

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW YORK'S OVERSIGHT OF
MEDICAID MANAGED CARE
ORGANIZATIONS DID NOT ENSURE
PROVIDERS COMPLIED
WITH HEALTH AND SAFETY
REQUIREMENTS AT 18 OF 20
ADULT DAY CARE FACILITIES REVIEWED**

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Amy J. Frontz
Deputy Inspector General
for Audit Services

March 2020
A-02-18-01027

Office of Inspector General

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OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

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Report in Brief

Date: March 2020

Report No. A-02-18-01027

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

In New York, adult day care facilities provide functionally impaired adults with socialization, supervision and monitoring, and nutrition services in a protective setting. Beneficiaries enrolled in New York's Medicaid managed long-term-care program receive adult day care services from providers contracted with Medicaid managed care organizations (MCOs). New York's health and safety requirements for adult day care facilities are detailed in its MCO contract approved by the Centers for Medicare & Medicaid Services (CMS). Our audits of adult day care facilities in six States identified multiple health and safety issues that put vulnerable adults at risk; therefore, we decided to review similar facilities in New York.

Our objective was to determine whether New York's oversight of Medicaid MCOs ensured compliance with Federal and State health and safety requirements for adult day care facilities.

How OIG Did This Audit

Of the 275 adult day care services providers in New York, we selected 20 for audit based on the number of reported encounters and geographic location. We conducted unannounced site visits at the selected facilities. During the site visits, we inspected the facilities' physical environment and reviewed the providers' documentation for staff training, emergency preparedness, and staff health status.

New York's Oversight of Medicaid Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed

What OIG Found

New York's oversight of Medicaid MCOs did not ensure that 18 of the 20 adult day care services providers we reviewed complied with Federal and State health and safety requirements. Specifically, we found 476 instances of noncompliance with requirements for staff training, physical environment and safety, emergency preparedness, and staff health status.

The instances of noncompliance occurred because the MCOs did not adequately monitor their contracted providers to ensure compliance with adult day care health and safety requirements. Specifically, we found that the survey tools and procedures used during the MCOs' required annual site visits to providers were not adequate. Further, New York's oversight of the MCOs did not include obtaining or reviewing the results of the MCO's site visits, which would be necessary to verify the MCOs' compliance with health and safety requirements detailed in New York's CMS-approved MCO contract.

These deficiencies could have significantly impacted the health and safety of vulnerable Medicaid beneficiaries.

What OIG Recommends and New York Comments

We recommend that New York (1) ensure that the MCOs work with their contracted adult day care services providers to correct the 476 instances of noncompliance with health and safety requirements that we identified, (2) require MCOs to improve their site visit procedures to ensure compliance with health and safety requirements detailed in New York's CMS-approved MCO contract and New York's regulations on adult day care programs, and (3) obtain and review the results of MCO site visits at adult day care facilities as part of its beneficiary health and safety monitoring activities.

In written comments on our draft report, New York did not indicate concurrence or nonconcurrence with our recommendations and described actions that it had taken to expand its oversight of adult day care services providers. After reviewing New York's comments, we maintain that our findings and recommendations are valid.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Office of Inspector General (OIG) has conducted health and safety audits of adult day care facilities in six States. The audits identified multiple health and safety issues that placed vulnerable adults at risk.¹ Therefore, we decided to review New York social adult day care (adult day care) providers contracted by Medicaid managed care organizations (MCOs) to determine whether similar risks affecting vulnerable beneficiaries existed at these facilities.

OBJECTIVE

Our objective was to determine whether the New York State Department of Health's (State agency's) oversight of Medicaid MCOs ensured compliance with Federal and State health and safety requirements for adult day care facilities.

BACKGROUND

The Medicaid Program

The Medicaid program provides medical assistance to low-income individuals and individuals with disabilities. The Federal and State Governments jointly fund and administer the Medicaid program. At the Federal level, the Centers for Medicare & Medicaid Services (CMS) administers the program.

