

New York State Medicaid Home and Community-Based Services

Heightened Scrutiny Evidence Packet

Setting Information

Provider Name 1st Choice Adult Day Care, Inc.		
Location of Setting Brooklyn, NY	Type of Setting Social Adult Day Care (SADC)	Medicaid Home and Community-Based Services Being Provided at the Setting Social Adult Day Care (SADC) Services

Heightened Scrutiny Prong

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

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

Requirements for All HCBS Settings		
Compliant?	Federal Requirement	Summary
<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: Goals listed in the</p>

		<p>PCSP reviewed did not indicate community integration or participation in the community. Supports are not documented in the PCSP to ensure a member has access to off-site activities of their choice. The SADC site was unable to clarify how they assist members with obtaining volunteer or employment opportunities in a competitive setting. Members are regimented to goals that do not promote individualized activities and community integration activities. Activity calendar posted for members does not offer community integration or individualized activities. Remediation will include asking members at admission and thereafter if they are interested in volunteer or employment opportunities, efforts to facilitate and support members to seek opportunities in the greater community, and collaborate with the member and their support team to address needs, desires, and barriers in the greater community, increasing access to activities and options that are of interest and/or individual preference, soliciting feedback and utilizing information for activities of interest, updating the PCSP template to ensure supports and coordination are listed in the community access field, and will be completed by 7/1/2024.</p>
<p>42 CFR 441.301(c)(4)(ii)</p> <p>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,</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</p>

	and, for residential settings, resources available for room and board.	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 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: Members are designated to particular staff while at the SADC site. Remediation will include updating and revising policies at the SADC site to remove 'blanket restrictions' that apply to all members, and will be completed by 3/17/2023.
<p><i>42 CFR 441.301(c)(4)(iv)</i></p> <p>Partially Compliant</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.	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: Members have limited choice in individualized activities. PCSP reviewed showed members regimented to goals that did not promote community integration. Not all supports offered by the SADC are documented in the member's PCSP. The PCSP policy is non-compliant because it indicates the member has the right to

		<p>"participate" in the PCSP process. The HCBS Final Rule requires that the process be "driven" by the member, not that the member only has the right to "participate", and the process cannot be led by the SADC. Remediation will include re-training staff at all levels on person-centered planning and service writing, ensuring the member is part of the person-centered planning, educate members and their advocates on member rights and informed choice, contacting the member's care manager to request a risk management plan to ensure safeguards are met, updating the PCSP to identify member choices in alternative activities including community activities, ensure supports are documented in case notes and the community access field, updating the PCSP and PCSP policy to remove Title 9 language to reflect guidance of the HCBS Final Rule, and will be completed by 3/17/2023.</p>
<p>42 CFR 441.301(c)(4)(v) Compliant</p>	<p>Facilitates individual choice regarding services and supports, and who provides them.</p>	<p>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.</p>
Additional Requirements for Provider-Owned or Controlled Settings		
Compliant?	Federal Requirement	Summary
<i>Standards for Provider-Owned and Controlled Residential and Non-Residential Settings</i>		
<p>42 CFR 441.301(c)(4)(vi)(C) Partially Compliant</p>	<p>Individuals have the freedom and support to control their schedules and activities; and have access to food any time.</p>	<p>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</p>

		request by reviewing weekly menus, policy manuals, and through on-site observation. The SADC has demonstrated compliance in all areas of the standards except for the following: The SADC site could not demonstrate more than one meal option is offered to members. Remediation will include updating current and future PCSPs with information on a member's preference to meals and snacks, review at the admission and periodically thereafter availability of food and snacks and how to access them, nutritionist will review all member preferences and incorporate a menu with those choices and alternatives available daily, and will be completed by 3/17/2023.
<p>42 CFR 441.301(c)(4)(vi)(D)</p> <p>Not Compliant</p>	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. The SADC has demonstrated compliance in all areas of the standards except for the following: Members are not able to have visitors at their choosing at any time. The SADC site policy does not clarify if visitors may come at any time. During the virtual on-site visit it was confirmed that the SADC requires prior notice due to COVID-19 regulations before a visitor may arrive. Remediation will include removing existing COVID-19 regulations on the visitors policy, and updating the visitors policy to reflect that visitors are allowed at any time, and review the updated information with members, families, and/or advocates. Remediation will be completed by 3/17/2023.
<p>42 CFR 441.301(c)(4)(vi)(E)</p> <p>Compliant</p>	The setting is physically accessible to the individual. (Not modifiable)	DOH verified accessibility of the facility through observation, during the virtual on-site review.

<p>42 CFR 441.301(c)(4)(vi)(F)</p> <p>Compliant</p>	<p>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.</p>	<p>The member SADC PCSPs reviewed did not require a modification. However, the SADC PCSP template has a section for indicating any necessary modifications.</p>
<p>Standards for Provider-Owned and Controlled Residential Settings Only</p>		
<p>42 CFR 441.301(c)(4)(vi)(A)</p> <p>Not Applicable</p>	<p>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.</p>	<p>SADC sites are non-residential, and therefore this standard is not applicable.</p>
<p>42 CFR 441.301(c)(4)(vi)(B)</p> <p>Not Applicable</p>	<p>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.</p>	<p>SADC sites are non-residential, and therefore this standard is not applicable.</p>

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

Date(s) Conducted: 11/3/2022	State Agency/Entity that Conducted the On-Site Visit: NYS DOH & RiverSpring at Home / Tina Chan
Description of the Setting: <p>The 1st Choice ADC Inc's Social Adult Day Care (SADC) is a freestanding building that has two floors but operates on the ground floor. The SADC has it's own entrance and exit and is located on the corner of a street in a suburban area of Brooklyn, NY. The SADC site is able to accommodate a maximum of 100 people on any given day and both members and staff speak English and Russian. Members are able to utilize all areas of the facility. The SADC can support members in offering round trip transportation and personal care services. The site offers bingo, arts and crafts, yoga, music therapy, billiards table, and a library.</p>	

Section Two

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

Individual (Recipient) Interviews <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> <ol style="list-style-type: none">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 - Member can interact with anyone she chooses 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.

2022-11-3_Virtual On-Site Review_s0103.pdf
Activity Calendar.pdf
Community Outings Policy.pdf
Individual Service Plans Policy.pdf
Meals Policy.pdf
Member Ex. Survey_1.xlsx
Member Ex. Survey_2.xlsx
Member Ex. Survey_3.xlsx
Menus.pdf
Participant Rights.pdf
PCSP Discussion Office Hours.pdf
PCSP_1.pdf
PCSP_2.pdf
PCSP_3.pdf
Person Centered Planning Policy.pdf
Personal Care Services Policy.pdf
Remediation Plan.pdf
Remediation Plan.xlsx
Self-Assessment Review_1.pdf
Socialization Services Policy.pdf
Transportation Posted.pdf
Visitor 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.

