

## **Guidance on Home and Community Based Services (HCBS) Compliance Review – Remediation Plans and Proof of Remediation**

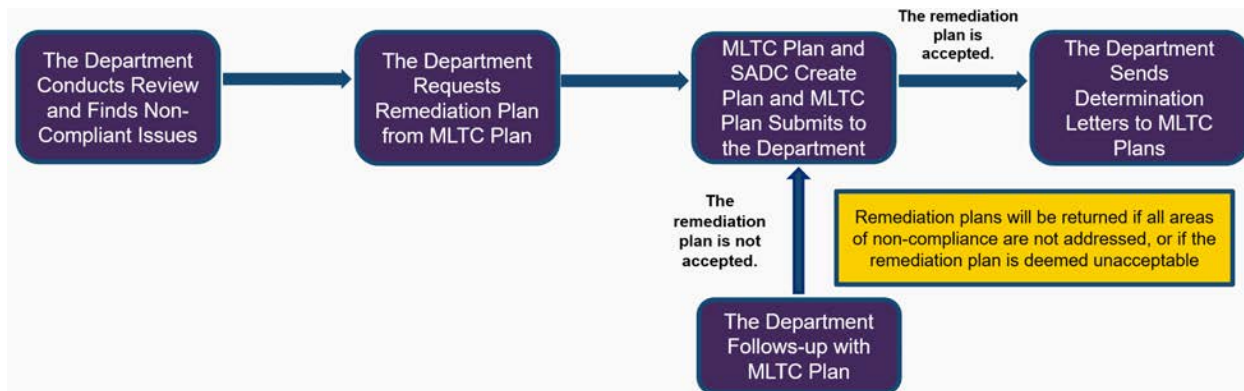
The purpose of this document is to provide guidance to Managed Long Term Care (MLTC) plans and Social Adult Day Care (SADC) sites on best practices for submitting acceptable remediation plans and proof of remediation as part of the HCBS compliance review process. The guidance focuses on the remediation plan and proof of remediation processes.

For general guidance on the SADC HCBS Compliance use the below resources:

- [Guidance on Home and Community Based Services \(HCBS\) Compliance Review Questions](#)
  - This webpage provides guidance regarding compliance with Centers for Medicare and Medicaid (CMS) HCBS Settings Final Rule standards and other state and federal requirements.
- [Community Integration.](#)
  - This webpage provides guidance related to community integration requirements, which is an integral part of the CMS HCBS Settings Final Rule. SADCs should ensure their policies and procedures are aligned with the guidance provided.
- [Social Adult Day Care \(SADC\) Home and Community Based Services \(HCBS\) Compliance Review Process-Roles & Responsibilities.](#)
  - This webpage provides an overview of the HCBS compliance review process and the roles and responsibilities of the New York State Department of Health (The Department), MLTC plans, and SADC sites within each phase of the review.

## Remediation Plan

### Overview of Remediation Plan Process



## What is a Remediation Plan?

The remediation plan is an action plan created collaboratively by the MLTC plan and SADC site which contains detailed actions the SADC site will take to remediate all areas of non-compliance identified during the HCBS Compliance Review.

All SADC sites must comply with all standards as defined in the [Centers for Medicare and Medicaid Services \(CMS\) HCBS Final Rule](#). If a SADC site does not meet compliance with all standards, a plan to remediate the non-compliant issues must be developed. SADC's must be compliant with HCBS final rule requirements and MLTC site visit requirements to be allowed to contract with MLTC plans. It is the expectation that the MLTC plan will work with the SADC to develop an acceptable remediation plan, to ensure remediation activities are completed appropriately and timely, and to provide [proof of remediation](#) when requested by the Department.

## The New York State Department of Health (the Department) Requests a Remediation Plan

The Department conducts annual reviews of SADC facilities and participant Person Centered Service Plans (PCSP) to assess for compliance with the CMS HCBS Final Rule. If areas of non-compliance are found during the review, the Department will send the MLTC plan that attended the review, a remediation plan template. The remediation plan template is a Microsoft Excel spreadsheet which is pre-populated with the reviewer's compliance findings, observations (where applicable) and comments. The blank cells in the template are to be used to enter remediation action steps, the person responsible for implementing the action, and the target date of completion.

