

**New York State Medicaid Home and Community-Based Services**

**Heightened Scrutiny Evidence Packet**

**Setting Information**

<b>Provider Name</b> New York Memory Center dba Park Slope Geriatric Day Center		
<b>Location of Setting</b> Brooklyn, NY	<b>Type of Setting</b> Social Adult Day Care (SADC)	<b>Medicaid Home and Community-Based Services Being Provided at the Setting</b> Social Adult Day Care (SADC) Services

**Heightened Scrutiny Prong**

<b>No</b>	<b>Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.</b>
<b>No</b>	<b>Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.</b>
<b>Yes</b>	<b>Prong 3: Setting has the effect of isolating individuals from the broader community.</b>

**Qualification for Prong**

The SADC site has the effect of isolating individuals from the broader community. Details on isolating characteristics, which are being or were already remediated, are found in the All HCBS Settings and Additional Requirements for Provider-Owned or Controlled Settings sections below.

**Provider Compliance Summary**

<b>Requirements for All HCBS Settings</b>		
<b>Compliant?</b>	<b>Federal Requirement</b>	<b>Summary</b>
<p><i>42 CFR 441.301(c)(4)(i)</i></p> <p>Partially Compliant</p>	<p>The setting is integrated in and supports 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.</p>	<p>DOH verified members have access to the greater community by confirming transportation options, support for volunteer/employment opportunities, staff resources, and that member preferences are accommodated by reviewing activity calendars, transportation schedules, daily sign-in/out sheets, and inclusion of preferences in member's PCSP. The SADC has demonstrated compliance in the following areas except: Members do not have independent access to in</p>

		<p>the community due to the specialized nature of diagnoses of all members with Alzheimer's, dementia or any memory loss. All members require one on one staffing while in the community. This does not show members have the option to go out individually in the community as they wish with/without supports. No community activities are posted and these options are not based on members individual needs and desires. Members do not go out into the community with staff. Members are not interacting with the community during SADC hours. Remediation will begin including updating the PCSP and training staff at all levels in person-centered planning, thinking, and practice, including how to incorporate these practices in the writing/coordination of service plans. Also educating individuals, families, and/or advocates on rights, informed choices and safeguards to capture Community Integration activities offered by the SADC and also individualized activities based on the member's/caregiver's/appointed representative's needs and desires</p>
<p><i>42 CFR 441.301(c)(4)(ii)</i> Compliant</p>	<p>The setting is 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.</p>	<p>The member must choose the SADC site prior to attending. This is done through the person-centered planning process, which is conducted by the MLTC plan. If it is determined the member qualifies and needs SADC, the MLTC plan care manager supplies a list of available SADC site options, and the member makes their selection of where they would like to attend and receive services. The MLTC plan care manager documents the need</p>

		and the choice of SADC site in the MLTC plan PCSP.
42 CFR 441.301(c)(4)(iii) Compliant	Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.	DOH verified members have privacy, are treated with respect and dignity, and are supported to choose their own schedules and activities based on their preferences by reviewing member PCSPs, SADC policy manuals, member experience surveys, staff training topics, and observing the spaces allocated for privacy
42 CFR 441.301(c)(4)(iv) Compliant	Optimizes, but does 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.	DOH verified staffing ratios, programming, and recreational areas as well as any barriers to free movement, and those individualized activities are offered by reviewing staff schedules, member PCSPs, activity schedules, and through on-site observation.
42 CFR 441.301(c)(4)(v) Compliant	Facilitates individual choice regarding services and supports, and who provides them.	DOH verified staff knowledge of members' needs and interests, as well as members' individual choice regarding their activities and supports, and the staff who provide them by evaluating member experience survey results, and reviewing SADC policies, and member handbooks, as well as through observation during the virtual on-site review.

**Additional Requirements for Provider-Owned or Controlled Settings**

Compliant?	Federal Requirement	Summary
<b><i>Standards for Provider-Owned and Controlled Residential and Non-Residential Settings</i></b>		
42 CFR 441.301(c)(4)(vi)(C) Compliant	Individuals have the freedom and support to control their schedules and activities; and have access to food any time.	DOH verified the availability for meal options, private dining spaces, activity modifications, and the freedom to take breaks and eat meals at the member's request by reviewing weekly menus, policy manuals, and through on-site observation.
42 CFR 441.301(c)(4)(vi)(D) Compliant	Individuals are able to have visitors of their choosing at any time.	DOH verified the acceptance of visitors during program hours by

		reviewing visitor policies and sign-in/out forms.
42 CFR 441.301(c)(4)(vi)(E) Compliant	The setting is physically accessible to the individual. (Not modifiable)	DOH verified accessibility of the facility through observation, during the virtual on-site review.
42 CFR 441.301(c)(4)(vi)(F) Not Compliant	Any modifications of the additional conditions under 441.301(c)(4)(vi)(A) through (D) for provider-owned and controlled settings must be supported by a specific assessed need and justified in the person-centered service plan.	DOH verified modifications were not offered or accommodated to support the freedoms for members of all abilities by reviewing completed member PCSPs. The PCSP template does not include a section to document and appropriately justify any modification to the freedoms allotted all members via the HCBS Settings Final Rule. Remediation efforts will be concluded by 3/17/2023 and include updating the PCSP template to have a modifications section, to utilize the new template for all new members, and to update current members' PCSPs.
<b>Standards for Provider-Owned and Controlled Residential Settings Only</b>		
42 CFR 441.301(c)(4)(vi)(A) Not Applicable	The unit or dwelling is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city, or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.	SADC sites are non-residential, and therefore this standard is not applicable.
42 CFR 441.301(c)(4)(vi)(B) Not Applicable	Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with	SADC sites are non-residential, and therefore this standard is not applicable.

