

# Updated SADC Site Evaluation Suggested Tool & FAQs from 9/16/22 Webinar

Dear Health Plan Administrator for Partial Capitation, MAP, and PACE plans:

The New York State (NYS) Department of Health (DOH) has made a small update to the Suggested Social Adult Day Care (SADC) Site Evaluation Tool for MLTC Plans and released the frequently asked questions (FAQs), related to SADC Site Compliance with the Home and Community Based Services (HCBS) Settings Final Rule.

The updated Suggested Tool and FAQs related to the tool can be found on the [MLTC Policy Documents](#) page, under MLTC Policy 21.05: Home and Community Based Services Social Adult Day Care Site Compliance or please see the direct links below.

## **Suggested SADC Site Evaluation Tool Update**

The Suggested SADC Site Evaluation Tool had a small update to correct a reference link. Site Requirements Tab – Question 10: Corrected reference link to go to [9 NYCRR §6654.10](#) for additional information on nutrition requirements.

- Direct Link to the Suggested SADC Site Evaluation Tool for MLTC Plans (updated 11.01.2022)- [\(XLSX\)](#) - [\(PDF\)](#)

## **Suggested SADC Site Evaluation Tool FAQs**

These FAQs are derived from the September 16, 2022 webinar, which was held with the MLTC Plans, to release the Suggested SADC Site Evaluation Tool. The suggested tool should be utilized and referenced when your plan conducts their annual SADC site evaluations or are conducting the initial evaluation before contracting with a SADC and includes verification of State and Federal requirements, including the HCBS Settings Final Rule compliance verification.

- Direct Link to the Suggested SADC Site Evaluation Tool FAQs - [\(Web\)](#) - [\(PDF\)](#) - 10.27.2022

## **September 2022 SADC HCBS Compliance Notification Letter FAQs (Attachment)**

The attached FAQs are regarding the four one-time notification letters that were sent to MLTC Plans on September 9, 2022. The letters sent were notifications regarding specific SADC sites contracted with the MLTC Plan and their compliance with the HCBS Settings Final Rule. These FAQs are also from the September 16, 2022 webinar but, are separated since they are related to the one-time notification letters. DOH is releasing these FAQs to help provide clarification on these letters regarding any required actions or next steps that your plan should be undertaking.

Please contact [hcbssadcsiteassessments@health.ny.gov](mailto:hcbssadcsiteassessments@health.ny.gov) with any questions.

NYS DOH

Bureau of Managed Long Term Care (BMLTC)  
BMLTC Surveillance Unit  
Social Adult Day Care (SADC) Compliance Team

[HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov)



**Department  
of Health**

# **Frequently Asked Questions (FAQs)**

**Managed Long-Term Care (MLTC)  
Social Adult Day Care (SADC)**

**September 2022 SADC Site-Specific Home  
and Community-Based Services (HCBS)  
Settings Final Rule Compliance Letters**

**October 26, 2022**

Revision History		
Change No.	Change Description	Change Date
1.0	Initial Version	10/26/2022

# Table of Contents

## [Section 1: Compliance Letter Types](#)

[Q1.1:](#) What are the four types of letters sent to MLTC Plans on September 9, 2022?

[Q1.2:](#) What actions are needed from the MLTC Plan and/or SADC Site for each of the four types of letters sent to MLTC Plans on September 9, 2022?

[Q1.3:](#) If different plans submitted self-assessments for the same SADC site but with different Heightened Scrutiny prongs indicated (i.e., Plan A selects a different response than all other plans), which response was accepted as the correct response?

## [Section 2: Heightened Scrutiny](#)

[Q2.1:](#) Can DOH review the “Heightened Scrutiny” section as there seems to have been a lot of confusion about that?

[Q2.2:](#) Can DOH provide examples for each of the three prongs?

## [Section 3: Steps to Remediate Non-Compliance](#)

[Q3.1:](#) Is DOH directly communicating with and/or asking the SADC sites to remediate based on their self-assessments?

[Q3.2:](#) Can the MLTC Plans direct SADC sites to contact DOH for guidance on non-compliant determinations and how to remediate them?

