3 | Number of contracts awarded | one or two | multiple | one |
| 4 | Contract length | may vary | may vary | single |
| 5 | Gradual program design or phased programs roll out | by sector | by program | by sector or program |
| 6 | Program launch | single | staggered | single or staggered |
| 7 | Promotes cross-promotional opportunities | yes | no | yes |
| 8 | Bidders form partnerships | yes | sometimes | yes |
| 9 | Encourages competitive bids at program level / selecting most appropriate / specialized contractor for specific program area | no | yes | no |
| 10 | Diversifies contractor risk | partially | yes | no |
| 11 | Simplicity of managing contracts / contractors coordinate activities amongst their subcontractors | yes | no | yes |
| 12 | Program marketing, incentive processing, data tracking by implementation contractors | yes | yes | yes |
| 13 | Examples | New Jersey, Ameren Illinois Utilities, AmerenUE | Energy Trust Oregon, NYSERDA, National Grid | Efficiency Maine, Wisconsin Focus on Energy, Efficiency Vermont |

## Discussion: Implementation Contracts

For a variety of reasons, the option of outsourcing DSM implementation, especially for the early years, is often a wise choice given DSM contractors can apply their experience, systems, materials, and market understanding immediately. Over time, administrators may decide to implement portions of their program portfolios directly with in-house staff (for example, C&I programs) as their experience and knowledge of the DSM market increases. Once the decision is made to outsource DSM implementation, in our opinion, a variety of factors, primarily the ability, desire, and experience of the administrator to manage the contracts, contributes to the decision of how to structure DSM implementation. At a minimum, we advise not to release RFPs for each and every individual program, except for a complete niche and turn-key area, such as appliance recycling.

Additionally, we believe administrator staff should empower contractors to deliver as they see best under a performance contract arrangement which holds the contractor accountable for results. DSM program administrators must manage in view of the performance contract dynamic and provide space and opportunity for the implementation contractors to implement as their experience directs them. Typically, initial implementation contracts are two to three years, with a possible extension for excellent performance up to a maximum of four to six years. Structuring contracts with the possibility for an optional extension, and performance incentives, is a significant motivator which will help attract qualified firms to initially respond to an RFP and achieve results.

Furthermore, administrators should require in an RFP that contractors propose performance goals, preferably a combination of resource acquisition energy savings goals (such as MWh, and MW) and market transformation-oriented goals (like the availability of efficient

products in retail outlets). Additionally, administrators should request that contractors propose other performance metrics that will help distinguish their bids from competitors and provide new ideas for improved program delivery contracts. This may include:

a) <u>Pay for Performance</u>: A pay for performance compensation structure option which pays the contractor an amount per kWh and kW saved or a different compensation or partial pay for performance approach.

b) <u>Performance Incentives and Penalties</u>: Contractors may propose a performance incentive structure which would reward contractors for achieving or exceeding goals within budget. The amount of potential performance incentive must be factored out of stated available contractor budgets, after accounting for projected program delivery costs. If contractors propose a performance incentive, then contractors should be requested to propose an equivalent penalty structure for failure to achieve goals, or a justification for why a penalty structure is not appropriate.

c) <u>Hold Back</u>: Contractors may propose that a portion of their invoices be held back in good faith, until annual performance goals are achieved.

d) <u>Other</u>: Contractors may propose other compensation or performance incentive structures for consideration.

DSM portfolios are also attracting the attention of key constituents, referred to in this paper as stakeholders, who seek to provide input into and influence the design, implementation, and evaluation of DSM programs. The second part of this paper focuses on stakeholder group designs and considerations, which typically competes for the attention of the DSM program administrator while also deciding how to structure the release of DSM contracts and RFP preparation.

## Part Two: Stakeholder Advisory Groups

DSM program administrators are increasingly engaging with stakeholders over the design, cost-effectiveness, and objectives of the new DSM programs. They are doing so either to broaden support of and trust in their efforts, or because regulators or legislatures have directed them to do so. Stakeholders typically represent a cross-section of interests from state and local government, industry associations, large customer groups, environmental and efficiency advocacy groups, and low-income advocates.

We advise administrators to engage with stakeholders early in the DSM process and provide mechanisms that ensure that stakeholders are educated and their concerns are voiced and, when appropriate, acted upon. A stakeholder process that is viewed as perfunctory or window dressing will quickly be seen for what it is and will have a negative value, unless it is agreed upon in advance that the stakeholders desire only high-level information exchange.

For the DSM program administrator, it can be tempting to view stakeholder groups as an unnecessary added burden, particularly for entities where the internal culture holds little regard for non-technical opinion. However, if the process is managed appropriately and stakeholder input is valued and acted upon to establish a sense of joint ownership of program objectives and designs, then the stakeholder process can become a key to long-term program support from these crucial constituencies. For example, if programs must receive regulatory approval prior to implementation, successfully engaging with stakeholders in a joint education and program design

process is likely to facilitate their support for the DSM portfolio filing and regulatory review of programs, thus, leading to improved programs and reduced legal and other DSM regulatory costs. Additionally, if programs underperform, and design plans and strategies were created by a joint administrator/stakeholder process, then a sense of shared responsibility and understanding will be more present.

