



Testimony on Amendment of Social Adult Day Cares Registration Requirements and Enforcement Procedures

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The New York State Adult Day Services Association (NYSADSA) writes today in strong support of New York City (NYC) Aging’s regulatory authority over Social Adult Day Care (SADC) programs in NYC. Robust, independent oversight is critical to ensuring the health, safety, and dignity of older adults and functionally impaired individuals who depend on these services. In a complex Medicaid landscape, where over 450 SADC programs deliver care under Managed Long-Term Care (MLTC) arrangements, NYC Aging plays an essential role as a third-party safeguard to respond to complaints and ensure that SADCs operate transparently, ethically, and in alignment with participant needs.

We want to express our strong support for the end of open-ended, uncapped fines and are grateful to the current NYC Aging administration for setting maximum limits on penalties. This change represents a meaningful shift toward fairness and predictability in enforcement. It protects providers from excessive financial risk while maintaining accountability and upholding quality standards. We urge that this capped penalty structure be preserved and consistently applied across all areas of compliance.

The necessity of NYC Aging oversight has been underscored in multiple government audits. The March 2021 report from the U.S. Office of Inspector General (OIG) (A-02-18-01027) found that New York’s Medicaid MLTC plans reimbursed SADC services without verifying that care was delivered in safe, appropriate settings. Plans failed to conduct site visits, assess whether participant needs were being met, or confirm that centers had basic emergency or safety protocols. Worse, the report uncovered billing for services not provided and placement of participants into centers without proper functional assessments—raising grave concerns about unsupervised care and the potential for harm. Similarly, the June 2020 NYC Comptroller audit (MD19-080A) found that NYC Aging itself had not been conducting or documenting adequate inspections or follow-ups—leaving serious compliance issues unaddressed and exposing participants to risk.

These findings clearly demonstrate the urgent need for a revitalized and empowered oversight model at the City level.

However, in order for NYC Aging to fulfill this role effectively, it must be supported by clear, objective, and transparent standards that providers can understand and operationalize. Without defined criteria for enforcement, ambiguous violations risk becoming punitive rather than corrective. Providers must know in advance how compliance will be measured, particularly in areas such as safety, supervision, person-centered planning, and service delivery that already intersect with NYS Department of Health (DOH) and federal Home and Community-Based Services (HCBS) requirements.

1. Lack of Transparency in Registration Process

The current design of the NYC Aging SADC registration system creates unnecessary barriers to compliance and contributes to administrative penalties for providers making good-faith efforts to follow the rules.

- The registration questions and required fields are not accessible in advance; providers cannot preview or download the full registration form unless they are already logged into the portal.
- This lack of visibility increases the likelihood of unintentional data entry errors, which in turn triggers \$240 amendment fees even for minor corrections.
- NYSADSA strongly recommends that NYC Aging publish a static, printable version of the registration form, enabling providers to prepare their documentation accurately before entering the system.

Furthermore, Section 21-204 of Local Law 9 states that registration must include “at least” the information enumerated. While this provides necessary flexibility for the Department, it also means that NYC Aging has broad authority to expand registration requirements at any time—without public notice or stakeholder input.

This authority has already been exercised in ways that created confusion. For example, under the previous NYC SADC Ombuds, the office began instructing providers to update Workers’ Compensation insurance expiration dates as part of registration—yet this requirement was never publicly posted, shared via guidance, or reflected in any update notice.

To prevent future confusion and ensure fairness:

- Any new registration criteria should be clearly communicated to providers in advance, with formal notice and implementation timelines.
- For significant additions, a hearing or public comment process should be considered, ensuring that operational impacts are evaluated and provider feedback is incorporated into system design.

This level of transparency is necessary not only for legal fairness, but also to enhance compliance, minimize unnecessary amendment fees, and strengthen provider trust in NYC Aging’s oversight systems.