## [Section 4: Demonstrating Compliance with HCBS Final Rule](#)

[Q4.1:](#) Do the SADC sites have to submit a revised self-assessment if the MLTC Plan received a letter on September 9th stating they were not fully compliant or have institutional or institutional-like characteristics to overcome?

[Q4.2:](#) How should MLTC Plans properly document remediation, and do MLTC plans need to provide those to DOH?

[Q4.3:](#) If a SADC site already had its on-site visit by the MLTC completed for 2022, but were identified as possible Heightened Scrutiny or not fully compliant in the September letters, does the MLTC plan need to go back to those sites and perform another on-site visit?

[Q4.4:](#) What is the timeframe for remediation and what are the consequences if a SADC site does not comply with this timeframe?

[Q4.5:](#) Will the November 1st, 2022 remediation date listed in the letters be pushed back if the DOH review of the SADC has not been completed?

[Q4.6:](#) Does DOH expect SADC sites to be removed in the Quarter 3 PNDS report if the sites are terminated from the network on November 1st, 2022? Or can plans start removing them in Quarter 4?

## [Section 5: Network Adequacy](#)

Q5.1: Considering some SADCs will need to be terminated because of this process, in some rural counties there is now only one SADC remaining in the MLTC plan's contract network, causing a MLTC plan to be non-compliant with network adequacy requirements. Are MLTC plans still obligated to abide by network adequacy requirements?

## [Section 6: Ongoing Self-Assessment Submissions](#)

Q6.1: If an SADC was closed due to the pandemic, MLTC plans were unable to submit a self-assessment for that site and that SADC site was listed as being non-compliant due to non-response. The SADC has since re-opened. Can a MLTC plan submit an assessment for that re-opened SADC site now? When can members begin to be referred to that re-opened SADC site?

Q6.2: How many self-assessments will DOH accept up to the 11/1/2022 date? What self-assessments/types of self-assessments is DOH currently accepting?

Q6.3: If we have a brand-new SADC site attempting to contract with our MLTC plan, do we still need them to complete a SADC self-assessment for us to forward to DOH?

## [Appendix A - Glossary & Acronyms](#)

[Appendix B – Letter 1](#)

[Appendix B – Letter 2](#)

[Appendix B – Letter 3](#)

[Appendix B – Letter 4](#)

# Frequently Asked Questions

## Section 1: Compliance Letter Types

### Q1.1: What are the four types of letters sent to MLTC Plans on September 9, 2022?

Depending on the status of their contracted SADC sites, MLTC Plans may have received any, or all, of the letters explained below:

- **Letter 1: SADC Sites Must Be Compliant with HCBS Settings Final Rule and **Overcome Institutional or Institutional-Like Characteristics****
  - Based on answers provided on the self-assessments and supporting documentation received (from your plan or other MLTC plans), the SADC sites indicated that they have institutional or institutional-like characteristics, which are not compliant with the HCBS Settings Final Rule and remediation efforts should be taking place.
- **Letter 2: SADC Sites Must Be Compliant with HCBS Settings Final Rule and **Remediation Efforts Should be Taking Place****
  - Based on answers provided on the self-assessments and supporting documentation received, the SADC sites indicated that they are not fully compliant with the HCBS Settings Final Rule and remediation efforts should be taking place.
- **Letter 3: SADC Sites Found **Non-Compliant Due to Non-Response****
  - To date, DOH has not received an acceptable self-assessment and/or supporting documentation for the SADC site (from your plan or other MLTC plans). Therefore, DOH has determined that the SADC site is not in compliance due to the lack of participation in applicable quality assurance efforts.
- **Letter 4: SADC Sites Considered **No Longer Active****
  - No acceptable SADC Self-Assessment survey and supporting documents have been received from your plan or any plan contracted with the SADC site and at least one MLTC Plan contracted with the SADC site has informed DOH that the site is no longer active.