**The remediation plan is due two weeks from the day that it was sent.**

**Note:** It is the expectation that the MLTC plan work with the SADC to develop an acceptable remediation plan and ensure that specific remediation activities outlined in the plan are completed appropriately and timely.

## Developing a Remediation Plan

The MLTC plan who attended the review must work with the SADC to develop an acceptable remediation plan. The Department strongly encourages the MLTC plan to schedule a meeting with the SADC to review all of the compliance findings, and to discuss areas of non-compliance and plan for appropriate actions to remediate each non-compliant issue.

To complete the remediation plan template:

- Save a copy of the remediation plan template received to a local computer.
- Maintain the file format. Do not change or delete any columns or rows.
- Complete the *Cover Page* with the required information.
  - The date the plan is completed with the SADC and approved by MLTC plan.
  - The full MLTC plan name.
  - The SADC representative's first and last name and title, phone number and email.
  - The MLTC plan representative's first and last name and title, phone number and email.
- Complete the following steps for the *Remediation Plan\_1* and *Remediation Plan\_2* tabs:
  - Filter the spreadsheet to view only the areas of non-compliance.
  - Address each area of non-compliance with a concise action plan that contains specific and verifiable actions.
    - Use action words.
    - Use future tense.
    - Do not use the space to write a rebuttal of the Department's findings.
  - Identify the person(s) responsible for implementing the action plan.
  - Specify the target start and completion date for each action.
    - There can be different dates for each action.
    - The Department understands that not all remediation actions will be completed at the time the remediation plan is submitted. All remediation actions must be completed within thirty (30) days of the original remediation notification.

The Reference Table tab of the remediation plan template provides examples of actions that may be taken to remediate non-compliance, in addition to acceptable documents that can be used as proof of remediation. The examples provided are considered suitable actions but are not mandatory.

### Notes:

- Ensure both Remediation Plan\_1 and\_2 tabs are completed.
- All remediation efforts must be completed within thirty (30) days of the original remediation notification.

## Submitting the Remediation Plan

Once the remediation plan template has been populated it should be reviewed by the MLTC plan for accuracy, grammatical errors, and template format, before submitting to the Department.

The remediation plan must have:

- A detailed summary of the remediation plan which explains the activities to be implemented to become compliant with the HCBS Final Rule.
- The date the remediation activities will begin and will be completed to bring the SADC into compliance with the HCBS Final Rule.
- The person(s) responsible for implementing the plan.

### Notes:

- Do not submit proof of remediation with the completed remediation plan (it is the responsibility of the MLTC plan to confirm remediation).
- Submit the remediation plan within two weeks of receipt.

## The Department's Review of Remediation Plans

Upon receipt of the remediation plan, the Department will review and notify the MLTC plan if the remediation plan is accepted.

### Remediation Plan Accepted

If the Department determines that the actions described in the remediation plan will resolve all areas of SADC non-compliance, the Department will send an email to all MLTC plans contracted with the SADC. This notification states the Department has determined the remediation plan is acceptable and if the actions are followed, would bring the SADC site into compliance with the HCBS Final Rule. The Department will request proof of remediation within thirty days. Please see the section below for the [Proof of Remediation](#) process.

### Remediation Plan Not Accepted

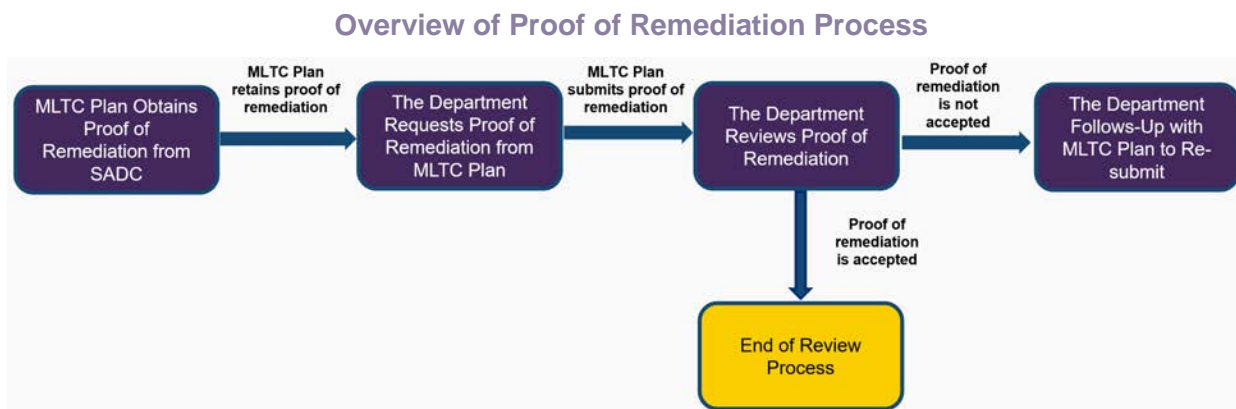
If the Department determines that the submitted remediation plan does not address all areas of non-compliance, the remediation plan will be deemed unacceptable and returned to the MLTC plan with a time frame of two (2) days to resubmit. The returned remediation plan will include detailed comments on why the action(s) specified in the plan will not lead to compliance. The submitted remediation plan will be attached to the email and *only* the areas indicated should be corrected. Refer to the [Creating a Remediation Plan](#) section above for further guidance.