While the objective of a stakeholder process, broadly speaking, is to provide an opportunity for transparency, education, and input on design, implementation, and evaluation of programs, the methods and degree of stakeholder engagement with the DSM program administrator varies significantly. Many program administrators are currently implementing efficiency programs with no active stakeholder engagement, but we have observed that in today's political and environmental climate, all new DSM programs are likely to be encountering questions and requests from stakeholder groups.

There are three basic structures for utility DSM stakeholder groups, ranging from informal and advisory only, to formal and empowered.

## Option A: DSM Working Group

The first kind of stakeholder group, and the most informal, is a structure we call the DSM Working Group. In our experience, the majority of utility-implemented programs, if they engage with stakeholders outside of the regulatory arena, proceed with this model, until either by stakeholder demands or regulatory decree, the creation of a more official stakeholder structure is implemented. Typically, DSM Working Groups are ad hoc. They bring together a group of interested stakeholders who have pro-actively approached the utility, often because they have a history of engaging with the utility on other regulatory issues (such as rate cases, etc.). Additionally, a regulatory order may designate a working group to inform initial DSM plan development.

Working Groups generally have no formal structure. Meetings are typically called only at the discretion of the utility or regulatory staff, at times, by requests from an individual stakeholder or a consortium of stakeholders. Working Group meetings are often called and formed in response to issue-oriented meetings (such as introducing a new program.) As this is an informal model, votes are rarely taken and notes of the meeting may or may not be recorded. There may be no requirement or expectations of public notice or posting of the meeting location and time, or an expectation or desire that the public or other potential stakeholders be included. However, in our opinion, even for an informal working group, it is best to prepare and distribute in advance a draft meeting agenda and any materials that will be discussed. The informal structure of a working group can be quite effective, in a low key way, to ensure that interested parties have a seat at the table and are provided an opportunity to provide input which may influence decisions. Ultimately however, the Working Group model will not empower stakeholders, beyond the potential adoption of suggested changes or enhancements to the issue of the day. Examples of regulatory bodies directing a Working Group to inform new DSM portfolio development include Baltimore Gas and Electric and the State of Arkansas.

## Option B: DSM Advisory Committee

The DSM Advisory Committee is a more formal approach to regularly convening with stakeholders to review and discuss DSM programs. Advisory committees are typically

established by a regulatory or legislative requirement, or pro-actively by the administrator. As the name implies, advisory committees are empowered to provide advisory input; however, final DSM program decisions are made by the program administrator. Advisory meeting notes and recommendations, both majority and minority, are typically submitted formally to both the DSM program administrator and the regulator.

Committee responsibilities typically include, but are not limited to: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing evaluations and plan progress against metrics and statutory goals; reviewing program additions or discontinuations; reviewing new proposed programs for the next program cycle; and reviewing program budget shifts between programs and the need for carry-over of unspent funds. Sometimes, advisory committees are granted administrator funding to hire DSM experts to provide the committee with expertise to review and comment on technical issues surrounding proposed DSM plans and evaluations on an as-needed basis.

Advisory Committees are typically composed of eight to fifteen representatives from a cross section of state government agencies, environmental groups, business groups, low-income and public advocates. Sometimes representation is pre-determined by regulatory order, or the administrator pro-actively selects members with attention to representation from a cross-section of interest groups. The DSM program administrator typically manages committee logistics and functions, including scheduling, materials, agenda preparation, etc. Meeting notes are taken, typically by the administrator and later approved or revised by the committee and posted on a dedicated website. Notice is posted in advance of meeting dates and times, and the public is invited to attend and allowed an opportunity to speak during an open forum period at some point during the meeting. Advisory Committees typically meet monthly, bi-monthly, or quarterly depending on the desire of the members. DSM Advisory Committees are used by the Energy Trust of Oregon and Efficiency Vermont.

**Option C: DSM Collaborative**

The most formal and empowered type of stakeholder group is a model often called a DSM Collaborative. This model, created by regulatory order or legislation, empowers a group of selected stakeholders to have direct oversight and ultimate budgetary and program design authority over the DSM program administrator. Issues addressed in the Advisory Committee model are reviewed in greater detail in the Collaborative model. Composition of the Collaborative typically mirrors those selected for Advisory Committees. Membership ranges from eight to fifteen, with meeting frequency varying from monthly, bi-monthly, or quarterly depending on the level of engagement deemed necessary by the Collaborative. Collaboratives are regularly granted funding from the administrator DSM budget to hire third-party DSM advisors (energy efficiency experts) to provide independent support to Collaborative members as they consider program designs, performance goals and program budget allocations. Fully-empowered DSM Collaboratives are still rare in utility and SBC-funded programs. Examples of DSM Collaboratives include the Massachusetts Joint Utility Collaborative and the Connecticut Energy Conservation Management Board.

Table 2 presents a summary of the three different approaches to stakeholder groups and their operations.

