



May 17, 2024

Mr. Paul Pfeiffer
Office of Health Insurance Programs
New York State Department of Health
DHPCO 1CP-1623
Albany, NY 12237

Re: Public Comment on SADC HCBS Rule Evidence Packages

Dear Mr. Pfeiffer:

On behalf of LeadingAge New York and the New York State Adult Day Services Association (NYSADSA), we are writing to provide comment on the Heightened Scrutiny evidence packets for Social Adult Day Care (SADC) sites, required pursuant to the Department of Health (DOH) Statewide Transition Plan (STP) for federal compliance with the Home and Community-Based Services (HCBS) Settings Final Rule (42 CFR §441.301(c)(5)(v)). We are also sharing our general concerns relating to implementation of the HCBS Rule.

The Heightened Scrutiny process is established to ascertain program compliance with the HCBS Rule and determine whether settings are institutional in nature. SADC programs serve individuals who live in their homes and communities and provide an opportunity for individuals to receive personal care, meals, and connect with others in a non-residential group setting a few to several hours a week. While some program sites may be connected to a facility setting, compliance with person-centered planning, implementation and facilitation with community integration, and the very fact that individuals attend at their preference and remain living in their own homes and communities should deem these programs non-institutional in nature. SADC is a critical resource to help older individuals receive services, care, and the connection they need to remain independent and active. Home care and other HCBS resources are limited in most communities, and SADC programs help individuals and families get the care they need to help individuals remain at home for as long as possible. Programs also provide significant resources and respite for families and caregivers as well, thereby postponing or completely deferring admission to residential care settings.

Our organizations support and commend the Fort Hudson SADC program for its commitment to serving its local community and its remediation efforts to comply with the HCBS Rule. The program has a long history of providing services and supports to frail, elderly, and disabled individuals, including providing community connection and integration of its participants. This program is in a rural area with limited alternatives for HCBS care and services. It completed its remediation requirements many months ago and remains in compliance with the Rule. The program provides person-centered care and offers community integration through participants' person-centered service plans (PCSPs) as well as through a suggestion box and Registrant Council meetings. The program has modified all of its policies and procedures to reflect the

required remediation changes. It is also actively seeking aides to accommodate participant preferences and is committed to being an equal opportunity employer by not discriminating in hiring based on sex, age, religion, race, and other types of discrimination prohibited by law.

We take note of the issue of co-location noted in one of the evidence packages. While we support overcoming Heightened Scrutiny with person-centered compliance and community integration aspects of the Rule, Riverstone Senior Life Services should not be considered a co-located setting due to its location near another health care facility. The evidence package states that the SADC site is located adjacent to the parking garage of the New York Presbyterian Columbia University Irving Medical Center. Proximity to other health care facilities is common in such an urban setting. Riverstone is located in the heart of Manhattan, and this neighboring facility has no affiliation with the program. Riverstone's SADC is an exemplary program serving individuals with dementia and cognitive challenges, and it is an important local resource that helps keep people healthy, safe, independent, and living at home and in their communities.

St. Cabrini SADC, Carmel Richmond Health Care and Rehabilitation SADC, and St. Vincent De Paul Senior Life SADC were reviewed by the Department for HCBS compliance including Heightened Scrutiny. While they have complied with the review and remediation process and are exemplary programs, we question the need for their inclusion in this review process, as they have no Medicaid members in their programs. If these programs are not serving Medicaid members and not receiving HCBS Medicaid, they are not subject to this Rule.

Several of the programs are listed as non-compliant because they do not have male direct support staff. The HCBS Rule does not require each program to have a male aide on staff. Programs should be hiring individuals as equal opportunity employers. To our knowledge, many of the programs do not have participants requesting male staff. Workforce challenges are difficult in the health care field, and individuals are hired based on their credentials and experience. Efforts to hire a qualified male for program if one is requested should qualify as demonstration of compliance. The Rule does not require a male staff person for every program. The Department should consider establishing reasonable SADC reimbursement rates so that programs can offer competitive aide salaries to build out their staffing models.

SADC programs are contracted with Managed Long Term Care (MLTC) plans to provide SADC services, which are provided in non-residential settings. Members attend the SADC on days of their choosing and participate in activities throughout the day, and not overnight. In addition to all other state and federal requirements, the MLTC plans are responsible for providing oversight and monitoring to ensure compliance with the HCBS Rule for all SADC sites they contract with.

LeadingAge New York and NYSADSA are concerned that the Department's process for survey and remediation of SADC program compliance with the HCBS Rule is cumbersome for both MLTC plans and HCBS providers. It results in significant duplicative reporting and surveying, diverting time and resources away from the services programs and plans provide. Every program must undergo a survey process from each MLTC plan, resulting in sometimes 10 surveys or more with varied interpretation of the HCBS Rule and varied compliance determinations. We ask DOH to carry out this survey process and not require MLTC plans to decipher and implement the Rule. Further, details on requirements of the Rule and subsequent clarifying questions and

answers should be shared with all SADC programs and MLTC plans so that all are on the same page.

Recently, the Department shared several clarifications on the Rule regarding handling of financial resources, community integration, participant freedom to come and go from program, and facilitation of employment or volunteering. We greatly appreciate this information. Yet, the Department stated that they would not be sharing this with programs or MLTC plans. We would greatly appreciate DOH taking this step. These are complicated requirements to implement. Clarification on adaptations for different HCBS populations is necessary for proper implementation of this requirement.

SADC programs and other related HCBS providers are still not receiving overarching non-provider person-centered care plans from MLTC plans, even though the Rule requires this step. This is particularly important, as SADC programs do not provide clinical assessments or receive documented diagnoses to help them develop PCSPs or modifications to those plans. DOH recently urged HCBS providers to obtain overarching care plans from MLTC plans. We urge the Department to require this of MLTC plans.

SADC programs provide socialization, personal care, nutrition, supervision, and help individuals stay healthy and active in their communities. They are a lifeline for families and caregivers and an important part of the HCBS continuum of care, especially with the rise of isolation and loneliness occurring in all populations.

We look forward to working with the Department and our member programs to help with implementation and compliance of the many important aspects of the HCBS Rule.

Thank you for the opportunity to comment.

Sincerely,



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