New York Adult Day Care Services Providers

In New York, the State agency administers the Medicaid program. Under New York's Medicaid managed care program, contracted MCOs are paid monthly fees to ensure that enrolled beneficiaries have access to a comprehensive range of medical services, including adult day care services from providers contracted by MCOs.²

Adult day care facilities provide functionally impaired adults with services in a protective setting, including socialization, supervision and monitoring, and nutrition. They may also provide services such as personal care, maintenance and enhancement of daily living skills, transportation, caregiver assistance, and case coordination and assistance.

The State agency, working in conjunction with its Office of Medicaid Inspector General, requires adult day care services providers contracted by MCOs to certify, on an annual basis, that their facilities comply with health and safety requirements.

¹ Appendix B contains a list of related OIG reports.

² Adult day care services are covered under New York's Medicaid managed long-term-care program. Beneficiaries enrolled in the program are chronically ill or disabled and wish to stay in their homes and communities.

Federal and State Requirements

To ensure beneficiaries' health and safety, the State agency's CMS-approved MCO contract requires that all contracted adult day care services providers meet the standards and requirements of New York's regulations for adult day care programs. These regulations establish the minimum requirements for the administration and operation of adult day care programs, including requirements for staff training, physical environment and safety, emergency preparedness, and staff health status.³ Additionally, MCOs must provide oversight of their contracted adult day care services providers, including annual site visits, to ensure compliance with program requirements.⁴

HOW WE CONDUCTED THIS AUDIT

Of the 275 adult day care services providers in New York as of March 31, 2018, we selected 20 providers for audit. We selected the providers based on the number of reported encounters⁵ and geographic location.⁶ We also met with representatives from four MCOs associated with the selected facilities to discuss their oversight and monitoring activities for adult day care services providers.⁷ We conducted unannounced site visits at 20 facilities.⁸ Specifically, we inspected the facilities' physical environment and reviewed the providers' documentation for staff training, emergency preparedness, and staff health status.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A contains the details of our audit scope and methodology.

³ Title 9, New York Compilation of Codes, Rules, & Regulations (NYCRR) § 6654.20.

⁴ State agency's CMS-approved MCO contract, Article VII(C)(2). The contract also states that site visits must be conducted prior to entering into a contract with any adult day care services provider.

⁵ Encounters are contracted providers' claims for reimbursement for services provided to beneficiaries enrolled in Medicaid managed care plans.

⁶ The 275 providers reported 511,871 encounters for the quarter ended March 31, 2018. Of these providers, 245 were located in New York City and 3 nearby counties and accounted for approximately 99 percent of all encounters. From these 245 providers, we selected 20 providers that accounted for approximately 15 percent of all encounters.

⁷ In total, the 4 MCOs contracted with 19 of the 20 adult day care services providers we reviewed. We did not meet with representatives from the MCO that contracted with the remaining provider.

⁸ For one facility, we conducted a scheduled site visit following our initial unannounced site visit.

FINDINGS

The State agency's oversight of Medicaid MCOs did not ensure that 18 of the 20 adult day care services providers we reviewed complied with Federal and State health and safety requirements. Specifically, we found 476 instances of noncompliance with requirements for staff training, physical environment and safety, emergency preparedness, and staff health status.⁹ The instances of noncompliance occurred because the MCOs did not adequately monitor their contracted providers to ensure compliance with adult day care health and safety requirements found in the State agency's CMS-approved MCO contract and detailed in New York's regulations on adult day care programs. These deficiencies could have significantly impacted the health and safety of vulnerable Medicaid beneficiaries.

Appendix C summarizes the areas of noncompliance at each facility.

PROVIDERS DID NOT COMPLY WITH STAFF TRAINING REQUIREMENTS

All adult day care staff must complete an orientation and training on working with the elderly, participants' rights, safety, and accident prevention. In addition, all staff must complete at least 6 hours of training annually to develop, review, or expand skills or knowledge and training at least annually in the use of fire extinguishers, written procedures concerning evacuation and emergency situations, and emergency telephone numbers. Providers must maintain appropriate documentation for all training provided to staff (9 NYCRR § 6654.20(d)(2)(iv)(c)). Prior to delivery of any services, all service staff¹⁰ must complete basic training¹¹ followed by additional training¹² within 3 months of being assigned to provide services (9 NYCRR § 6654.20(d)(2)(iv)(d)).

