

# Heightened Scrutiny Evidence Packet

## Setting Information

**Provider Name:**

United Cerebral Palsy of NYC, Inc. (dba as Adapt Community Network), Site 2

**Location of Setting:** Bronx, NY 10458

**Type of Setting:** Day Habilitation

**Medicaid Home and Community-Based Services Being Provided at the Setting:** Day Habilitation

## Heightened Scrutiny Prong

- Prong 1: Setting is in a publicly or privately operated facility that provides inpatient institutional treatment.
- Prong 2: Setting is in a building on the grounds of, or adjacent to, a public institution.
- Prong 3: Setting has the effect of isolating individuals from the broader community.

## Qualification for Prong

**Describe briefly below how the setting meets the prong indicated (what facility is it in or located on the grounds of, or adjacent to, etc.):**

The site had limited transportation options available, and individuals were unable to have meaningful community interactions as there had been only one van that is wheelchair accessible to facilitate such activities. Although this site is in the middle of a very active community, with readily available public transportation and local resources, program participants were not able to properly engage with the broader community. Subsequent surveys have noted improvement with community inclusion opportunities for individuals.

## Provider Compliance Summary

### Requirements for All HCBS Settings

Compliant?	Federal Requirement	Summary
<p>42 CFR 441.301(c)(4)(i)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Settings are integrated and support full access of individuals receiving Medicaid HCBS to the greater community, including opportunities to seek employment and work in competitive integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as individuals not receiving Medicaid HCBS.</p>	<p>OPWDD's Division of Quality Improvement survey staff report after conducting an on-site survey on 7/20/21, that the site demonstrates compliance related to individual's rights, behavior management requirements, community activities and access, choice-making, person-centered planning, and other HCBS-settings requirements. While the 3rd floor day habilitation facilities will continue to co-locate with each other in the building,</p>

		<p>the imminent transfer of the 2nd floor programs off-site with their cumulative 100+ individuals will alleviate the institutional aesthetic of the physical plant. Record review, interviews, and observations conducted on 7/20/21 provided empirical support that the program does not have isolating or institutional practices.</p> <p>The site now has increased transportation opportunities to access the broader community. The program has purchased additional vehicles and has implemented a travel training program to teach individuals at the program to use a variety of public transportation options that are available. Individuals are encouraged to sign up for this training, which has a series of scheduled dates where various aspects of increasing independence with public transportation options are reviewed.</p>
<p>42 CFR 441.301(c)(4)(ii)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Settings are selected by the individual from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the individual's needs, preferences, and for residential settings, resources available for room and board.</p>	<p>This is a day habilitation site. Alternative settings options are discussed with individuals as part of the person-centered planning process. The agency is CQL (Council on Quality and Leadership) accredited and utilizes Personal Outcome Measures (POM) to ensure needs and preferences of individuals are at the center of the person-centered planning (PCP) process.</p> <p>Additionally, OPWDD requires Care Managers to discuss alternative non-disability specific settings with individuals as part of the Life Plan review process. Care Coordination Organizations (CCOs) are reviewed for this requirement annually as part of DQI's quality review survey of Care Management.</p>
<p>42 CFR 441.301(c)(4)(iii)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Settings ensure an individual's rights of privacy, dignity, respect, and freedom from coercion and restraint.</p>	<p>Individuals in this setting express satisfaction with how staff treat them with dignity and respect. The agency has policies and procedures related to ensuring individual rights and provides opportunities for self-advocacy and training for individuals and staff on appropriate topics.</p>

<p>42 CFR 441.301(c)(4)(iv)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Settings optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact.</p>	<p>Individuals in this setting make daily choices about the services and supports that they would like to participate in. The day habilitation site has travel training classes available for individuals due to the proximity of the agency to the train and buses. This allows individuals to increase their independence when accessing community activities and businesses. Individuals are encouraged to sign up for these classes, which are held on a regular monthly basis and address a variety of topics related to accessing public transportation more independently.</p>
<p>42 CFR 441.301(c)(4)(v)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Settings facilitate individual choice regarding services and supports, and who provides them.</p>	<p>Individuals in this setting make daily choices about the services and supports that they would like to participate in. Through the agency's CQL accreditation, POM interviews are conducted in order to determine each individual's most desired Personal Outcomes and choices. Satisfaction surveys are conducted annually to assess that the program is effectively addressing individuals' interests, needs, choices, and preferences.</p>

**Additional Requirements for Provider-Owned or Controlled Settings**

*Standards for Provider-Owned or Controlled Residential and Non-Residential Settings*

Compliant?	Federal Requirement	Summary
<p>42 CFR 441.301(c)(4)(vi)(C)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Individuals have the freedom and support to control their own schedules and activities; and have access to food at any time.</p>	<p>Individuals are supported to make daily choices in their daily schedules and activities as illustrated below. Individuals at this site have access to food at any time, as reported in the four Individual Experience Interviews received.</p>
<p>42 CFR 441.301(c)(4)(vi)(D)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Individuals are able to have visitors of their choosing at any time.</p>	<p>The agency has a policy that allows individuals to receive visitors to the site at any time.</p>

