

# Public Notice

## NYS DOH, Bureau of Managed Long Term Care Social Adult Day Care (SADC)

### Heightened Scrutiny Evidence Packets

April 17, 2024

The New York State (NYS) Department of Health (DOH), is seeking public comment on the Heightened Scrutiny evidence packets for all Social Adult Day Care (SADC) sites, which is required pursuant to the DOH Statewide Transition Plan (STP) for federal compliance with the Home and Community-Based Services (HCBS) Settings Final Rule (42 CFR §441.301(c)(5)(v)). This is required for DOH to maintain federal Medicaid funding for HCBS services provided in the SADC sites listed below. As more fully set forth below, the Department intends to submit these evidence packets to the United States Department of Health and Human Services (DHHS), to establish that these SADC sites have overcome the regulatory presumption that these settings are institutional (i.e., non-eligible for HCBS funding) due to their location. A public comment period is required by DHHS for this submission process.

The SADC sites are contracted with Managed Long Term Care (MLTC) plans to provide social adult day care services, which are provided in non-residential settings. Members attend the SADC on days of their choosing, and participate in activities throughout the day, and not overnight. In addition to all other state and federal requirements the MLTC plans are responsible for providing oversight and monitoring to ensure compliance with the HCBS Final Rule for all SADC sites they contract with.

The Centers for Medicare and Medicaid Services (CMS) has issued Heightened Scrutiny requirements for HCBS settings presumed to have the qualities of an institution. Settings that fall into one of two categories that define qualities of an institution and are subject to a Heightened Scrutiny review by CMS are as follows:

- Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.
- Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.

CMS, based on evidence submitted by the State, will confirm whether a setting is **not** institutional and **does** have the qualities of home and community-based settings.

This notice further serves to open the 30-day public comment period that will close on May 17, 2024. The Heightened Scrutiny packets can be found here:

[http://www.health.ny.gov/health\\_care/medicaid/redesign/mrt90/mltc\\_policy/sadc/sadc\\_high\\_scrutiny\\_sub.htm](http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/sadc/sadc_high_scrutiny_sub.htm). The Department will receive written comments during the 30-day comment period via email: [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov), please include a subject line of "Public Comment", or by mail to: ATTN: Paul Pfeiffer, OHIP DHPKO 1CP-1623, New York State Department of Health, Albany, NY 12237 For individuals with limited online access who require special accommodation to access paper copies, please call 518-474-6965.

## Heightened Scrutiny Overview

In accordance with federal rules set forth by CMS, the NYS DOH, BMLTC is required to publish for public comment Evidence Packets for SADC sites that deliver HCBS that were identified as Heightened Scrutiny settings.

## Strategies to Identify Settings

Heightened Scrutiny is a review of certain settings that, according to CMS, are presumed to be institutional in nature, but do, in fact, demonstrate qualities of home and community-based settings. DOH has identified any SADC sites that are in a publicly or privately operated facility that provides inpatient institutional treatment or are in a building on the grounds of, or adjacent to, a public institution via the annual HCBS compliance reviews which began at the end of calendar year 2022 and were finalized by the end of 2023.

Please note that SADC sites previously reported are not re-reported as requiring heightened scrutiny review to CMS.

## Strategies to Review Settings

DOH conducted a detailed review of all supporting documentation and cross-referenced CMS guidance. This review was done to verify and validate the determinations made by the MLTC plans regarding the SADC site's compliance with the HCBS Final Rule and to ensure remediation efforts were completed in alignment with the federal deadline.

DOH's review entailed the following:

- Detailed review of SADC site supporting documentation.
- Review of the SADC site characteristics via geo-mapping, as well as a customized map displaying each site in proximity to known health facilities.
- Individual member experience surveys sampled to identify possible institutional or isolating characteristics.
- Virtual on-site validation reviews of SADC sites which included a virtual walkthrough of the SADC site and review of SADC person-centered service plans (PCSPs).

Each SADC site was evaluated for compliance with HCBS requirements and designated as "Compliant," "Not Compliant," or "Needs Remediation." The evaluation was completed using guidance for each prong, as detailed above.

- **Compliant:** All SADC sites determined to be "Compliant" demonstrated no institutional or institution-like characteristics and are deemed compliant with the HCBS Final Rule.
- **Needs Remediation:** Those SADC sites deemed "Needs Remediation" were required to remediate any non-compliance. DOH and the MLTC plans followed up on these SADC sites to ensure the SADC site is in compliance with the HCBS Final Rule.
- **Not Compliant:** Based on the evaluations, this determination was made if DOH determined that some SADC sites are "Not Compliant" and unable to remediate all institutional or institution-like characteristics. In this case, DOH notified all MLTC plans that have contracts with these SADC sites that they will need to be removed from the MLTC plan's contracted network. The MLTC plans identified members receiving services at these non-compliant SADC sites and notified members to select an alternative and

compliant SADC site for continued services. Members were supported in selecting and transferring to an alternative SADC site via the MLTC plan person-centered planning process.

