



TESTIMONY

Presented by

Dr. Robin Fenley
Assistant Commissioner, Bureau of HealthCare Connections

on

Social Adult Day Care Follow-Up

before the

New York City Council
Committee on Aging

on

Tuesday, February 7, 2017
1:00 P.M.

at

Council Chambers, City Hall
New York, NY 10007

Good afternoon, Chairperson Chin and members of the Aging Committee. I am Dr. Robin Fenley, Assistant Commissioner for the Bureau of HealthCare Connections at the New York City Department for the Aging (DFTA). I am joined by Fran Winter, Deputy Commissioner for Program Operations, and Monica Parikh from the Office of the General Counsel at DFTA. On behalf of Commissioner Donna Corrado, I would like to thank you for this opportunity to update you on the implementation of Local Law 9 of 2015, in relation to regulating social adult day care.

OVERVIEW OF SOCIAL ADULT DAY CARE

Social adult day care (SADC) is a structured program that offers a protective setting to functionally impaired individuals with either cognitive or physical frailty. Generally, these programs provide socialization opportunities, structured activities, personal care, meals, supervision, and monitoring. Additional SADC services may include activities designed to maintain and improve daily living skills, transportation, caregiver assistance, and case coordination. Medical adult day programs, by contrast, are affiliated primarily with nursing homes. These programs provide social activities as well as more intensive health and therapeutic services like occupational and physical therapy. DFTA currently monitors 10 social adult day care programs that are supported by Council discretionary funding.

As you know, the environment for operating SADC programs has changed with the development of long term care service and finance models in New York's Medicaid program. The authorization of social adult day care as a Medicaid-covered benefit available through Managed Long Term Care (MLTC) plans has led to an increase in the opening of new SADC programs throughout the five boroughs, most notably in Brooklyn and Queens. As a result of mandated changes by the Governor's Medicaid Redesign Team, there has been a massive influx of Medicaid beneficiaries into MLTCs – many of whom require personal care.

Since 2011, when NYC enrollment in Medicaid MLTCs was fewer than 30,000 individuals, enrollment has soared to more than 2.6 million individuals in 2016. To respond both to the expansion of Medicaid-authorized services as well as to the larger number of enrollees, the MLTC plans have broadened their product lines by contracting with SADC programs, which are a less expensive community based support service.

STATE SOCIAL ADULT DAY SERVICES OVERSIGHT

As these SADC providers are being paid by and contracted with MLTC plans who receive their funding through the State Medicaid program, primary oversight responsibility, therefore, rests with the State Department of Health. It is precisely for this reason that it is the State that is obliged to ensure the quality of the services provided and to protect the integrity of the taxpayer funded program. Following are several actions taken by the State, beginning in 2015, in response to the reported problems related to social adult day care programs:

- The State Department of Health (DOH) has established a specific requirement that MLTC plans assess SADC entities for compliance with the minimum New York State Office for the Aging (NYSOFA) requirements prior to entering into a contractual relationship for provision of service. DOH also issued a policy memo to remind MLTC plans that SADC entities must comply with the NYSOFA regulations as per contractual requirements. In addition, MLTCs are required to conduct an assessment of the cognitive and physical status of all potential SADC participants, prior to authorizing attendance.
- MLTC plans are required to conduct initial and annual on-site visits of all SADC contractors in order to monitor compliance with the minimum requirements. MLTCs are prohibited from contracting with any entity that does not meet NYSOFA requirements. DOH also requires MLTC plans to maintain documentation of compliance in their records for all related audit activities.
- Since May of 2015, DOH has required that all MLTC-contracted SADCs in the State self-certify annually with the New York State Office of the Medicaid Inspector General (OMIG), indicating that they are in compliance with NYSOFA requirements.

LOCAL LAW 9 OF 2015 UPDATE

Local Law 9 of 2015, as you know, required all SADC programs operating within NYC to register with DFTA, set forth civil penalties for violations of NYSOFA social adult day program regulations regarding SADC program operations, and designated DFTA as the SADC Ombuds Office. Since July of 2015, DFTA began accepting SADC registrations as mandated under Local

Law 9. As of December 30, 2016, 298 individual sites have registered, although 15 sites have closed since their registration. Of the remaining 283 active sites, 122 are in Brooklyn, 93 are in Queens, 29 are in Manhattan, 27 are in the Bronx, and 12 are in Staten Island. As required by Local Law 9, DFTA has requested and received the 2015 and 2016 lists of NYS OMIG-certified SADC programs. We are working to ensure that these OMIG-certified programs included in these lists are registered with the SADC Ombuds Office.