### **Additional Information**

These are one-time notifications that were sent based on the information in the self-assessments received and are not official findings notifications based on DOH's review effort. The first two notifications (Letters 1 and 2) were sent to alert the MLTC Plans of contracted SADC sites that had reported, through at least one MLTC Plan, of possible institutional characteristics or non-compliance. The last two notices (Letters 3 and 4) were to notify MLTC plans of SADC sites deemed non-compliant due to non-response or that are considered by DOH as no longer active, and therefore should be removed from your plan's network.

Copies of the letters can be found in Appendix B of this document.

- [Letter 1 – Institutional or Institutional-Like Characteristics](#)

- [Letter 2 – Not HCBS Compliant](#)
- [Letter 3 – Non-Compliant Due to Non-Response](#)
- [Letter 4 – No Longer Active](#)

**Q1.2: What actions are needed from the MLTC Plan and/or SADC Site for each of the four types of letters sent to MLTC Plans on September 9, 2022?**

- **Letters 1 & 2:** For the first two notifications, your MLTC Plan should be working with the SADC site in question to ensure they are compliant with all HCBS Settings Standards, remediate any non-compliance, and/or ensure they have overcome institutional characteristics of their setting (ex. On the grounds of or adjacent to a publicly or privately operated facility that provides inpatient treatment).

**DOH recommends that your plan review the originally submitted self-assessment survey to identify non-compliance areas.** If non-compliance is not evident on the self-assessment your plan submitted, or if your plan did not submit an acceptable self-assessment survey to DOH, it is recommended that your plan evaluate the SADC site utilizing the [MLTC SADC HCBS Self-Assessment Survey](#) or the new [Suggested SADC Site Evaluation Tool](#), to identify and remediate possible areas of deficiency, ensuring full compliance. Your plan should be fully confident that all contracted SADC sites are fully compliant with the HCBS Settings Final Rule and all State and Federal standards. DOH will also be validating annually hereafter.

- **Letters 3 & 4:** Please ensure all SADC Sites that were deemed non-compliant due to no response or that are considered inactive by DOH are removed from your plan's network, assistance is provided to transfer members to a compliant or remediating SADC site of their choosing, and that your next quarterly Provider Network Data System (PNDS) report reflects this removal from your plan's network.

**NOTE:** No information or documentation is required to be submitted to DOH in response to these notifications, other than ensuring your plan's quarterly PNDS submission is accurate and appropriately removes any SADC sites no longer contracted with your plan.

**Q1.3: If different plans submitted self-assessments for the same SADC site but with different Heightened Scrutiny prongs indicated (i.e., Plan A selects a different response than all other plans), which response was accepted as the correct response?**

The letters sent on September 9, 2022, were generated based on self-reported answers by all MLTC Plans and the unique SADC site to all questions on the [MLTC SADC HCBS Self-Assessment Survey](#). If a SADC site provided an answer on any of the assessments received and accepted by DOH that indicated having institutional or institutional-like characteristics, the SADC site may be reported to CMS for possible Heightened Scrutiny.

**NOTE:** The final determination, if a SADC site will be reported as heightened scrutiny to CMS, will be based on DOH's holistic quality assurance reviews of the unique SADC site across all MLTC plans reporting contracts with that unique SADC site.



## Section 2: Heightened Scrutiny

### **Q2.1: Can DOH review the “Heightened Scrutiny” section as there seems to have been a lot of confusion about that?**

“Heightened Scrutiny” refers to a one-time effort to be undertaken by the Centers for Medicare and Medicaid Services (CMS) to ensure that SADC sites are following the HCBS Settings Final Rule and are not Prongs 1, 2, or 3 (are not institutional in nature, isolating, or restricting members autonomy and freedom of choice).

### **Q2.2: Can DOH provide examples for each of the three prongs?**

- **Prong 1**, examples of a setting in a publicly or privately operated facility that provides inpatient institutional treatment would be: hospitals, skilled nursing facilities, in-patient psychiatric/mental health, or intermediate care facilities.
- **Prong 2**, examples of a setting in a building on the grounds of, or adjacent to, a public institution would be: county or city hospitals providing in-patient treatment. (Does not apply to adjacency to library and schools as they are not medical inpatient settings.)
- **Prong 3**, examples of a setting that has the effect of isolating individuals from the broader community based on responses would be: SADC sites that have blanket restrictions against visitors, do not include participants in developing service plans, or have barriers used that restrict all participant movement.