2. Annual Registration Cycle and Fee Structure

- The current structure penalizes programs by imposing a \$240 amendment fee for any change to the registration, including updates to hours of operation or even notifying the Department of a program closure. Charging a fee for the latter is especially inappropriate given that the program is ceasing operations and likely facing financial hardship, such as a loss of lease or funding.
- A more equitable and operationally effective approach would be an annual renewal process with one consolidated fee, and no charge for reasonable updates, particularly closures or administrative corrections.
- Adopting an annual registration model would also improve NYC Aging’s ability to monitor program status consistently, ensure that all provider data is current, and reduce compliance risks stemming from outdated information. This would also allow the NYC Aging SADC Ombuds office a fixed budget for their oversight efforts.

- Additionally, allowing free updates throughout the year would increase provider compliance, reducing the incentive to delay or avoid notifying the Department of changes.
- The annual fee could be calculated using historical averages of amendment volumes, helping to distribute administrative costs more evenly while avoiding punitive, per-update charges that discourage transparency.
- As an example, a NYC Aging-recognized SADC in East New York, an underserved neighborhood, was recently informed by MetroPlus (a NYC-owned MLTC) that their contract would be terminated for “business reasons only.” This decision not only strips the community of local SADC service options, but also imposes additional financial burden on the SADC, which is still required to pay a \$240 fee simply to notify NYC Aging of its loss of contract.

3. Unclear Enforcement Criteria and Standards Interpretation

The incorporation of 9 New York Codes, Rules, and Regulations (NYCRR) § 6654.20(d) and (e) specifies dozens of new enforceable items, which were previously under the criteria of “Failure to Adhere to Program Standards, \$500 per day, for each violation of the State SADC Regulations.”

However, many of the standards are subjective or lack clear criteria. NYSADSA requests written guidance from NYC Aging on how the following will be interpreted and enforced:

- “Well-being goals insufficient” under § 6654.20(d)(1)(iii)(d)(1): What constitutes sufficiency? Will existing MLTC person-centered care processes be honored?
- Clarification needed: Director qualifications and compliance determination: One of the proposed rule violations—“Director not qualified” under 9 NYCRR § 6654.20(d)(2)(iv)(b)(1)(i) —raises important questions about how compliance will be judged and what specific qualifications are required for a program director under NYC Aging enforcement. While the regulation requires a paid director responsible for daily operations, it does not define detailed criteria such as required degrees, credentials, or specific levels of experience. This ambiguity poses a significant compliance risk to providers. The NYS Office for the Aging (NYSOFA) Social Adult Day Services Self-Monitoring Tool reinforces this lack of specificity. It states only that there must be a:
 - “Paid Director with appropriate educational qualifications and work experience to ensure that activities and services are provided appropriately.”

This subjective standard—while emphasizing quality—leaves room for inconsistent interpretation across auditors, plans, and providers. Moreover, many SADCs already submit their director’s resume and credentials to their contracted MLTC plans as part of their credentialing process. If the MLTC has reviewed, approved, and credentialed the director, NYSADSA asks:

- Will NYC Aging accept MLTC plan approval as sufficient evidence of compliance?

- If not, what specific criteria must the director meet to be deemed qualified?
- What forms of documentation are required?
- Will NYC Aging offer a corrective action period before imposing penalties?

Without clear standards, programs face the risk of being cited for deficiencies based on subjective or retroactive interpretations, despite good-faith efforts to comply. We strongly urge NYC Aging to provide written clarification on these points to ensure consistent, fair, and transparent application of director qualifications across the sector.

- In addition to standard NYSOFA emergency preparedness requirements under 9 NYCRR § 6654.20(d), NYC Aging (then the Department for the Aging (DFTA)) shared additional emergency planning expectations with MLTC plans during a 2018 meeting—without issuing the same guidance directly to SADC providers. These NYC-specific expectations included preparing protocols for active shooter or violent incidents, maintaining communication with the NYC Office of Emergency Management (OEM), identifying alternative evacuation sites, and utilizing Fire Department of the City of New York (FDNY) or Department of Health and Mental Hygiene (DOHMH) emergency templates. While these practices reflect important safety considerations, they were never formally adopted into written standards or published on the Department’s website. As a result, SADC providers have been left unaware of these enhanced requirements, which puts them at risk of noncompliance. NYSADSA urges NYC Aging to issue clear, consistent, and accessible emergency preparedness standards to both MLTC plans and SADC providers, and to clarify which requirements are mandatory versus recommended.
- “Socialization not properly planned” under § 6654.20(d)(1)(iv)(a)(1)(i): DOH allows for fluid, interest-based activities. Will this flexibility be honored by NYC Aging, or will structured calendars only be required?
- “Improper supervision/monitoring” under § 6654.20(d)(1)(iv)(a)(2)(i): DOH guidance demands task- and context-based supervision, yet recent violations appear to demand continuous oversight, even in contradiction to a participant’s Person-Centered Service Plan (PCSP). NYC Aging must clarify how it will interpret supervision requirements, especially in the context of HCBS compliance and DOH expectations.