## Heightened Scrutiny Categories and Summary

Based on the SADC site specific HCBS compliance reviews, DOH identified the SADC sites that have institutional or institutional-like characteristics due to isolation components but are working to overcome these characteristics. These sites are identified below and are being reported to CMS for Heightened Scrutiny verification.

CMS has identified two categories/prongs of settings that are presumed to have qualities of an institution. The categories are described below as well as the number of settings in each category that have been identified by the BMLTC as requiring a Heightened Scrutiny review.

Heightened Scrutiny Prong	Number of Sites
<b>Prong 1</b> - Settings in this category are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	4
<b>Prong 2</b> - Settings in this category are located in a building located on the grounds of, or immediately adjacent to, a public institution.	2

## Numbered List of Settings

The following is a list of SADC sites identified and categorized as requiring Heightened Scrutiny, including the prong, a summary of how each site has or will overcome the presumption that it is an institution, and the state’s plan for oversight of remediation to ensure compliance with the settings criteria by the end of the transition period:

#	SADC Site	Prong	Summary
1	Chenango Valley Adult Enrichment Center	2	Per observation from the virtual onsite review, interviews with SADC staff, and desk review of the SADC person-centered service plan, the SADC site was identified as having the following isolating characteristics: Participant rights documentation states members are free from "unnecessary restraints", but restraints should never be used. The Member Rights document states the member "participates" in the PCSP process, and the submitted policy and procedures states members care plan is written "in conjunction with" the member. The HCBS Final Rule requires that the process is "driven" by the member, not that the PCSP be done only "in conjunction with" the member, and the process cannot be led by the SADC. The SADC PCSP template lacks a section to indicate necessary modifications. The SADC lacks notices for community integration and volunteer or employment opportunities. The SADC employs female staff only, which does not allow for member preferences to be accommodated. Remediation efforts will be concluded by 08/24/2023 and include updating policies and procedures to offer community activities and provide job/volunteer postings. Staffing requirements in relation to DOH guidelines will be updated to ensure proper staff-member ratio and so as to offer member-choice of staffing gender to assist with any personal needs. Revise Participant Rights document and any other associated policy/procedure to reflect that restraints not be used in any situation. Revise language within Member Rights document and any pertinent policies/procedures to address that member's should be driving their PCSP with assistance from the SADC staff, and including a section to document modifications to the freedoms allotted to all members via the HCBS Final Rule.
2	Fort Hudson Social Day	1	The SADC site was identified as having the following isolating characteristics via the virtual on-site review, which included a PCSP review, and validation of any member experience surveys conducted by the MLTC plan: The SADC PCSP does not indicate any community integration options being offered to the members, SADC does not maintain members rights to privacy and dignity in that there are no male staff employed at the facility, the PCSP does not have a section to indicate any necessary modifications. Remediation efforts will be concluded by 09/20/2023 and include: Obtaining input from members about community integration activities at monthly formal council meetings and by using suggestion boxes. Staff will provide needed supports for members to participate in selected community integration activities. A section will be added to the PCSP where modifications and justifications can be documented, and the SADC will begin efforts to recruit a male PCA.



#	SADC Site	Prong	Summary
3	Riverstone Senior Life Services	2	<p>The SADC site was identified as having the following isolating characteristics, via the virtual on-site review, which included a PCSP review, and validation of any member experience surveys conducted by the MLTC plan: the SADC PCSP did not list community integration opportunities, did not list member's staff preference, states the member as being a 'part of' their PCSP process, and did not list community supports. There is no documentation that members have a right to handle their own funds, choose their preferred staff to provide services, have activities adapted to their abilities, or to have flexible mealtimes. In addition, there is no process documented on how staff are kept up to date on members' preference and needs, or how members can make them known. The Policy and Procedure manual contains the language "free from 'unnecessary' harm", which is not compliant with the HCBS Final Rule, there is no procedure for handling disruptive behavior, and the information in the Visitor Policy and the Visitor posting do not align. The front door is locked at all times, not allowing members to come and go as they please. Remediation efforts will be concluded by 9/30/2023 and include conducting morning meetings with members to obtain their feedback/suggestions, revise the Member Rights policy to include having access to their own funds, will develop a procedure for handling disruptive behavior, and will exclude the language free from 'unnecessary' harm from the Policy and Procedure manual. The SADC will ensure the front door can be accessed by all individuals entering and leaving, conduct daily staff meetings to ensure staff are kept up to date on the members needs and preferences, signs will be posted to indicate mealtime flexibility and how activities can be adapted to meet members' needs. The Visitor Policy will be updated to remove COVID related restrictions, the PCSP will include community integration options, member's preferences for staff, revise the language to state the PCSP process is driven by the member, include necessary supports and activity adaptations when required.</p>
4	Carmel Richmond Health Care & Rehabilitation	1	<p>The SADC site was identified as having the following isolating characteristics, via the virtual on-site review, which included a PCSP review, and validation of any member experience surveys conducted by the MLTC plan: The SADC representatives confirm that members have flexibility in their daily schedule, however there is no documentation to show how members are informed of their flexibility or choices. Remediation efforts will be concluded by 09/26/2023 and include: the SADC will post a notice informing members they can choose their activities and update its member rights document to indicate members have the right to change their schedule to any day or time of the week.</p>