The electronic system developed by DFTA for registration and to receive comments, inquiries and complaints has been effective in the tracking of activity to date. During calendar year 2016, 50 complaints were received, involving 39 distinct programs. Of these 39 programs, 11 programs had multiple complaints levied against them. In some instances, one individual sent numerous complaints, while in other cases, several individuals made similar complaints about the same program. One of these 11 programs has closed. The types of complaints are broad: a lack of activities; facility problems, including being dirty, overcrowded and vermin sightings; poor food quality or lack of credentialed food handlers; allegations of Medicaid fraud through the use of financial incentives and falsified participant eligibility and staff qualifications; participant termination, fighting and consumption of substances on-site; untrained and disrespectful staff; and transportation issues such as scheduling and availability.

Many complaints were received anonymously, although some individuals provided a name but requested anonymity with regard to sharing complaint information beyond the Ombuds Office. Some complainants acknowledged that they were former employees. Based on responses the Ombuds Office has received from some SADCs following notification of complaints, it appears that complaints may also have been submitted by competitors. Two complaints received revealed that both programs were not registered with the SADC Ombuds Office. One has registered, while registration is pending on the second site. The Ombuds Office is following up on this program.

SADC OUTREACH

Local Law 9, as you are aware, required that SADCs prominently post a sign on-site that indicates how to contact the Ombuds Office, should individuals have comments or complaints regarding the SADC. As part of its annual outreach to all registered SADC programs, translated SADC Ombuds

Office posters were emailed and mailed to all registered programs in April of 2016. At that time, the poster was made available in seven languages: Chinese, English, Haitian Creole, Italian, Korean, Russian, and Spanish. A request was subsequently received from one program for two additional languages, Hindi and Gujarati, which was fulfilled. As new programs register, posters in all 9 languages are provided by email and mail. The email communications include a link to DFTA's website where extensive information on social adult day programming resides, including the text of Local Law 9, access to the registration form, signage, and the NYSOFA standards.

Last month, an email was sent to the current 283 registered programs reminding them about the requirement to prominently display the Ombuds Office posters, to respond to DFTA in acknowledgement of receipt of this notification, and to inform the programs that the Ombuds Office may conduct random, unannounced visits to confirm posting of the signage. Translations of Participant Rights have also been completed and emailed to all registered SADCs. The 26 MLTCs in NYC contracting with SADCs will be notified of these Ombuds Office transmissions.

SADC OMBUDS OFFICE COMPLAINT REVIEW PROCESS

The SADC Ombuds Office procedure is as follows: Upon receipt of complaints, each is reviewed and logged in our database, with an acknowledgement of receipt sent to the complainant, if contact information was provided. Complaints are then triaged for response, based on complaint content. The SADC Ombuds Office makes a determination as to whether the complaint suggests a referral to our City and/or State partners for their area of expertise, and/or a site visit to be conducted by the Ombuds Office. Site visits are made by the Ombuds Office in response to complaints regarding participant safety or lack of physical access or egress.

All complaints and relevant correspondence are sent to the SADC in question, their contracted MLTCs, and the NYS oversight agencies: DOH, OMIG and NYSOFA. A summary communication of all action taken on a given complaint is then provided to the complainant. It is important to note that several MLTCs have been very diligent in their follow up of complaints received, informing the Ombuds Office of unannounced site visits the MLTC will or has conducted, any findings related to the allegations or other observations, plus corrective action plans initiated by the MLTC.

INTERAGENCY COLLABORATION

Relationships developed with other City and State agencies have been integral to DFTA fulfilling its SADC Ombuds mandate. Interagency collaborations at the City level have included key partners such as the Fire Department, the Department of Health and Mental Hygiene, the Department of Buildings, the Commission on Human Rights, and the Department of Investigation. We continue to work with the Law Department to develop rules related to Local Law 9. In addition, we have begun the process of hiring a Director of the SADC Ombuds Office. It is expected that this will be extremely beneficial to DFTA's implementation of Local Law 9.

