

NYS SADC HCBS Heightened Scrutiny Submission Available for Public Comment

Public Notice

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

Heightened Scrutiny Evidence Packets

August 30, 2023

The New York State (NYS) Department of Health (DOH), in order to be in compliance with 42 CFR §441.301(c)(5)(v), is seeking public comment on the Heightened Scrutiny evidence packets which are required as part of the Statewide Transition Plan (STP) for coming into compliance with the Home and Community-Based Services (HCBS) Settings Final Rule for all Social Adult Day Care (SADC) sites. This is being done to maintain federal match funding for the HCBS SADC settings listed below that the Department has determined have overcome the institutional (i.e., non-eligible for HCBS funding) presumption by the United States Department of Health and Human Services (DHHS).

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 three 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.
- Prong 3: Setting has the effect of isolating individuals from the broader community.

CMS, based on evidence submitted by the State, will confirm whether a setting is **not** institutional in nature 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 September 30, 2023. 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. The Department will receive written comments during the 30-day comment

period via email: HCBSADCSiteAssessments@health.ny.gov, please include a subject line of “Public Comment”, or by mail: 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. In order to identify SADC sites that were possibly subject to Heightened Scrutiny, MLTC plans were given a SADC site self-assessment survey to complete with all SADC sites within their network. Utilizing the returned SADC site self-assessments, DOH identified SADC sites where the MLTC plan and/or the SADC site self-identified as possibly being institutional in nature or had isolating characteristics. SADC sites at risk of being institutional or isolating in nature were prioritized for DOH review. Each site was then evaluated further for institutional and institution-like characteristics by MLTC plans conducting virtual on-site visits.

DOH has finished reviewing all SADC sites that appeared to be at risk of being institutional or isolating in nature and will continue ongoing monitoring and compliance for all SADC sites.

Strategies to Review Settings

DOH conducted a detailed review of the self-assessments and 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 self-assessments and all 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. These sites were validated as not belonging to any of the three prongs.
- **Needs Remediation:** Those SADC sites deemed “Needs Remediation” were required to remediate any non-compliance before March 17, 2023. 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.

Based on the SADC site specific self-assessments completed and submitted by the MLTC plans, DOH identified the SADC sites that have institutional or institution-like characteristics due to isolation components which were remediated to overcome these characteristics. These sites are identified below and are being reported to CMS for Heightened Scrutiny verification.

Heightened Scrutiny Categories and Summary

Based on the SADC site specific self-assessments completed and submitted by the MLTC plans, DOH identified the SADC sites that have institutional or institution-like characteristics due to isolation components which were remediated to overcome these characteristics. These sites are identified below and are being reported to CMS for Heightened Scrutiny verification.

CMS has identified three 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
Prong 1 - Settings in this category are located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment.	5
Prong 2 - Settings in this category are located in a building located on the grounds of, or immediately adjacent to, a public institution.	2
Prong 3 - Settings in this category may have the effect of isolating individuals from the broader community.	45

Numbered List of Settings

A list of the 52 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 can be found here:

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	Hudson Senior Adult Day Care	1 – Unable to Remediate

A List of Presumptively Institutional Settings Due to Isolation

A list of the SADC sites identified and categorized as being presumptively institutional settings due to isolation, 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 can be found here:

http://www.health.ny.gov/health_care/medicaid/redesign/mrt90/mltc_policy/sadc/sadc_high_scrutiny_sub.htm.

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.

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 HCBSSADCSiteAssessments@health.ny.gov.

Written comments will be accepted by email at HCBSSADCSiteAssessments@health.ny.gov, please indicate "Public Comment" in the subject line, or by mail at:



**Department
of Health**

ATTN: Paul Pfeiffer
OHIP DHPCO 1CP-1623
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.