Of the 20 adult day care services providers we visited, 16 had 1 or more deficiencies related to staff training requirements. In total, we found 217 instances of noncompliance. Specifically, we found 150 instances for which providers had not documented whether required trainings applicable to all staff were completed and 67 instances in which providers had not documented

⁹ During our site visits, we informed provider officials of all instances of noncompliance with physical environment and safety requirements so that they could take immediate corrective action. Following our discussion of the results of our audit with State agency officials, we provided the State agency with documentation detailing the specific instances of noncompliance at the adult day care facilities we reviewed.

¹⁰ Service staff provide participants with adult day care services such as supervision and monitoring, personal care, and maintenance and enhancement of daily living skills.

¹¹ Service staff basic training is composed of training in personal care skills, body mechanics, and behavior management.

¹² Service staff additional training is composed of 20 hours of training that covers topics including socialization skills and activities, supervision and monitoring, personal care skills, the family and family relationships, mental illness and mental health, and cardiopulmonary resuscitation.

whether certain basic and additional trainings for service staff were completed. Without such documentation, we could not determine whether staff completed required trainings.

PROVIDERS DID NOT COMPLY WITH PHYSICAL ENVIRONMENT AND SAFETY REQUIREMENTS

Adult day care services providers must maintain and operate buildings and equipment so as to prevent fire and other hazards to personal safety, notify in writing the local fire jurisdiction of the facility's presence and hours of operation, and use a facility with sufficient space to accommodate program activities and services (9 NYCRR § 6654.20(d)(2)(vi)).

Of the 20 adult day care services providers we visited, 13 had 1 or more deficiencies related to physical environment and safety requirements. In total, we found 51 instances of noncompliance. Specifically, we found 48 instances of participant health and safety hazards (e.g., a locked emergency exit door, tripping hazards, slip and fall hazards, black mold, and evidence of vermin), 2 instances in which providers had not documented that they notified the local fire jurisdiction of their presence and hours of operation, and 1 instance in which a facility's maximum occupancy was exceeded by 21 persons.¹³ The following photographs depict some of the conditions we identified during our site visits.



Photograph 1: Emergency exit door deadbolted shut and blocked by heavy exercise equipment.



Photograph 2: Floor mat in facility's main entrance not properly secured to floor.

¹³ We used the providers' sign-in sheets, staff rosters, and certificates of occupancy to determine whether the facilities' maximum occupancy was exceeded. We did not include OIG auditors in our calculations.



Photograph 3: Restroom ceiling tile with signs of water damage and mold.



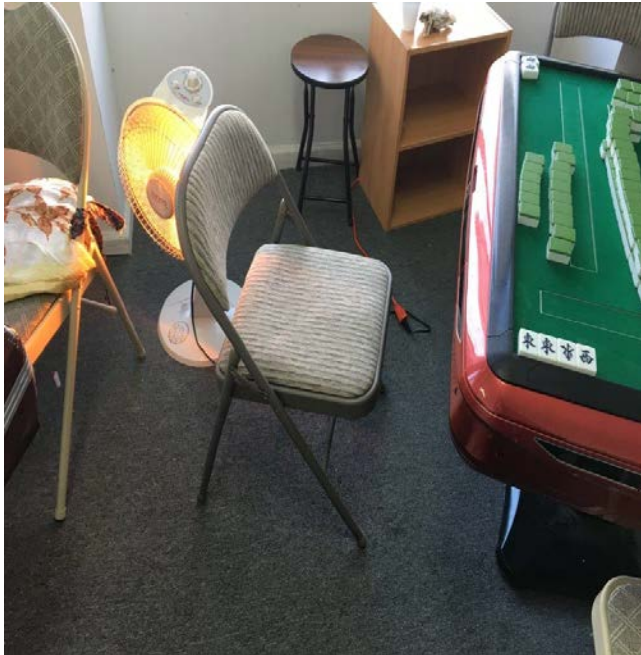
Photograph 4: Evidence of vermin in kitchen where meals were served.



Photograph 5: Open sharps disposal container of used acupuncture needles found in unsupervised room occupied by participants.