To correct the remediation plan:

- Save the attached remediation plan to a local computer.
- The MLTC plan and SADC review the plan together.
- Correct only the areas indicated.
- Do not reformat the spreadsheet.

- The MLTC plan re-submits the remediation plan to the Department by the due date.

## Proof of Remediation



### What is Proof of Remediation?

Proof of remediation refers to the evidence obtained from the MLTC plan to confirm the plan has overseen the activities agreed to in the remediation plan and that they were performed, bringing the SADC site into compliance with the HCBS Final Rule.

### The Department Requests Proof of Remediation

After the remediation plan is approved by the Department, the SADC will be given time to implement their remediation actions by the due date indicated on the remediation plan. Once the last date remediation will be completed has passed, a request for proof of remediation will be sent to the MLTC plan. The accepted remediation plan will be attached to the request for proof of remediation (see previous section on [Remediation Plans](#))

The MLTC plan will be given two weeks from the date of the request to submit the proof of remediation to the Department. If the proof of remediation is not received by the due date, the Department will follow-up with the plan.

**Please Note:** The Department will typically request the MLTC plan that attended the review to submit proof of remediation. **However, all MLTC plans contracted with the SADC are responsible for ensuring the remediation actions are completed and for obtaining and retaining proof of remediation.**

### MLTC Plan Obtains Proof of Remediation from SADC

MLTC plans are expected to work with the SADC to obtain proof of remediation from the SADC as the remediation actions are completed. All remediation efforts must be completed within thirty (30) days of the original remediation notification.

Examples of acceptable proof of remediation include:

- Updated SADC policies and procedures.
- An updated SADC PCSP template.
- Evidence of resources for participants.

#### **Notes:**

- Physical alterations or modifications to the SADC facility are exempt from the 30 day timeframe.
  - Proof of remediation for these items should include a detailed plan and expected date of completion.
- Do not include any Protected Health Information (PHI) or Personal Identifiable Information (PII) in emails or submissions.

## **The Department Reviews Proof of Remediation**

### **Proof of Remediation Accepted**

When the Department accepts the submitted proof of remediation, the review process for that year is finished. MLTC plans are required to retain proof of remediation efforts for audit purposes and submit proof of remediation to the Department when requested.

### **Proof of Remediation Not Accepted**

If the Department does not accept the submitted proof of remediation, the Department will follow-up with the plan to request more appropriate proof that remediation activities are in place. This process will repeat until acceptable proof has been submitted to the Department. Once proof of remediation has been accepted by the Department, the annual review process is complete. MLTC plans are required to retain proof of remediation efforts for audit purposes and submit proof of remediation to the Department when requested.

### **Unable/Unwilling to Remediate**

If the SADC site is unable, or unwilling to complete remediation activities, the SADC site is considered non-compliant with the HCBS Final Rule. SADC's must be compliant with HCBS final rule requirements and MLTC site visit requirements to be allowed to contract with MLTC plans. Therefore, all contracted MLTC plans **MUST** immediately terminate their contract(s) with the SADC site and notify the Department. All MLTC plans contracted with the SADC will be notified via a determination letter.

Additionally, MLTC plans must:

- Support members in transferring to a compliant SADC, or one that is in the process of remediating non-compliance.

- Remove the SADC from the network by the next quarterly PNDS.
- Notify the Department of the termination and reason for the termination by the due date.

MLTC plans are required to monitor continued, ongoing compliance with the HCBS Settings Final Rule and all State and Federal regulations.