At the State level, OMIG has been an excellent partner in their willingness to work with DFTA's SADC Ombuds Office in response to complaints received. Notably, OMIG has convened bimonthly conference calls with the MLTCs, with DFTA included as an active participant. This has served to introduce all those involved to each other, and to raise concerns from all parties for discussion and potential resolution. DFTA plans to meet with the NYS DOH in the very near future, as they now have a NYC office with staff who are familiar with SADCs. This will undoubtedly enhance our collaborative efforts around ensuring quality social adult day programs. NYSOFA continues to be a close partner regarding DFTA's Ombuds Office activities. In all cases, the coordination across agencies helps in shaping our understanding of the responsibilities of other governmental entities as relevant to complaints received, as well as informing an appropriate DFTA response.

CONCLUSION

Thank you again for this opportunity to provide testimony on Local Law 9. I am pleased to answer any questions you may have.



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New York City Council Hearing

Oversight - Social Adult Day Care Follow-Up

Committee on Aging, Council Member Margaret Chin, Chair

February 8, 2017

Testimony by Jed A. Levine, Executive Vice President, Director of Programs and Services

CaringKind, The Heart of Alzheimer's Caregiving

Formerly known as the Alzheimer's Association, NYC Chapter

Thank you Chairperson Chin for the opportunity to discuss the important role of Social Adult Day Care as part of the continuum of care for persons with dementia in New York City.

I am Jed Levine, Executive Vice President and Director of Programs and Services at CaringKind. For over thirty years, we operated as the Alzheimer's Association. New York City Chapter. On December 1, 2015 we disaffiliated from the National Association and returned to our roots as an independent charity, doing business as CaringKind, the Heart of Alzheimer's Caregiving. Only our public name changed. We remain the only organization in New York City singularly focused on care and support for individuals with Alzheimer's and related disorders and their families and paid caregivers, with a comprehensive portfolio of programs and services directly delivered to clients.

Alzheimer's is a progressive and fatal brain disease, mostly affecting the elderly, which threatens to overwhelm the health care system, if we do not find a way of preventing, or hopefully curing it one day. Over 5 million people in the United States are living with Alzheimer's disease – we estimate that 5% reside in New York City. That number is expected to grow to as many as 14 million nationwide by mid-century. Every 66 seconds a person in the United States is diagnosed with Alzheimer's disease and we expect by 2030 there will be 7.1 million people age 65 and older living with Alzheimer's. The financial ramifications of the disease are daunting and currently cost America \$236 billion annually. The out of pocket costs for caring for a relative with Alzheimer's is greater than that of non-Alzheimer's caregivers. This is the most costly disease in the United States.

A bit of relevant background – I supervised the first Adult day program for persons with dementia in NYC at the International Center for the Disabled. Before that program, there was nothing for persons with dementia in the community. I know the benefit of these programs for persons with the disease and for their families. I know the sense of connectedness, and how it combats the deadening isolation of the disease, and allows individuals to tap their individual strengths, giving them an opportunity to express themselves, to experience pleasure, and provide meaning in their lives.

By providing a social community, cognitively impaired individuals thrive with the engagement, activities and socialization provided by social adult day services. The reduction in isolation

such as Social Adult Day Services, helps provide cost-effective ways to deal with the problems families face now, and will continue to face in ever increasing numbers. However, these programs cannot be provided without the appropriate oversight and governance, and need to be provided in a sufficient number that will allow family members, who are working, to continue to be part of the tax base, contributing to the economic base of the city. Social Adult Day Services, under proper supervision and training are an effective option for persons with dementia and their families. The implementation of an ombudsman and an effective reporting process would positively influence Social Adult Day program management. It is important that seniors and their families know what is available to them to guarantee the highest quality of life possible.

CaringKind deeply appreciates the leadership shown by Council Chair and the Committee on Aging in ensuring that Social Adult Day Services are held accountable to providing these services in a safe, appropriate manner that is consistent with the laws and regulations of New York State.

CaringKind is on the front lines every day providing a wide variety of educational and support programs, including over 90 monthly support groups, a Wanderer's Safety Program, a 24-hour Helpline 646-744-2900 and social work services with professional counselors all designed to assist caregivers, family members and persons with dementia develop methods for successfully coping with this progressive and terminal illness. We also train family members, home care workers and other professionals to better care for persons with dementia. Connect2Culture is our program increasing access for persons with dementia and their families to New York's rich cultural and arts communities A major focus for our organization is outreach to the Latino, Chinese, African-American, Russian, LGBT, and Orthodox Jewish communities and other underserved and immigrant populations.

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