<p>42 CFR 441.301(c)(4)(vi)(E)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>The setting is physically accessible to the individual.  (Not modifiable)</p>	<p>The setting is physically accessible and has elevators within the building to access the program which is located on the third floor. Individuals have full access to all areas within the facility.</p>
<p>42 CFR 441.301(c)(4)(vi)(F)</p> <p><input checked="" type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No</p>	<p>Any modifications of the additional conditions under 441.301(c)(4)(vi)(A) through (D) for provider-owned and controlled settings must be supported by a specific assessed need and justified in the person-centered service plan.</p>	<p>The agency has policies and procedures on informed consent and on protections that must be implemented and documented when there are any restrictions to individual rights. These are reviewed annually with individuals. Staff are trained on this annually as well.</p>

*Standards for Provider-Owned or Controlled Residential Settings Only*

Compliant?	Federal Requirement	Summary
<p>42 CFR 441.301(c)(4)(vi)(A)</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No  <input checked="" type="checkbox"/> Not Applicable</p>	<p>The unit or dwelling is a specific physical place that is owned, rented, or occupied under a legally enforceable agreement by the individual receiving services, and the individual has the same responsibilities and protections from eviction as all tenants under landlord/tenant law of the State, county, city, or other designated entity. In settings where tenant laws do not apply, a lease, residency agreement or other written agreement is in place providing protections to address eviction processes and appeals comparable to those provided under the jurisdiction's landlord/tenant law.</p>	<p>Not applicable, as this is a certified day habilitation site and not a certified residential site.</p>
<p>42 CFR 441.301(c)(4)(vi)(B)</p> <p><input type="checkbox"/> Yes  <input type="checkbox"/> Partial  <input type="checkbox"/> No  <input checked="" type="checkbox"/> Not Applicable</p>	<p>Each individual has privacy in their sleeping or living unit: (1) Units have entrance doors lockable by the individual, with only appropriate staff having keys to doors. (2) Individuals sharing units have a choice of roommates in that setting. (3) Individuals have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.</p>	<p>Not applicable, as this is a certified day habilitation site and not a certified residential site.</p>

## **Recommendation**

As required by 42 CFR 441.301(c)(5), the State of New York submits this request for heightened scrutiny review for the setting identified above. The State has compiled evidence that the setting is integrated in and supports full access of individuals to the greater community, is selected by the individual from among disability and non-disability specific settings, ensures individual rights, and promotes individual initiative, autonomy, choice, and independence.

### ***Instructions for Completing Sections One through Four***

The following four (4) sections may be expanded in length to capture evidence of HCBS Final Rule compliance. However, a complete heightened scrutiny packet may be no longer than ten (10) pages in length. The ten (10) pages should include documentation that demonstrates support of the statements made here. Any additional supporting documentation should be kept by agencies/offices/units for the recommended amount of time.

## **Section One**

### ***On-Site Visit Observation***

**Date Conducted:** 7/20/2021

**State Agency/Entity that Conducted the On-Site Visit:** NYS Office for People With Developmental Disabilities (OPWDD) – Division of Quality Improvement (DQI)

### **Description of the Setting:**

The day habilitation site is located in the borough of the Bronx in New York City. It is just two blocks away from a bustling business area. The day program is co-located with another day habilitation program operated by the same agency. The programs occupy approximately 32,000 sq ft on the 3rd floor of a five-story commercial building, collectively. At the corner of the building is a small store front. There are 2 passenger elevators, and the building has a large freight elevator. The stairwell off the main entrance in the building is often used to gain access to any floor in the building.

The day program is located in the heart of a business district which is known for its richness in diversity and culture. In the neighborhood are multi-dwelling apartment buildings that surround the many businesses in the area. The neighborhood is densely populated. Public transportation is readily accessible with a northbound MTA bus stop directly outside the building door. In addition, the mass transit line is down the block and the train line is 3 blocks west of the program location. There are public park spaces within walking distance.

The community is filled with people from various backgrounds and cultures. The diversity is seen in the restaurants and street foods that line the streets such as Latin, Chinese, Caribbean, healthy choices (vegan/vegetarian), fruit and fish markets, etc. There are major retailers in the area such as: Gap, Marshall's, CVS, Duane Reed and Burlington Coat Factory as well as several banks such as Chase and Citibank. Small businesses are also plentiful in the area. Such businesses include hair and nail salons, tax and insurance businesses, fitness centers, supermarkets, pet shops, small clothing and household items stores, fast food restaurants, etc. Within walking distance there are parks and during the warm seasons, a farmer's market. Another nearby location offers tennis courts and a community center. Also nearby is a public library with a small theater, Fordham University and Monroe College.