#	SADC Site	Prong	Summary
5	St. Vincent's De Paul Senior Life	1	The SADC site was identified as having the following isolating characteristics, via the virtual on-site review, which included a PCSP review, and validation of any member experience surveys conducted by the MLTC plan: The staff have not been trained in HCBS Final Rule standards. The Members Rights document states in several sections that the member has the right "to participate" in the PCSP process when the process should be directed by the member. The HCBS Final Rule requires that the process be "driven" by the member, not that the member is just participating, and the process cannot be led by the SADC. Remediation efforts will be concluded by 08/31/2023 and includes providing new hire training for all staff in topics such as PCSP, HCBS, personal care skills, supervision and monitoring, and will maintain training logs. The SADC Policy and Procedure manual will be updated to ensure the member is driving the plan of care, and update the language to reflect it.
6	Saint Cabrini	1	The SADC site was identified as having the following isolating characteristics, via the virtual on-site review, which included a PCSP review, and validation of any member experience surveys conducted by the MLTC plan: The setting did not have any volunteer or employment opportunities available to members, the Members Rights document indicates the member is able to choose who provides their services however, there are no male staff employed for members to choose if preferred. The PCSP policy indicates non-compliance because it states the PCSP will be "written for each participant"; the participants must drive their care planning process. The PCSP template does not have a section to document any modifications to the member's rights under the HCBS Final Rule and justification for the modification. There is no documented evidence of when company policies are reviewed or when the last update was made, if HCBS specific trainings were completed, or how the SADC ensures that one or more person's behavior does not impede on the rights of others. Remediation efforts will be concluded by 9/1/2023 and include reviewing and updating all policies and procedures including those related to behavior management procedures, identifying trainings available specific to HCBS Final Rule requirements, hiring a male staff member, updating the PCSP template to reflect the member is driving the plan of care and included a section for modifications, and posting volunteer and employment opportunities.

## A Numbered List of Settings That Cannot Overcome the Presumption

One SADC site was found non-compliant and unable to overcome the presumption that they were an institutional setting. The site is listed below. All members were supported via the MLTC plan person-centered planning process to transfer to a new SADC within 60-days of DOH's determination being sent to the contracted MLTC plans. At this time, the SADC site below is no longer in operation.

#	SADC Site	Prong
1	New York Seniorcare In the Valley, LLC dba Valley Vista Adult Day Care Program	1 – Unable to Remediate

## Process for Applying CMS Feedback on Specific Settings

Heightened Scrutiny summaries, including public comment and supporting evidence, may later be selected for review by CMS as a part of a random sample. DOH will use any feedback from the CMS random sample review to inform whether it is applicable to similarly situated settings and additional review is needed, and/or if remediation of settings not included in the CMS review sample is necessary.

## Contact Information to Submit Public Comment

A draft of the Heightened Scrutiny evidence data packets will be available for review at: [http://www.health.ny.gov/health\\_care/medicaid/redesign/mrt90/mltc\\_policy/sadc/sadc\\_high\\_scrutiny\\_sub.htm](http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/sadc/sadc_high_scrutiny_sub.htm).

For individuals with limited online access who require special accommodation to access paper copies, please call (518) 474-6965.

Prior to finalizing the proposed Heightened Scrutiny evidence packets, the BMLTC will consider all written and verbal comments received, amending determinations of compliance, and conducting further remediation activities as needed.

Please direct all questions to [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov).

Written comments will be accepted by email at [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov), please indicate "Public Comment" in the subject line, or by mail at:

ATTN: Paul Pfeiffer  
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New York State Department of Health  
Albany, NY 12237

**All comments must be postmarked or emailed within 30 days of the date of this notice.**