**Table 2. Stakeholder Groups – Options**

| | Issue | A. Working Group<br>Ad Hoc / Informal | B. Advisory Committee<br>More Formal | C. Collaborative<br>Formal |
|---|---|---|---|---|
| 1 | Initiated by | program administrator or stakeholders | program administrator, regulator or legislation | regulator or legislation |
| 2 | Number of members | no limit | eight to fifteen | eight to fifteen |
| 3 | Use of outside DSM experts funded by administrator or regulator | no | maybe | yes - multiple |
| 4 | Dedicated Website | no | yes | yes |
| 5 | Meeting frequency | typically at request of program administrator | defined (monthly to quarterly range) | defined (monthly to quarterly range) |
| 6 | Public notice of meetings | maybe | usually | yes |
| 7 | Public/potential stakeholders included in meetings | maybe | usually | yes |
| 8 | Votes taken | maybe | usually | yes |
| 9 | Notes recorded | maybe | yes | yes |
| 10 | Input to decisions | proposed | advisory | consensus/voted |
| 11 | Level of engagement / example | seat at table: provide input to program design, may influence decisions | advisory: reviewing final program designs; establishing agreed-upon performance metrics; reviewing evaluations and plan progress; reviewing program additions or discontinuations; reviewing new proposed programs; reviewing program budget shifts and need for carry-over of unspent funds | fully empowered: have oversight and ultimate budgetary and program design and goals authority over administrator |
| 12 | Decision making by | program administrator or regulator | majority vote with final decisions by program administrator or regulator | collaborative via consensus or majority vote |
| 13 | Example | Baltimore Gas and Electric, Arkansas | Efficiency Vermont, Energy Trust of Oregon | Massachusetts Joint Utility Collaborative, Connecticut Energy Conservation Management Board |

## Discussion: Stakeholder Advisory Groups

In our experience, we have observed a clear trend over time resulting in an increase in the formality and level of empowerment of stakeholder groups. Typically, stakeholder Working Groups evolve into a formal Advisory Committee; increasingly in New England, they are evolving into legislatively-mandated Collaboratives, with voting power over program designs and budgetary decisions. In jurisdictions with mature DSM programs and well-organized environmental groups, the trend is clearly toward empowered stakeholders, operating in either Advisory or a Collaborative fashion. In areas new to DSM implementation, our observations are that stakeholder engagement is often structured according to the Working Group model, and in many instances, stakeholder engagement outside of a regulatory process is limited to non-existent. We believe the trend toward more empowered and engaged stakeholders with DSM programs will continue to increase as DSM budgets grow larger and public concern over climate change continues to increase. We advise clients starting new DSM programs to, at a minimum, pro-actively establish Working Groups which will then likely lead to Advisory Committees early in the DSM program planning and implementation stages. We believe that meaningful engagement with stakeholders, early in the process, will establish links to key constituencies and potentially reduce expensive and contested public hearings over DSM program designs and budgets.

In terms of representation and structure, we believe that for the majority of DSM program administrators, the best initial approach is a meaningful and engaged Advisory Committee composed of eight to ten members, representing a cross-section of constituent interest groups. All committee members should have a genuine interest in overall DSM program success and have no personal financial stake in the DSM program designs. We recommend staggered two to three year terms for committee membership, with the possibility for re-appointment.

Appointments to Advisory Committees should be made via nominations to the regulatory body overseeing the DSM programs, and interviews and commitments by those selected to serve on Advisory Committees should be required. If Advisory Committee members miss more than 50% of meetings in a given year, they should be asked to resign and/or be replaced. We also suggest that Advisory Committees meet no more frequently than monthly, preferably bi-monthly, and allow opportunities for periodic participation by the public through open forum sessions. We encourage the DSM program regulator to authorize funding to provide expert DSM technical consultant support to assist Advisory Committee members, as needed, with review of technical or program design considerations.

Additionally, we believe a representative from the implementation contractor teams, in addition to a representative from the DSM program administrator, be present at all Advisory Committee meetings, in a non-voting, informational resource capacity. All logistics for Advisory Committee meetings should be handled by the DSM program administrator. To ensure timely topical areas are addressed, the DSM program administrator should play a key role in drafting initial meeting agendas, subject to advanced review and edit by committee members. In closing, while the stakeholder process can be initially seen as a lengthy and burdensome task for the DSM program administrator, we believe it is an essential component to ensure transparency in the use of ratepayer funds that ultimately, if well managed and staffed with dedicated Committee members, will result in strengthened DSM programs.

## Conclusion

DSM program administrators face numerous challenges when first launching their programs. If the choice is made to use third-party implementation contractors, then a critical initial decision, with long lasting impacts, hinges on how the very implementation contracts themselves are structured. In our experience, this decision is never an easy one, and often results in passionate disagreements by highly-experienced DSM professionals. We hope that this paper serves as a resource to help assist future DSM program administrators in evaluating how best to structure their implementation contracts and stakeholder groups in the context of their specific circumstance. In conclusion, we hope the observations presented in this paper assist the next generation of DSM administrators to get ahead of the curve with the design, launch, and on-going management of successful DSM programs.

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