



## Department of Health

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Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

February 5, 2016

Mr. Brian Mason  
Assistant Comptroller  
New York State Office of the State Comptroller  
110 State Street, 10<sup>th</sup> Floor  
Albany, New York 12236

Dear Mr. Mason:

Pursuant to the provisions of Section 170 of New York State Executive Law, I hereby transmit to you a copy of the New York State Department of Health's comments related to the Office of the State Comptroller's final audit report 2014-S-31 entitled, "Social Adult Day Services."

Please feel free to contact Amy Nickson, Assistant Commissioner, Office of Governmental and External Affairs at (518) 473-1124 with any questions.

Sincerely,

Howard A. Zucker, M.D., J.D.  
Commissioner of Health

Enclosure

cc: Ms. Nickson

**Department of Health  
Comments on the  
Office of the State Comptroller's  
Final Audit Report 2014-S-31 entitled,  
Social Adult Day Services**

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The following are the Department of Health's (Department) comments in response to the Office of the State Comptroller's (OSC) Final Audit Report 2014-S-31 entitled, "Social Adult Day Services."

**General Comments**

As noted by the Comptroller in the summary of Key Findings, "DOH has provided guidance and direction to the MLTCs." These actions have been effective, as demonstrated by OSC's finding on page 12 of the audit that 100 percent of the 460 individuals reviewed were found eligible for the program.

The OSC is correct in its assertion that the Department does not have any direct mandate to regulate Social Adult Day Care (SADC) programs or their operators, but is responsible for the oversight of Managed Long Term Care (MLTC) plans and covered benefits for qualified enrollees. SADC has been a covered benefit within MLTC since the inception of the program, and the transition to mandatory MLTC enrollment for individuals receiving long term care services did not change the threshold for authorization that MLTC plans use in reviewing need for this benefit. The Department has issued guidance clarifying Medicaid recipients' eligibility for mandatory enrollment in MLTC. In addition, the Department amended its MLTC contract provisions in 2012 to require all SADCs under contract with a MLTC plan to adhere to the New York State Office for the Aging (NYSOFA) SADC regulations under Title 9 New York Codes, Rules, and Regulations (NYCRR) §6654.20.

In May 2015, in conjunction with NYSOFA and the Office of the Medicaid Inspector General (OMIG), the Department established a new Certification process for all SADC entities that contract with MLTC plans. SADC operators that contract with MLTC plans are now required to attest to meeting the standards and requirements set forth in Title 9 NYCRR §6654.20.

The Department maintains a Technical Assistance Hotline for MLTC plan enrollees, their family members and providers. All complaints received by the Hotline are tracked and monitored for any trends on a monthly basis by Department plan managers. Plan managers examine complaint trends, and may audit MLTC plan records, issue Statements of Deficiency and require Plans of Correction, if warranted. Department staff also monitor and review plan network submissions and encounter data on a quarterly basis to ensure that appropriate services, including SADC services, are available and utilized by enrollees.

The Department is compelled to point out some language in the audit report that misrepresents the benefit of SADC. Specifically, the OSC referred to SADC as "DOH funded" and "MLTC SADS programs." SADC programs are not directly funded by the Department or Medicaid or directly provided by MLTC plans—SADC is a covered benefit for qualified enrollees.

**Background**

New York State is a national leader in its oversight of the Medicaid Program. With the transition to care management, OMIG continues to improve upon our processes and direct our resources to match this changing direction in the Medicaid program. In conjunction with the Department,

NYS will continue its focus on achieving improvements to the Medicaid program and aggressively fighting fraud, waste and abuse wherever it exists.

Under Governor Cuomo's leadership, the Medicaid Redesign Team (MRT) was created in 2011 to lower health care costs and improve quality of care for its Medicaid members. Since 2011, Medicaid spending has remained under the Global Spending Cap, while at the same time providing health care coverage to an additional 1,405,500 fragile and low income New Yorkers. Additionally, Medicaid spending per recipient has decreased to \$7,868 in 2014, consistent with levels from a decade ago.

### **Recommendation #1**

Relevant stakeholder agencies should carefully consider the risks identified in this report in deciding whether a more comprehensive system of regulation, such as licensing, registration, or mandated inspection, is warranted as the SADS program moves forward.

### **Response #1**

The Department intends to continue to work with NYSOFA and OMIG to evaluate and mitigate the risks identified in the OSC's audit report. The Department will continue to partner with NYSOFA and OMIG to ensure compliance with existing requirements and educate plans and providers through webinars, Frequently Asked Questions and policy documents.

### **Recommendation #2**

NYSOFA should consider updating program regulations and/or providing supplemental guidance that more specifically defines expectations for factors that directly impact program quality and performance.

### **Recommendation #3**

NYSOFA should take steps to improve existing oversight and monitoring programs, including:

- Conducting on-site monitoring of each of its direct SADS contractors at least annually and making provisions for unannounced site visits.
- Ensuring consistent evaluation of program compliance at the county level by requiring all AAAs to utilize the standardized SADS monitoring tool as part of their annual on-site evaluations.

### **Response #2 and #3**

The Department defers to NYSOFA for comment.

### **Recommendation #4**

Stakeholder agencies should work together to implement a comprehensive program to oversee Medicaid-funded SADS programs, which includes the oversight actions recently developed as well as procedures to verify the accuracy of the annual SADS self-assessment certifications.

#### **Response #4**

The Department has created a distinct surveillance and audit unit within the Office of Health Insurance Program's Division of Long Term Care, responsible for ongoing oversight of MLTC plans through on-site and desk audits. Surveillance efforts review compliance with the Department's MLTC contract standards, relevant statutes, regulations and policies, as well as oversight of all contractors—including SADC entities. In addition, the Department's MLTC plan managers ensure members receive only appropriate services, and may issue Statements of Deficiency and require corrective actions, if warranted. Oversight capacity has been increased by the addition of surveillance staff and MLTC plan network submissions will continue to be reviewed on a quarterly basis.

The Department will continue to work with OMIG and NYSOFA to review and monitor the self-assessment Certification process to oversee the submissions and accuracy of the SADC Certifications.