Photograph 6: Damaged concrete at end of emergency exit ramp poses tripping risk.



Photograph 7: Fire safety and burn hazards from electric space heater near participants seating.



Photograph 8: Empty hand soap dispenser in men's restroom.

PROVIDERS DID NOT COMPLY WITH EMERGENCY PREPAREDNESS REQUIREMENTS

Adult day care services providers must have written procedures for handling emergencies and the names and telephone numbers of each participant's emergency contact person and physician, and must conduct fire drills at least twice a year and document those drills (9 NYCRR § 6654.20(d)(2)(vii)).

Of the 20 adult day care services providers we visited, 12 had 1 or more deficiencies related to emergency preparedness requirements. In total, we found 124 instances of noncompliance. Specifically, we found 123 instances in which providers did not document the name and telephone number for participants' emergency contacts and physicians. In addition, we found that one facility documented only one annual fire drill. Therefore, we could not determine whether the facility conducted fire drills at least twice a year.

PROVIDERS DID NOT COMPLY WITH STAFF HEALTH STATUS REQUIREMENTS

Adult day care services providers must ensure that the health status of each staff person who may or will have contact with participants is assessed and documented annually and that the health status of each new staff person is assessed and documented prior to contact with participants. In addition, each staff person who may or will have contact with participants must have a tuberculosis screening prior to employment and no less than every 2 years thereafter (9 NYCRR § 6654.20(d)(2)(iv)(a)(3)).

Of the 20 adult day care services providers we visited, 12 had 1 or more deficiencies related to staff health status requirements. In total, we found 84 instances of noncompliance. Specifically, we found 43 instances in which providers had not documented staff health status assessments, 26 instances in which providers had not documented staff tuberculosis screenings, and 15 instances in which providers employed individuals prior to conducting a tuberculosis screening.¹⁴ Without documentation of staff health status assessments and tuberculosis screenings, we could not determine whether the required assessments and screenings were performed.

INADEQUATE MANAGED CARE ORGANIZATION MONITORING

Although New York Medicaid MCOs performed the monitoring required by the State agency's CMS-approved MCO contract, including conducting site visits at adult day care facilities, our review of the MCOs' site visit assessment tools¹⁵ and survey results for the selected providers found that their site visits were inadequate. We found that nearly all site visits did not include a review of records to determine whether providers complied with all health and safety requirements detailed in the CMS-approved MCO contract and New York's regulations on adult day care programs, including specific requirements related to staff training, physical environment and safety, emergency preparedness, and staff health status.

Further, the State agency's oversight of MCOs did not include obtaining or reviewing the results of MCO site visits at adult day care facilities, which would be necessary to verify the MCOs' compliance with health and safety requirements detailed in the State agency's CMS-approved MCO contract.

RECOMMENDATIONS

We recommend that the New York State Department of Health:

- ensure that MCOs work with their contracted adult day care services providers to correct the 476 instances of noncompliance with health and safety requirements identified in this report,
- require MCOs to improve their site visit procedures to ensure compliance with health and safety requirements detailed in the State agency's CMS-approved MCO contract and New York's regulations on adult day care programs, and
- obtain and review the results of MCO site visits at adult day care facilities as part of its beneficiary health and safety monitoring activities.

¹⁴ The 15 individuals were employed by 7 providers and received a tuberculosis screening between 1 and 8 months after their date of hire.

¹⁵ Each MCO developed its own site visit assessment tool. The tools were composed of a checklist of standards to be met and the assessor's comments concerning deficiencies and corrective actions.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency did not indicate concurrence or nonconcurrence with our recommendations and described actions that it had taken to expand its oversight of adult day care services providers. Specifically, the State agency indicated that it will work with MCOs to correct the instances of noncompliance identified in our report. In addition, the State agency indicated that it has expanded its survey process to include a review of adult day care facilities. The State agency also described its process for reviewing the results of a sample of MCO site visits at adult day care services providers to ensure providers' compliance with health and safety requirements. The State agency's comments are included in their entirety as Appendix D.