## **Section Two**

### ***Community Integration Observations and Input from Individuals Served (without observation by staff), Family Members/Guardians, and Staff***

#### **Individual Interviews:**

Individual A reports that they have attended this day habilitation program for 24 years. They enjoy going to the local movie theater and activities with their friends at the program. Individual A has recently gone shopping, out to eat, and to the park with their friends through this day habilitation site. When at the program site, individual A reports they like to do puzzles, arts and crafts, and food preparation.

Individual B has attended this program for 6 years, and report that they enjoy doing arts and crafts activities at the day habilitation more than anything else. Individual B reports that they like to spend their money on food and shopping as their favorite community activities.

Individual C has attended this day habilitation program for 3 years. They enjoy walking, meeting new people, shopping, activities at the park and buying an ice cream when in the community. Individual C likes to spend their money on ice cream the most.

Individual D has been attending this program for 27 years. They like to spend time with friends, coloring, and shopping. They also like activities in the community such as dining in restaurants and shopping for and spending their money on clothes, books, and food.

All individuals interviewed report that they decide their schedules, their privacy is respected, and that they are supported by staff to do the things that they want to do. They are supported by staff to learn new things, feel comfortable communicating any concerns they might have, and have control over their money. Individuals also reported that they can eat when and where they want, have visitors when they want, and were given a choice of program settings.

#### **Employee Interviews:**

DQI conducts on site reviews (referred to as “surveys”) of certified HCBS settings such as day habilitation programs on a routine basis. Each site is reviewed for community integration, physical plant compliance and safety standards, quality of life, ability to make individualized choices, rights, and overall compliance with HCBS settings requirements, along with other NYS and federal requirements.

Agency management report that staff support people to participate in the interview process with direct support staff who are hired to work at the day program. Planning meetings are scheduled at a time and date that allows the person supported, their family member/caregiver and advocate to actively participate. Staff will conduct virtual meetings when an in-person meeting is not convenient or possible. The day program staff will go to the person’s residence if that’s the preferred location to attend a meeting.

Throughout the year, the day program staff facilitate activities and events that honor and celebrate the various cultures and religious beliefs of the people supported who represent the day program.

Advisory council meetings are held every 4-6 weeks to dialog and provide a forum for day habilitation participants to air any concerns. A few times during the year, family meetings are held to provide agency or program updates as well as provide the opportunity to raise and address any general

concerns. Staff are trained at least annually on all required areas to meet the needs and interests of the person supported.

The day habilitation site has travel training classes available for individuals due to the proximity of the agency to the train and buses. This allows individuals to increase their independence when accessing community activities and businesses. Individuals are encouraged to sign up for these classes, which are held on a regular monthly basis and address a variety of topics related to transportation.

Adapt's calendar of community events demonstrates that individuals are offered many types of classes and groups to participate in, including jewelry design, graphic design, cinema, nutrition, health and wellness, money math and virtual shopping, cooking 101, music, self-advocacy, and many more. Individuals at the site regularly attend advisory council meetings as well. Review of community activities throughout 2019 indicate that individuals have attended diverse community activities, such as Dave and Buster's, bowling, classes at an art studio, classes on using a tablet, the zoo, the museum, the movie theater, the Museum of Modern Art, the Bronx art museum, a senior center, the petting zoo, a medieval restaurant, miniature golf, sip and paint, a farm, and many more. The agency also maintains a database of community connections and relationships that the agency has cultivated with local businesses.

Review of the agency's annual 2020 satisfaction survey shows that satisfaction surveys are a major source of feedback for the agency from people supported and their families. The survey has been conducted annually for roughly 20 years. The agency reports that approximately a third of the responses received during implementation of the 2020 survey were provided after New York State issued Executive Orders on March 18, 2020, for the COVID-19 pandemic that resulted in the temporary closure of many programs provided by ADAPT. The annual satisfaction survey has provided a comprehensive summary of feedback received from individuals and families, including new things they would like to try.

### **Section Three**

#### ***Additional Evidence***

The following evidence has been compiled that demonstrates the setting is integrated in, and supports full access of, individuals receiving HCBS into the greater community.

1. 2020 Annual Satisfaction Survey Report
2. ADAPT Natural Supports - Partnerships Database
3. Bill of Rights
4. Policy on Bill of Rights
5. Policy on Self Advocacy and Rights
6. Grand Concourse photos
7. Calendar of Community Services and Events
8. Adapt Trip Planner Guide of Community Events and Activities
9. CQL Personal Outcome Measures (POMs) interview example conducted by the agency

### **Section Four**

#### ***Public Comments Summary***

<b>Public Comment Period</b>
<b>From:</b> Click or tap to enter a date. <b>To:</b> Click or tap to enter a date.
<b>Summary of Public Comments Received for the Setting</b>

**Summary of the State's Response to the Public Comments Received**

Click or tap here to enter text.