

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

**Heightened Scrutiny Evidence Packet**

**Setting Information**

<b>Provider Name</b> Melody Adult Day Care 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 all areas of the standards except for the following: Community integration</p>

		activities were not documented as a choice in the PCSP. Not all supports are documented to ensure a member can attend opportunities and activities of interest are documented. Activity calendar posted for members does not offer community integration or individualized activities. Remediation will include the PCSP template being revised and updated to incorporate community integration goals and activities for current and new members, connecting with new community resources to increase access and opportunity of community integration, and providing assistance to members for resources needed to access and maintain community activities of interest, and meeting with current members to add goals for community involvement by 7/1/2024.
<p><i>42 CFR 441.301(c)(4)(ii)</i></p> <p>Compliant</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.	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 and the choice of SADC site in the MLTC plan PCSP.
<p><i>42 CFR 441.301(c)(4)(iii)</i></p> <p>Partially Compliant</p>	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

		<p>surveys, staff training topics, and observing the spaces allocated for privacy. The SADC has demonstrated compliance in all areas of the standards except for the following: The SADC was unable to clarify how the service setting ensures an individual's behavior supports do not impede on the right's of others. The PCSP sample reviewed did not include documentation that the member was given a choice for who they wanted to assist them with their personal needs. Remediation will include having all behavioral changes and supports being documented and behavioral protocols reviewed, adding a new section to the PCSP template for alternative activities, and updating SADC policies to reflect guidance from the HCBS Final Rule by 3/17/2023.</p>
<p><i>42 CFR 441.301(c)(4)(iv)</i> Partially Compliant</p>	<p>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.</p>	<p>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. The SADC has demonstrated compliance in all areas of the standards except for the following: The PCSP sample reviewed documented socialization but only at the service setting. Not all supports necessary to ensure a member can engage in community involvement are documented. The PCSP policy is non-compliant because it indicates the member has the right to "participate" in the PCSP process. The HCBS Final Rule required that the process be "driven" by the member, not that the member only has the right to</p>

		"participate", and the process cannot be led by the SADC. Remediation will include revising and updating the PCSP template to appropriately document supports a member needs by 3/17/2023.
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 and how members are informed to make changes or additions to their PCSP by reviewing daily SADC schedules, SADC policy manuals, member handbooks, and staff training topics.

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

Compliant?	Federal Requirement	Summary
<b>Standards for Provider-Owned and Controlled Residential and Non-Residential Settings</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) 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 offered and accommodated to support the freedoms for members of all abilities by reviewing completed member 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	SADC sites are non-residential, and therefore this standard is not applicable.

	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.	
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 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.	SADC sites are non-residential, and therefore this standard is not applicable.

## 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

<b>Date(s) Conducted:</b> 11/30/2022	<b>State Agency/Entity that Conducted the On-Site Visit:</b> NYS DOH & Empire BlueCross BlueShield Health Plus / Michelle Taggart
<b>Description of the Setting:</b>  The Melody Adult Day Care Center, Inc's Social Adult Day Care (SADC) program is located on the second floor of a seven-story building with elevator access. The SADC is located in a residential building in the suburbs of Brooklyn, NY and can host 50 members per day; members and staff at the site speak English and Russian. Amenities offered by the SADC include transportation, self-care assistance, and a beauty salon. Members are able to enjoy social and recreational activities such as karaoke, chair exercises, vocal class, art class, singing and dancing, and a performance stage to be used by members, staff, and community members. Members have access to all areas of the facility. Throughout the day, members can participate in off-site group activities such as shopping at the flea market, visiting a museum, and having lunch at 'Lights of Baku'.	

## Section Two

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

#### Individual (Recipient) Interviews

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.

Details received and investigated by DOH are as follows:

1. Are you able to be in private for this call or interview? – [Yes]
2. Did you choose this program for yourself to attend? – [Yes]
3. Are you able to leave the SADC for outside activities you wish or need to attend? (Ex. community activities, volunteer work, doctor appointments) – [Yes]
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? – [Yes]
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? – [No – Mbr stated that she can talk to anyone. There are no restrictions at all on who you can talk to.]
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.**

2022-11-30\_Virtual On-Site Review\_s0100.pdf  
Activity Calendar.pdf  
Changes & Additional Services Information.pdf  
Member Ex. Survey\_1.xlsx

Member Ex. Survey\_2.xlsx  
Member Ex. Survey\_3.xlsx  
Menu Series.pdf  
PCSP Documentation of Modifications.pdf  
PCSP\_1.pdf  
PCSP\_2.pdf  
PCSP\_3.pdf  
Private Space.png  
Remediation Plan.pdf  
Remediation Plan.xlsx  
SADC Bus Schedule.pdf  
SADC Plan of Care Creation Policy.pdf  
Visitor Sign In Sheet.pdf  
Visitors Policy.pdf

## Section Four

### Public Comments Summary

#### Public Comment Period

**From:** Click or tap to enter a date.

**To:** Click or tap to enter a date.

#### Summary of Public Comments Received for the Setting

Click or tap here to enter text.

#### Summary of the State's Response to the Public Comment Received

Click or tap here to enter text.