	<p>only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	
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**Recommendation**

As required by 42 CFR 441.301(c)(5), the State of New York submits this request for heightened scrutiny review of the SADC site identified above. The State has validated and compiled evidence that the SADC site is not institutional in nature and will have remediated all isolating characteristics prior to March 17, 2023.

**Section One**

**On-Site Visit Observation**

<p><b>Date(s) Conducted:</b> 11/29/2022</p>	<p><b>State Agency/Entity that Conducted the On-Site Visit:</b> NYS DOH &amp; VillageCareMAX / Nancy Martinez</p>
<p><b>Description of the Setting:</b></p> <p>New York Memory Center (NYMC) is a specialized SADC specifically for members with Alzheimer's, dementia, or any memory loss. NYMC is located on the first floor of a not-for-profit 3 story building and is wheelchair accessible. The SADC can accommodate 45 participants and is in Brooklyn NY. NYMC offers snacks with a beverage of choice, and offers a full catered lunch based on each person's dietary needs and preferences. They offer a variety of arts and music-based programs for all participants that encourage and promote socialization and memory care such as computer programs, exercise, and meditation. NYMC works with community members, venues through scheduled activities and special events such as Memory Arts Cafe, joint enrichments, and has a wandering path for members. Due to COVID- 19, visitors, guests and consultants must have an appointment to enter and be fully vaccinated, have their temperature taken upon entry and kept in a daily log. All members are offered round trip transportation to and from the center on escorted agency vehicles. Those members that arrive by transportation other than the agency travel are generally accompanied by their caregiver. Members cannot travel alone or on public transportation, but their caregivers are given options for getting the member to and from the Center.</p>	

**Section Two**

**Community Integration Observations and Input from Individuals Served (without observation by staff), Family Members/Guardians, and Staff**

<p><b>Individual (Recipient) Interviews</b></p> <p>The MLTC plan contracted with the SADC site conducted a member experience survey to ascertain how members feel about the SADC. DOH utilized responses on the survey to identify any potential areas of possible non-compliance and investigated thoroughly during the virtual on-site review, to confirm validity of the responses. DOH's determination and observations are documented in the Provider Compliance Summary section.</p> <p>Details received and investigated by DOH are as follows:</p> <p>1.Are you able to be in private for this call or interview? – Yes</p>
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2. Did you choose this program for yourself to attend? – No - Members is not self-directing and SDC was chosen by family
3. Are you able to leave the SADC for outside activities you wish or need to attend? (Ex. community activities, volunteer work, doctor appointments) – No - Member does not leave the SDC and is always supervised
4. Do you get the help you need while you are at the program, for example with using the restroom, grooming, feeding, setting up appointments, taking medications, etc.? – Yes
5. Do staff treat you and those around you with respect and care? – Yes
6. If you have a problem or concern, do you know who to go to? – Yes
7. If you have a problem or concern, and you speak to someone about it, does it get resolved and do you feel listened to? – Yes
8. Do you get to choose when and with whom you get to eat with, or can you eat alone if you want to? – Yes
9. Can you make private phone calls? – No - Member cannot use the phone due to non-self-directing status
10. Are you allowed to have visitors while you are here? – Yes
11. Do you know where to store your personal belongings while you are here (coat, purse, etc.)? – Yes
12. Do you get to choose which activities you will or will not participate in, and with whom? – Yes
13. Are there restrictions on who you can or cannot interact or talk with? – Yes
14. Are you allowed to move around the building alone? If not, are staff available when you choose to move around? – Yes
15. Is transportation and support to obtain transportation available to you, at your request, for medical appointments or outings of your choosing? – Yes

### **Employee Interviews**

## **Section Three**

### **Additional Evidence**

**The following evidence has been compiled that demonstrates the setting is integrated in, and supports full access of, individuals receiving HCBS into the greater community.**

2022-11-29\_Virtual On-Site Review\_s0081.pdf  
 Alternative Dining.docx  
 Car service.docx  
 Care Plan Case Notes.doc  
 F Train \_ MTA.pdf  
 Lunch Menu December 2022.pdf  
 Nov 2022 Activity Calendar.pdf  
 Participants Rights.pdf  
 PCSP Assessment Template.doc  
 Remediation Plan.xlsx  
 Self-Assessment Review\_#236.pdf  
 Visitors Policy.docx

## **Section Four**

### **Public Comments Summary**

#### **Public Comment Period**

<b>From:</b> Click or tap to enter a date.	<b>To:</b> Click or tap to enter a date.
<b>Summary of Public Comments Received for the Setting</b> Click or tap here to enter text.	
<b>Summary of the State's Response to the Public Comment Received</b> Click or tap here to enter text.	