

New York State Medicaid Home and Community-Based Services

Heightened Scrutiny Evidence Packet

Setting Information

Provider Name Borough Adult Day Care, Inc.		
Location of Setting Queens, 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 not demonstrated compliance in all areas of the standards: Members PCSP do not show individualized</p>

		community integration activities. Remediation to include adding a section to PCSP that will clearly show individualized community integration activities to be completed by 07/01/2024.
<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 surveys, staff training topics, and observing the spaces allocated for privacy. PCSP reviewed noted that member has need for transfer and toileting but does not indicate that member can choose the staff they prefer and feel comfortable with to provide assistance. Remediation will include adding a section to the care plan for comments that will inform about the member's choice of service provider and will be concluded by 4/24/2023.
<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	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

	activities, physical environment, and with whom to interact.	schedules, member PCSPs, activity schedules, and through on-site observation. PCSP's reviewed showed identical activities and goals for all members, there were no individualized goals and activities per member. Remediation includes an update to the members' PCSP to include a member's preference section where members preferred activities will be recorded. Remediation will be completed by 4/24/2023.
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, 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
Standards for Provider-Owned and Controlled Residential and Non-Residential Settings		
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.

<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: 11/8/2022	State Agency/Entity that Conducted the On-Site Visit: NYS DOH & Empire BlueCross BlueShield Health Plus / Sandra Almanzar
Description of the Setting: <p>The Borough Adult Day Care Inc. Social Adult Day Care (SADC) program operates on the ground level of a five-story building. The SADC is located on a private campus in a residential neighborhood amidst town houses and a local supermarket. The building is nestled between two childcare centers, one on either side. In the rear of the building is an apartment building for assisted living housing. The SADC site can accommodate up to 70 members on a given day and staff communicate in both English and Chinese. The site offers social and recreational activities, round-trip transportation to and from the SADC site, breakfast, and lunch with a choice of entrée, exercise programs, strength training and baking classes, community trips and outdoor activities. Members are given freedom to choose their activities and daily schedules, utilize all areas of the facility, and access the community as they wish. Members partake in off-site activities at their leisure such as shopping at local stores.</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? –Yes2. Did you choose this program for yourself to attend? – Yes3. Are you able to leave the SADC for outside activities you wish or need to attend? (Ex. community activities, volunteer work, doctor appointments) – Yes4. 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.? – Yes5. Do staff treat you and those around you with respect and care? – Yes6. If you have a problem or concern, do you know who to go to? – Yes7. If you have a problem or concern, and you speak to someone about it, does it get resolved and do you feel listened to? – Yes8. Do you get to choose when and with whom you get to eat with, or can you eat alone if you want to? – Yes9. Can you make private phone calls? – Yes10. Are you allowed to have visitors while you are here? – Yes11. Do you know where to store your personal belongings while you are here (coat, purse, etc.)? – Yes12. Do you get to choose which activities you will or will not participate in, and with whom? – Yes13. Are there restrictions on who you can or cannot interact or talk with? – No14. Are you allowed to move around the building alone? If not, are staff available when you choose to move around? – Yes15. Is transportation and support to obtain transportation available to you, at your request, for medical appointments or outings of your choosing? – Yes
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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.

2022-11-8_Virtual On-Site Review_s0260.pdf
2023-04-14_Remediation Plan_48.xlsx
Change Activity Posted.pdf
Individualized Activities.pdf
Meal Option.pdf
Member Ex. Survey_1.xlsx
Member Ex. Survey_2.xlsx
Member Ex. Survey_3.xlsx
Monthly Activity calendar.pdf
Participant's Right.pdf
PCSP_1.pdf
PCSP_2.pdf
PCSP_3.pdf
Person Centered Training.pdf
Plan of care Template.pdf
Self-Assessment Review_#48.pdf
Staff Training.pdf
Transportation Information.pdf
Vistors 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.