## Section 3: Steps to Remediate Non-Compliance

### **Q3.1: Is DOH directly communicating with and/or asking the SADC sites to remediate based on their self-assessments?**

No, DOH is not communicating with or discussing directly with the SADC sites. The SADC sites are contracted directly with the MLTC plans, so each MLTC plan must ensure that the contracted SADC sites in the PNDS network are fully compliant with the HCBS Settings Final Rule within the terms of their contract and process.

### **Q3.2: Can the MLTC Plans direct SADC sites to contact DOH for guidance on non-compliant determinations and how to remediate them?**

No, the SADC sites should be communicating directly with their contracted MLTC Plan(s) to identify and remediate areas of non-compliance and/or institutional or institutional-like characteristics. If DOH receives an inquiry from a SADC site, the site is referred back to their contracted MLTC Plan(s) for assistance.

## Section 4: Demonstrating Compliance with HCBS Final Rule

### **Q4.1: Do the SADC sites have to submit a revised self-assessment if the MLTC Plan received a letter on September 9th stating they were not fully compliant or have institutional or institutional-like characteristics to overcome?**

No, the SADC sites should not have to submit a revised MLTC SADC HCBS Self-Assessment Survey if one was already received and accepted by DOH for the MLTC Plan and applicable

line of business. Please see [Q1.2](#) for information on what actions do need to be taken based on each of the four letters sent.

**Q4.2: How should MLTC Plans properly document remediation, and do MLTC plans need to provide those to DOH?**

All MLTC Plans have been through the process of Statement of Deficiency and a Corrective Action Plan, and the same elements from those processes should be included in remediation efforts between the SADC sites and the MLTC Plans (i.e., identification of the non-compliance, supports to correct the issue, how to prevent the issue from occurring in the future, and evidence of achieved compliance). As a best practice, DOH recommends retaining all records for seven years. These would need to be furnished to any regulatory agency that requests them (CMS, DOH, etc.).

**Q4.3: If a SADC site already had its on-site visit by the MLTC completed for 2022, but were identified as possible Heightened Scrutiny or not fully compliant in the September letters, does the MLTC plan need to go back to those sites and perform another on-site visit?**

The MLTC Plans are responsible for oversight of all contracted SADC sites and ensuring they are fully compliant and should undertake any necessary steps to be confident in the SADC site's compliance. Depending on the areas of remediation, another site visit may be necessary to ensure compliance is achieved within the timelines required.

**Q4.4: What is the timeframe for remediation and what are the consequences if a SADC site does not comply with this timeframe?**

SADC sites must have areas of non-compliance remediated and demonstrate they have overcome institutional or institutional-like characteristics by November 1, 2022. If an SADC site is unable to do so within this time, your plan must terminate the SADC site's contract, remove the SADC site from your plan's network, update the next quarterly submission to PNDS to remove the SADC site, and inform and help members transfer to a HCBS Settings Final Rule compliant SADC site or site that is in the process of remediating any non-compliant issues.

**Q4.5: Will the November 1st, 2022 remediation date listed in the letters be pushed back if the DOH review of the SADC has not been completed?**

No, the November 1st deadline for remediation will not be pushed back if the DOH validation review of the SADC site has not been completed. This date is for your plan to be confident that all contracted SADC sites are compliant with the HCBS Settings Final Rule or have been removed from network if they are unable to comply. The date has been set to ensure that ongoing reporting to CMS is accurately concluded and ready during the month of December 2022.

**Q4.6: Does DOH expect SADC sites to be removed in the Quarter 3 PNDS report if the sites are terminated from the network on November 1st, 2022? Or can plans start removing them in Quarter 4?**

The November 1st, 2022 date is not the termination date, it is the date SADC sites must demonstrate they are remediating areas of non-compliance and have overcome institutional or

institutional-like characteristics. MLTC plans should remove sites from their report immediately if the SADC site is unable to comply with the HCBS Settings Final Rule or if they were deemed non-compliant by DOH (letters 3 and 4).