After reviewing the State agency's comments, we maintain that our findings and recommendations are valid. We acknowledge the State agency's efforts to expand its oversight of adult day care services providers; however, we continue to maintain that during our audit period, the survey tools and procedures used during MCOs' required annual site visits to providers were not adequate and to recommend that these procedures be improved.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 275 providers in New York where beneficiaries received adult day care services for the quarter ended March 2018, we selected 20 providers for audit. We selected the providers based on the number of encounters and geographic location.¹⁶

To accomplish the objective of our audit, we met with State agency officials to gain an understanding of the health and safety requirements for adult day care facilities and the State agency's oversight of MCOs. We also met with representatives from four MCOs contracted with the selected facilities to discuss their oversight and monitoring activities for adult day care services providers.¹⁷ In addition, we conducted unannounced site visits at 20 facilities.¹⁸ Specifically, we inspected the facilities' physical environment and reviewed the providers' documentation for staff training, emergency preparedness, and staff health status.

We did not assess the State agency's overall internal control structure. Rather, we limited our review of internal controls to those applicable to our audit objective.

We performed our fieldwork at the State agency's offices in Albany, New York, and MCO offices and adult day care facilities located throughout New York City and three nearby counties.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- met with State agency officials to gain an understanding of the health and safety requirements for adult day care facilities and the State agency's oversight of its MCOs;
- obtained the State agency's MCO encounter data for adult day care services provided during the quarter ended March 2018;
- determined whether any of the adult day care services providers that provided services during the quarter ended March 2018 were excluded from participation in Federal health care programs;

¹⁶ See footnotes 5 and 6 for details of how we selected the providers.

¹⁷ See footnote 7 for details of meetings with MCO representatives.

¹⁸ See footnote 8 for details of facility site visits.

- selected a judgmental sample of 20 adult day care services providers that provided services to beneficiaries during the quarter ended March 2018;
- met with representatives from four MCOs that contracted with the sampled providers to discuss the MCOs' oversight and monitoring activities for adult day care services providers;
- obtained the MCOs' site visit survey and assessment tools, provider contracts for the sampled providers, annual facility site visit results, and results of facility site visits conducted prior to contracting with the sampled adult day care services providers;
- conducted site visits at the sampled adult day care facilities and determined whether:
 - the facility's entrances, emergency exits, common areas, restrooms, and kitchen were free of safety hazards;
 - the facility had an emergency preparedness plan including policies and procedures for emergencies such as fire or flood and incidents such as choking or fainting;
 - the facility had a certificate of occupancy, insurance coverage, documented fire drills, and provided written notification to the local fire jurisdiction of the facility's presence and hours of operation;
 - emergency contact and physician information requirements for each participant in attendance were met; and
 - training, health status assessment, and tuberculosis screening requirements were met for each staff person on duty;
- determined whether the sampled providers complied with Federal and State health and safety requirements; and
- summarized and discussed the results of our audit with State agency officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>California Needs To Improve Oversight of Community-Based Adult Services Providers' Compliance With Health and Safety and Administrative Requirements</i>	A-09-18-02002	9/30/2019
<i>Kentucky Did Not Comply With Federal Waiver and State Requirements at 14 of 20 Adult Day Health Care Facilities Reviewed</i>	A-04-18-00123	7/9/2019
<i>Four States Did Not Comply With Federal Waiver and State Requirements in Overseeing Adult Day Care Centers and Foster Care Homes</i>	A-05-19-00005	5/16/2019
<i>Wisconsin Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Service Centers Reviewed</i>	A-05-17-00030	10/15/2018
<i>Mississippi Did Not Comply With Federal Waiver and State Requirements at All 20 Adult Day Care Facilities Reviewed</i>	A-04-17-00116	8/20/2018
<i>Illinois Did Not Comply With Federal Waiver and State Requirements at 18 of 20 Adult Day Service Centers Reviewed</i>	A-05-17-00028	7/24/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for All 20 Adult Day Care Centers Reviewed</i>	A-05-17-00009	5/30/2018
<i>Minnesota Did Not Comply With Federal Waiver and State Requirements for 18 of 20 Family Adult Foster Care Homes Reviewed</i>	A-05-16-00044	10/31/2017