4. Standards for Optional or Non-Universal Services

Numerous violations reference services that are optional, not universally required:

- Caregiver assistance failures under § 6654.20(d)(1)(iv)(b)(3)(ii)–(v): What documentation or service models are considered compliant if a program does not provide caregiver assistance?
- Case coordination standards under § 6654.20(d)(1)(iv)(b)(4)(i): Must every provider engage in case coordination, or only when specified in the participant’s PCSP?

5. Inconsistent Standards Between DOH and NYC Aging

Lastly, it is essential to reconcile NYC Aging's enforcement standards with DOH contractual and funding requirements:

- Meal standards under § 6654.20(d)(1)(iv)(a)(4)(iii): DOH requires choice and cultural responsiveness; how will NYC Aging assess compliance without penalizing programs for offering flexibility?
- Funding conditions: Programs rely on DOH-compliant operations for reimbursement. If NYC Aging applies a stricter or contradictory interpretation, programs may be forced into noncompliance with one regulatory body to satisfy another.

In conclusion, NYSADSA urges NYC Aging to:

1. Improve transparency by publishing all registration and enforcement criteria in advance to ensure that providers are informed and prepared to meet expectations.
2. Replace the amendment fee model with an annual, inclusive registration process that allows providers to update critical information—such as closures, staffing, or hours—without incurring punitive fees, thereby enhancing overall compliance.
3. Provide comprehensive, written guidance on enforcement standards, including for areas such as emergency preparedness, participant supervision, and service planning. Providers must know how compliance will be judged and what documentation is required.
4. Ensure consistency with DOH and NYSOFA directives to avoid conflicting compliance requirements that force providers to choose between regulatory bodies or risk penalties from either.
5. Affirm emergency planning as a core oversight responsibility. As recent audit findings have shown, the absence of clear emergency preparedness expectations poses serious risks to participant safety. NYC Aging is uniquely positioned to address this by issuing enforceable standards and ensuring that providers are equipped to respond to emergencies effectively.
6. Ensure that NYC Aging develops and publicly shares written policies and procedures for its oversight activities. This was a central recommendation of the 2020 NYC Comptroller audit, which found that the absence of formal policies led to inconsistent and undocumented enforcement. Clear policies will support internal accountability within NYC Aging and allow providers to better understand and prepare for compliance expectations.
7. Acknowledge the limitation of NYC Aging's oversight over MLTC plans. As confirmed during NYC Aging's 2018 meeting with MLTCs, the Department does not have jurisdiction to regulate MLTC plan behavior or intervene in plan-provider contracting decisions. While the previous administration provided compliance training to MLTC plans—including on critical topics like emergency preparedness and disaster response—no equivalent guidance or training was offered directly to SADC providers. This resulted in a fragmented understanding of compliance expectations and inconsistent application across the system. Moving forward, all compliance-related expectations and training must be shared equally with both plans and providers, to ensure fair enforcement and a shared understanding of regulatory obligations. Furthermore, NYC Aging should work closely

with DOH and the NYS Office of the Medicaid Inspector General (OMIG) to establish coordination protocols that address gaps stemming from the City's limited oversight authority over MLTCs.

We welcome the opportunity to participate in a stakeholder roundtable to refine these rules in a collaborative manner. Thank you for considering this feedback in defense of community-based, person-centered care.