## Section 5: Network Adequacy

**Q5.1: Considering some SADCs will need to be terminated because of this process, in some rural counties there is now only one SADC remaining in the MLTC plan's contract network, causing a MLTC plan to be non-compliant with network adequacy requirements. Are MLTC plans still obligated to abide by network adequacy requirements?**

Yes, all MLTC Plans are still contractually obligated to meet their contract network standards. If plans are unsure which other SADC sites might be in the process of HCBS SADC remediation or already found compliant, MLTC Plans can reach out to the HCBS SADC compliance team at [HCBSADCsiteassessments@health.ny.gov](mailto:HCBSADCsiteassessments@health.ny.gov) and ask for names of sites that are in "compliant/remediating compliance" standing in the counties or adjacent counties where gaps exist.

## Section 6: Ongoing Self-Assessment Submissions

**Q6.1: If an SADC was closed due to the pandemic, MLTC plans were unable to submit a self-assessment for that site and that SADC site was listed as being non-compliant due to non-response. The SADC has since re-opened. Can a MLTC plan submit an assessment for that re-opened SADC site now? When can members begin to be referred to that re-opened SADC site?**

DOH previously advised MLTC plans who were experiencing difficulties submitted a self-assessment survey due to SADC sites being unopen that if no participation was received, DOH would consider the SADC site non-compliant due to no response. Self-assessments will not be accepted for the SADC sites that were just deemed non-compliant due to no response.

However, if a currently closed SADC site plans to reopen in the future, the SADC site must demonstrate 100% compliance with all HCBS Settings Final Rule Standards before the MLTC Plan can contract with the SADC site and begin referring members. The MLTC plan must conduct the initial on-site review of evidence and confirm 100% compliance to the HCBS standards and all State and Federal standards prior to contracting with the SADC site and referring members. MLTC Plans are encouraged to use the [Suggested SADC Site Evaluation Tool](#) to verify compliance. Secondly, the MLTC Plan should notify DOH of the new contract and inquire if a [MLTC SADC HCBS Self-Assessment Survey](#) will be needed for the SADC site, at [HCBSADCsiteassessments@health.ny.gov](mailto:HCBSADCsiteassessments@health.ny.gov).

**Q6.2: How many self-assessments will DOH accept up to the 11/1/2022 date? What self-assessments/types of self-assessments is DOH currently accepting?**

If a SADC site was **on letters 3 or 4**, no self-assessment will currently be accepted. These sites should be removed from your plan's network. Please see the details in the letters for all steps.

If your plan has not submitted an assessment listed for a SADC site **on letters 1 or 2** or if DOH has not accepted a self-assessment for the SADC site, please submit the [MLTC SADC HCBS](#)

[Self-Assessment Survey](#) as soon as possible, as those SADC sites are currently undergoing validation reviews.

If the self-assessment(s) for a SADC site have already been submitted and accepted by DOH, a new assessment should not be submitted and will not be accepted by DOH.

**NOTE:** DOH is reviewing all SADC sites and will verify information annually. Therefore, if a self-assessment was submitted with incorrect information, DOH will discover this during the validation process and no updated self-assessment is needed.

**Q6.3: If we have a brand-new SADC site attempting to contract with our MLTC plan, do we still need them to complete a SADC self-assessment for us to forward to DOH?**

The SADC site must demonstrate 100% compliance with all HCBS Settings Final Rule Standards before the MLTC Plan can contract with the SADC site and begin referring members. Therefore, the MLTC plan must conduct the initial on-site review of evidence and confirm 100% compliance to the HCBS standards and all State and Federal standards prior to contracting with the SADC site and referring members. MLTC Plans are encouraged to use the [Suggested SADC Site Evaluation Tool](#) to verify compliance. Secondly, the MLTC Plan should notify DOH of the new contract and inquire if a [MLTC SADC HCBS Self-Assessment Survey](#) will be needed for the SADC site, at [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov).

