

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

**Heightened Scrutiny Evidence Packet**

**Setting Information**

<b>Provider Name</b> La Familia Adult Day Center, Inc.		
<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>

		<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. The SADC site does not offer individualized activities in the community that members can participate in independently and at their choosing.</p> <p>Remediation will be updates to current and future PCSPs to include individual and community integration activities, educating the member and their family, and/or advocate on member's rights and informed choice, and implementing strategies for members to access community activities, adding an activities section, updating information on supports and coordination a member needs to access opportunities of interest, contact Managed Long Term Care Plan providers to obtain the risk management plan for members, utilize the member's risk management plan to document health, safety, and transportation information to ensure member's have full access to the community by 3/17/2023.</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, 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 and the choice of SADC site in the MLTC plan PCSP.</p>

<p><i>42 CFR 441.301(c)(4)(iii)</i></p> <p>Partially Compliant</p>	<p>Ensures an individual's rights of privacy, dignity and respect, and freedom from coercion and restraint.</p>	<p>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: The PCSP sample reviewed does not include documentation that the member was given a choice in who would "assist as needed" with personal needs. Remediation will be updating the PCSP template to include information on a member's preference regarding what staff can render personal care needs or matters by 5/1/2023.</p>
<p><i>42 CFR 441.301(c)(4)(iv)</i></p> <p>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 did not show that a member's Plan of Care is individualized, The PCSP sample did not have socialization goals related to community integration, members have limited community integration because not all health and safety information is 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</p>

		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 be training staff in person-centered planning and service plan writing, updating person-centered policies and, conducting person-centered planning meetings that include the member and their support team, removing Title 9 SADC regulations and update to the guidance to show HCBS Final Rule, and documenting supports needed to ensure members can access community activities of their choice by 3/17/2023.
42 CFR 441.301(c)(4)(v) Partially 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. The SADC has demonstrated compliance in all areas of the standards except for the following: The SADC site does not have a documented policy and procedure for members to request additional services or changes to their PCSP. Remediation will be updating and revising current policies and procedures to ensure individualized person-centered planning is utilized for current and new members by 3/17/2023.
<b>Additional Requirements for Provider-Owned or Controlled Settings</b>		
<b>Compliant?</b>	<b>Federal Requirement</b>	<b>Summary</b>
<b><i>Standards for Provider-Owned and Controlled Residential and Non-Residential Settings</i></b>		
42 CFR 441.301(c)(4)(vi)(C) Partially 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. The SADC has demonstrated compliance in all areas of the standards except for the following: Members are not afforded flexibility in their breaks and lunch times while at the SADC site. Remediation will include revising and updating the lunch menu to show alternative choices available, updating the menu to show times listed for meals are optional and not regimented and reviewing the new information with members, families, and/or their advocates by 3/17/2023.
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.	The member SADC PCSPs reviewed did not require a modification. However, the SADC PCSP template has a section for indicating any necessary modifications.
<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	SADC sites are non-residential, and therefore this standard is not applicable.

	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> 11/16/2022	<b>State Agency/Entity that Conducted the On-Site Visit:</b> NYS DOH & HomeFirst / Suzy Wu
<b>Description of the Setting:</b>  The La Familia Adult Day Center Inc's Social Adult Day Care (SADC) program operates on one floor of a five-story building. The SADC is located under public housing separated from the facility by its own entrance in the suburbs of Brooklyn, NY and can accommodate up to 183 people per day. The SADC is able to provide support in obtaining door-to-door transportation and personal hygiene services. Members socialize and engage in activities such as cooking, bingo, bowling, arts and crafts, raffles, and celebrating international holidays. Members can use all areas of the site and can participate in outdoor activities such as day trips to the library, attending classes at the library, and going to the farmer's market.	

## Section Two

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

<b>Individual (Recipient) Interviews</b>  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
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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 – No restriction reported]
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.**

2022-11-16\_Virtual On-Site Review\_s0338.pdf  
2023.03.03\_Remediation Plan\_210\_VCM.xlsx  
Bus & Train Schedules at Activity & Community Table.jpg  
Calendar of Activities.xlsx  
Calendar of Events.jpg  
Client Sign In & Out Sheet.pdf  
Community Events.docx  
Community Table.jpg  
Meal Menu.docx  
Member Ex. Survey\_1.xlsx  
Member Ex. Survey\_2.xlsx  
Member Ex. Survey\_3.xlsx  
Member Feedback & Changes.docx  
PCSP\_1.pdf

PCSP\_2.pdf  
PCSP\_3.pdf  
Policy Procedures (002).docx  
Referral for Community Resources.docx  
Remediation Plan.pdf  
Remediation Plan.xlsx  
Visitor's Policy.docx

## 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.