



Office of Health Insurance Programs - Division of Long Term Care

Managed Long Term Care Policy 21.05: Social Adult Day Care HCBS Final Rule Implementation

Date of Issuance: December 03, 2021

The New York Department of Health (DOH), Division of Long Term Care is issuing the following guidance to provide information and resources to Managed Long Term Care (MLTC) plans including Medicaid Advantage Plus and Partial Capitation plans, regarding the Centers for Medicare and Medicaid Services (CMS) Home and Community-Based Services (HCBS) Final Rule. In addition to federal Part 6654.20 and the Social Adult Day Care (SADC) requirements within MLTC Partial Capitation contract Article V. A. (7) and Medicaid Advantage Plus contract Section 1, it is important to note that SADC is a Home and Community-Based Service under federal law that falls under the purview of the federal HCBS rule 42 CFR § 441.301(c)(4).

HCBS Rule Requirements for SADC

To continue receiving federal Medicaid funding after March 17, 2023, MLTC plans must ensure that SADCs:

- are integrated in and support full access to the greater community;
- are selected from among options by the individual;
- ensure rights of privacy, dignity, respect, and freedom from coercion and restraint;
- optimize an individual's autonomy and independence in making life choices;
- facilitate an individual's informed choice about their services and who provides them;
- are physically accessible to the individuals supported;
- provide freedom and support for individuals to control their own schedules and activities**; and
- provide individuals access to food (meals and/or snacks) and visitors at any time**.

**The last two standards are the only standards that are modifiable, under certain conditions.

For the last 2 standards, there cannot be restrictive rules that apply to all participants in an SADC. Examples of restrictive rules include, set visitor hours, and only one time slot food/snacks are available. The two modifiable standards listed above may be modified on a case-by case basis for a specific individual if it is done:

- when there is a *specific need* that has been identified that a participant requires staff support with (i.e., a diagnosis is not enough information to support modifying a standard);



- on a time-limited basis (reassessing periodically to see if the modification is still needed);
- after less restrictive and more positive approaches were tried and failed.

Modification example: Jane D. requires assistance with managing her access to food/snacks due to her tendency to eat frequently, which raises her blood sugar levels. Staff tried counseling her but were not successful. With her (or her representative's) informed consent, staff will support her with accessing the snack cabinet for at least six months, documenting this in her plan.

HCBS Rule Requirements for Person Centered Planning

In addition to the settings standards above, the federal HCBS rule also requires a person-centered planning process. This process must:

- provide necessary information and support to the individual to ensure that they can direct their planning process as much as possible;
- include people chosen by the individual;
- be timely and occur at least annually at times and locations of the individual's convenience;
- assist the person in achieving outcomes they define for themselves, and in the most integrated community setting(s) they desire;
- ensure delivery of services in a manner that reflects personal preferences and choices;
- help promote the health and welfare of those receiving services;
- take into consideration the culture of the person served;
- use plain language;
- include strategies for solving disagreement(s);
- offer choices regarding the services and supports the person receives, and from whom;
- provide a method for the individual to request updates to their plan;
- indicate what entity or person will monitor the primary or main person-centered plan;
- identify individual's strengths, preferences, needs (both clinical and support), and desired outcomes.

To achieve these standards, the plan and/or the social adult day care entity must also obtain a member's experience self-assessment as the desired HCBS outcomes of participants often focus on relationships and preferred activities rather than health and safety.

The member's experience self-assessment must occur during the initial and the member's annual Person-Centered Service Plan.



Written Notice and Other Transition Requirements

MLTCs must ensure that SADC providers in their network make any required changes **no later than March 17, 2023**.

DOH will offer a statewide webinar for SADCs on **December 9, 2021** to provide education on these standards, compliance reporting and progress monitoring.

Resources and Training

New York State Department of Health (DOH) will offer a statewide webinar for Social Adult Day Care provider sites and the MLTC plans in early December 2021 to provide additional education for assessment and remediation.

In addition to the specific webinar for MLTC Social Adult Day Care provider sites, DOH is currently sponsoring the upcoming ***Person-Centered Planning Comprehensive System Transformation Statewide Training Initiative***. The trainings, learning opportunities, and person-centered planning online toolkit are offered at no cost. Participation can demonstrate efforts towards compliance. For information and to register, go to: nydohpcptraining.com/events.

Additional information regarding New York’s HCBS Rule Statewide Transition Plan can be found at:

- **CMS HCBS Final Rule:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/docs/hcbs_final_rule.pdf
- **NYSDOH HCBS Final Rule Website:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/home_community_based_settings.htm
- **NYSDOH HCBS Transition Plan:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/hcbs/docs/2018-11-07_hcbs_final_rule.pdf
- **NYSDOH Person-Centered Planning Library:**
 - https://www.health.ny.gov/health_care/medicaid/redesign/person-centered_planning/index.htm

Any questions should be directed to: HCBSADCSiteAssessments@health.ny.gov.