# Appendix A

Glossary and Acronyms	
Acronym / Word	Definition
DOH	Department of Health (NYS)
HCBS	Home and Community-Based Services
MLTC	Managed Long-Term Care
NYS	New York State
PNDS	Provider Network Data System
SADC	Social Adult Day Care

# Appendix B – Letter 1

Month XX, 2022

**MLTC Plan:** [Plan Name]

**Reminder:** SADC Sites Must Be Compliant with HCBS Settings Final Rule and Overcome Institutional or Institutional-Like Characteristics

## **Warning: These SADC Sites Are Being Reported to CMS as Possible Heightened Scrutiny**

The Social Adult Day Care (SADC) sites in the list at the end of this notification have been identified as SADC sites with your plan based on the November 2021 Provider Network Database System (PNDS) report, which was verified by your plan. To determine compliance with the Home and Community-Based Services (HCBS) Settings Final Rule, the New York State (NYS) Department of Health (DOH) requested a completed SADC Self-Assessment survey and supporting documentation from your plan and from any other Managed Long-Term Care (MLTC) plans the SADC site is contracted with.

Based on the self-assessments and supporting documentation received, the SADC sites in the list at the end of this notification have institutional or institutional-like characteristics, which are not compliant with the HCBS Settings Final Rule.

DOH is in the process of validating the self-assessments received and will be verifying that your MLTC Plan has coordinated with the SADC sites listed below to become compliant or is in the process of overcoming any institutional or institutional-like characteristics.

The Centers for Medicare and Medicaid Services (CMS) will also be conducting a Heightened Scrutiny evaluation of these SADC sites, to ensure they have overcome any institutional or institutional-like characteristics.

The SADC sites listed have been reported by a MLTC plan they are contracted with, or self-reported by the site, that they have one or more of the following institutional or institutional-like characteristics:

- 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.

**Your plan is required to work with each of the contracted SADC sites below to remediate any non-compliance and ensure the site has and can overcome any institutional or institutional-like characteristics before November 1, 2022.**

As a reminder, your MLTC Plan should be ensuring all contracted SADC sites are compliant with the HCBS Settings Final Rule. Additionally, if a SADC site is unable to comply and overcome the institutional or institutional-like characteristics before November 1, 2022 your plan must terminate the SADC site’s contract, remove the SADC site/s from your plan’s PNDS for the next quarterly submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is in the process of remediating any non-compliant issues.

If you have any questions or would like to discuss this finding, please contact [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov).

Thank you,

**New York State (NYS) Department of Health (DOH)**

Bureau of Managed Long Term Care (BMLTC)  
BMLTC Surveillance Unity  
Social Adult Day Care (SADC) Compliance Team

**[Page Break]**

## **HCBS Settings Final Rule Background**

Please note that all HCBS sites must be in compliance with the [HCBS Settings Final Rule](#) to remain eligible for funding and to continue to serve members.

The institutional or institutional-like characteristics that must be overcome 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, based on responses.

**The standards required to be met are as follows:**

<b>CMS HCBS Standard(s)</b>	
42 CFR 441.304(c)(4)(i)	Settings are integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
42 CFR 441.301(c)(4)(ii)	Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual’s needs, preferences, and for residential settings, resources available for room and board.
42 CFR 441.301(c)(4)(iii)	Settings ensure an individual’s rights of privacy, dignity, respect, and freedom from coercion and restraint.

CMS HCBS Standard(s)	
42 CFR 441.301(c)(4)(iv)	Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
42 CFR 441.301(c)(4)(v)	Settings facilitate individual choice regarding services and supports, and who provides them.

## SADC Sites with Institutional or Institutional-Like Characteristics

The below SADC sites are not fully compliant with the HCBS Settings Final Rule and have institutional or institutional-like characteristics, based on the self-assessments and supporting documentation received from your MLTC plan or another MLTC plan the SADC site is contracted with.

**Your plan is required to work with each of the contracted SADC sites below to remediate any non-compliance and ensure the site has and is able to overcome any institutional or institutional-like characteristics.** Remediation activities must begin now and be achieved by November 1, 2022, so that reporting to CMS is accurately concluded and ready during the month of December 2022.

Otherwise, if a SADC site is unable to comply and overcome their institutional or institutional-like characteristics before November 1, 2022, your plan must terminate the SADC site contract, remove the SADC site from your plan's PNDS for the next quarterly submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is remediating any non-compliant issues.