APPENDIX C: AREAS OF NONCOMPLIANCE AT EACH FACILITY

Facility	Staff Training	Physical Environment and Safety	Emergency Preparedness	Staff Health Status	Total
1	22	6	7	17	52
2	5	1	1	1	8
3	15	0	1	11	27
4	13	2	0	0	15
5	8	3	0	1	12
6	34	10	11	11	66
7	0	0	0	0	0
8	20	17	19	9	65
9	0	2	0	0	2
10	18	0	0	3	21
11	14	1	7	2	24
12	15	4	35	16	70
13	1	1	0	0	2
14	19	0	3	2	24
15	0	2	17	0	19
16	15	0	17	1	33
17	12	1	0	0	13
18	4	1	5	10	20
19	0	0	0	0	0
20	2	0	1	0	3
Total	217	51	124	84	476

Note: We provided to the State agency under a separate cover the specific facilities reviewed and their specific violations.

APPENDIX D: STATE AGENCY COMMENTS



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

January 21, 2020

Ms. Brenda Tierney
Regional Inspector General for Audit Services
Department of Health and Human Services - Region II
Jacob Javitz Federal Building
26 Federal Plaza
New York, New York 10278

Ref. No: **A-02-18-01027**

Dear Ms. Tierney:

Enclosed are the New York State Department of Health's comments on the United States Department of Health and Human Services, Office of Inspector General's Draft Audit Report **A-02-18-01027** entitled, "New York's Oversight of Medical Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed."

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Sally Dreslin".

Sally Dreslin, M.S., R.N.
Executive Deputy Commissioner

Enclosure

cc: Marybeth Hefner
Diane Christensen
Elizabeth Misa
Geza Hrazdina
Dan Duffy
Erin Ives
Timothy Brown
Amber Rowan
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**New York State Department of Health
Comments on the Department of Health and Human Services
Office of Inspector General Draft Audit Report A-02-18-01027 entitled,
“New York’s Oversight of Medicaid Managed Care Organizations Did
Not Ensure Providers Complied With Health and Safety Requirements at
18 of 20 Adult Day Care Facilities Reviewed”**

The following are the New York State Department of Health’s (Department) comments in response to the Department of Health and Human Services, Office of Inspector General (OIG) Draft Audit Report A-02-18-01027 entitled, “New York’s Oversight of Medicaid Managed Care Organizations Did Not Ensure Providers Complied With Health and Safety Requirements at 18 of 20 Adult Day Care Facilities Reviewed.”

Recommendation #1:

Ensure that MCOs work with their contracted adult day care services providers to correct the 476 instances of noncompliance with health and safety requirements identified in this report.

Response #1:

The Department will work with the Managed Care Organizations (MCOs) and the New York State Office for the Aging to address and correct the instances of noncompliance identified in this report for the Social Adult Day Care (SADC) facilities included in the audit.

Recommendation #2:

Require MCOs to improve their site visit procedures to ensure compliance with health and safety requirements detailed in the State agency’s CMS-approved MCO contract and New York’s regulations on adult day care programs.

Response #2:

The Department has expanded its survey process to include a review of SADC facilities (see Response #3). MCOs are required to provide the Department with documentation on any noncompliance identified and the corrective actions taken.

Recommendation #3:

Obtain and review the results of MCO site visits at adult day care facilities as part of its beneficiary health and safety monitoring activities.

Response #3:

The Department’s current process requires MCOs to send us a list of all SADC providers the plan has contracted with during a specific time period (currently January 1, 2017 to December 31, 2018). The Department then selects a sample of 25 SADCs and requests the following information from the MCO:

1. A copy of the most up-to-date, executed provider contract;
2. The date and evidence of the required provider site visit that was performed prior to the contract’s execution;
3. The date and evidence of required annual provider site visits performed during the time period;

4. Evidence the plan has confirmed the provider's compliance with 9 NYCRR 6654.20 during the required site visits;
5. Evidence the plan has confirmed the provider's compliance with all other standards required by law or regulation for the operation of said provider, including but not limited to laws, codes, and regulations regarding the facility's structure, labor requirements, and food quality; and
6. Documentation of any noncompliance identified, and corrective actions taken.