SADC Site	Address



# Appendix B – Letter 2

Month XX, 2022

**MLTC Plan:** [Plan Name]

**Reminder:** SADC Sites Must Be Compliant with HCBS Settings Final Rule and Remediation Efforts Should be Taking Place

## Notification: These SADC Sites Are Not Fully Compliant with the HCBS Settings Final Rule

The Social Adult Day Care (SADC) sites in the list at the end of this notification have been identified as SADC sites with your plan based on the November 2021 Provider Network Database System (PNDS) report, which was verified by your plan. To determine compliance with the Home and Community-Based Services (HCBS) Settings Final Rule, the New York State (NYS) Department of Health (DOH) requested a completed SADC Self-Assessment survey and supporting documentation from your plan and from any other Managed Long-Term Care (MLTC) plans the SADC site is contracted with.

Based on the self-assessments and supporting documentation received, the SADC sites in the list at the end of this notification are not fully compliant with the HCBS Settings Final Rule and remediation efforts should be taking place.

DOH is in the process of validating the self-assessments received and will be verifying that your MLTC Plan has coordinated with the SADC sites listed below to become compliant.

The SADC sites listed have been reported by a MLTC plan they are contracted with, or the site themselves self-reported, that they are not fully compliant with all aspects of the HCBS Settings Final Rule:

CMS HCBS Standard(s)	
42 CFR 441.304(c)(4)(i)	Settings are integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
42 CFR 441.301(c)(4)(ii)	Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
42 CFR 441.301(c)(4)(iii)	Settings ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.

CMS HCBS Standard(s)	
42 CFR 441.301(c)(4)(iv)	Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
42 CFR 441.301(c)(4)(v)	Settings facilitate individual choice regarding services and supports, and who provides them.

**Your plan is required to work with each of the contracted SADC sites below to remediate any non-compliance and ensure the site has and can come into compliance before November 1, 2022.**

As a reminder, your MLTC Plan should be ensuring all contracted SADC sites are compliant with the HCBS Settings Final Rule. Additionally, if a SADC site is unable to comply and overcome their institutional or institutional-like characteristics by November 1, 2022, your plan must terminate the SADC site's contract, remove the SADC site from your plan's PNDS for the next quarterly submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is in the process of remediating any non-compliant issues.

If you have any questions or would like to discuss this finding, please reach out to DOH at [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov). We'll be happy to assist with any clarification needed.

Thank you,

New York State (NYS) Department of Health (DOH)

Bureau of Managed Long Term Care (BMLTC)  
BMLTC Surveillance Unity  
Social Adult Day Care (SADC) Compliance Team

**[Page Break]**

## HCBS Settings Final Rule Background

Please note that all HCBS sites must be in compliance with the [HCBS Settings Final Rule](#) to remain eligible for funding and to continue to serve members.

All SADC Sites must not be institutional or institutional-like in nature, based on the following:

- 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, based on responses.

**The standards required to be met are as follows:**

CMS HCBS Standard(s)	
42 CFR 441.304(c)(4)(i)	Settings are integrated in and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community

CMS HCBS Standard(s)	
	life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.
42 CFR 441.301(c)(4)(ii)	Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.
42 CFR 441.301(c)(4)(iii)	Settings ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.
42 CFR 441.301(c)(4)(iv)	Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.
42 CFR 441.301(c)(4)(v)	Settings facilitate individual choice regarding services and supports, and who provides them.

## SADC Sites Not Fully Compliant with the HCBS Settings Final Rule

The below SADC sites are not fully compliant with the HCBS Settings Final Rule and must remediate any non-compliance, based on the self-assessments and supporting documentation received from your MLTC plan or another MLTC plan the SADC site is contracted with.

**Your plan is required to work with each of the contracted SADC sites below to remediate any non-compliance and ensure the site has and is able to come into compliance. Remediation activities must begin now and be achieved by November 1, 2022, so that reporting to CMS is accurately concluded and ready during the month of December 2022.**

Otherwise, if a SADC site is unable to comply and overcome any institutional or institutional-like characteristics by November 1, 2022, your plan must terminate the SADC site contract, remove the SADC site from your plan's PNDS for the next quarterly submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is remediating any non-compliant issues.

SADC Site	Address

# Appendix B – Letter 3

Month XX, 2022

**MLTC Plan:** [Plan Name]

**Status:** SADC Site Found Non-Compliant with HCBS Settings Final Rule

## **Warning: These SADC Sites Should Be Removed from Network**

The Social Adult Day Care (SADC) sites below have been identified as a SADC site with your plan based on the November 2021 Provider Network Database System (PNDS) report, which was verified by your plan. The New York State (NYS) Department of Health (DOH) requested a completed SADC Self-Assessment survey and supporting documentation from your plan multiple times, to determine compliance with the Home and Community-Based Services (HCBS) Settings Final Rule. To date, DOH has not received an acceptable self-assessment and supporting documentation for the SADC site (from your plan or other MLTC plans). Therefore, DOH has determined that the SADC site is not in compliance due to the lack of participation in applicable quality assurance efforts.

**Your plan must undertake the following actions before November 1, 2022. Review the SADC sites below, remove them from your network and the next quarterly PNDS submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is in the process of remediating any non-compliant issues.**

If you have any questions or would like to discuss this finding, please reach out to DOH at [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov).

Thank you,

**New York State (NYS) Department of Health (DOH)**

Bureau of Managed Long Term Care (BMLTC)  
BMLTC Surveillance Unity  
Social Adult Day Care (SADC) Compliance Team

**[Page Break]**

## **SADC Sites Considered Non-Compliant**

The below SADC sites are considered non-compliant due to no HCBS Compliance self-assessment being received.

**Your plan is required to ensure each of the below SADC sites are removed from network and your plan's PNDS for the next quarterly submission and inform members to choose and help those members transfer to a HCBS Settings Final-Rule compliant SADC site or**

**site that is remediating any non-compliant issues.** These activities must be done by November 1, 2022, so that reporting to CMS is accurately concluded and ready during the month of December 2022.

SADC Site	Address

# Appendix B – Letter 4

Month XX, 2022

**MLTC Plan:** [Plan Name]

**Notification:** SADC Site Considered No Longer Active

## Warning: These SADC Sites Should Be Removed from Network

The Social Adult Day Care (SADC) sites listed below have been identified as a SADC site with your plan based on the November 2021 Provider Network Database System (PNDS) report, which was verified by your plan. To determine compliance with the Home and Community-Based Services (HCBS) Settings Final Rule, the New York State (NYS) Department of Health (DOH) requested a completed SADC Self-Assessment survey and supporting documentation from your plan and from any other Managed Long-Term Care (MLTC) plans the SADC site is contracted with.

No acceptable SADC Self-Assessment survey and supporting documentation has been received from the SADC sites below from your plan or any plan contracted with the SADC site. Additionally, at least one MLTC Plan contracted with the SADC site has informed DOH that the site is no longer active.

**Your plan must undertake the following actions before November 1, 2022. Review the SADC sites below, remove them from your network and the next quarterly PNDS submission, and inform members to choose and help those members transfer to a HCBS Settings Final Rule-compliant SADC site or site that is in the process of remediating any non-compliant issues.**

If you have any questions or would like to discuss this finding, please contact [HCBSADCSiteAssessments@health.ny.gov](mailto:HCBSADCSiteAssessments@health.ny.gov).

Thank you,

**New York State (NYS) Department of Health (DOH)**

Bureau of Managed Long Term Care (BMLTC)

BMLTC Surveillance Unity

Social Adult Day Care (SADC) Compliance Team

## SADC Sites Considered Non-Active

The below SADC sites are considered no longer active by DOH.

**Your plan is required to ensure each of the below SADC sites are removed from network and your plan's PNDS for the next quarterly submission and inform members to choose and help those members transfer to a HCBS Settings Final-Rule compliant SADC site or site that is remediating any non-compliant issues.** These activities must be done by November 1, 2022, so that reporting to CMS is accurately concluded and ready during the month of December 2022.

SADC Site	Address