



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



MANAGEMENT AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Department for the
Aging's Monitoring of Social Adult Day
Care Centers

MD19-080A

April 15, 2020

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office has audited the New York City Department for the Aging (DFTA) to determine whether it (1) is in compliance with Local Law 9 of 2015 and Local Law 9 of 2018 relating to Social Adult Day Cares (SADCs); and (2) adequately monitors the Social Adult Day Services programs (SADS) with which it contracts to ensure that they operate in accordance with certain applicable requirements and policies. We audit City operations such as this as a means to increase accountability and to ensure that agencies adequately enforce laws and policies.

The audit found that although DFTA has complied with certain aspects of Local Law 9 of 2015 and Local Law 9 of 2018, the agency did not timely adopt rules establishing civil penalties for violations of applicable laws and regulations by SADCs operating in the City and did not conduct any investigations into complaints it received against SADCs, as required by Local Law 9 of 2015. The audit also found that DFTA's website did not include SADC-related information required by Local Law 9 of 2018. Furthermore, the audit found that DFTA did not consistently track the referral of complaints to State oversight agencies, and that a significant portion of those referrals were not performed timely. Finally, the audit found DFTA did not consistently ensure that the SADSs it contracts with (1) conducted required self-evaluations; and (2) submitted corrective action plans (CAPs) to address non-compliance with State standards in a timely manner.

The audit made 12 recommendations, including that DFTA ensure that the recently finalized rules, including those that set out the steps for referring and/or investigating complaints against SADCs, are consistently enforced; that all required information for SADCs is posted on the agency's website; that procedures are drafted for tracking all complaints and their outcomes; that complaint referrals are made timely; and that SADSs that contract with the City complete required self-monitoring documentation and submit CAPs in a timely manner.

The results of the audit have been discussed with DFTA officials, and their comments have been considered in preparing this report. DFTA's complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer
New York City Comptroller

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CITY OF NEW YORK OFFICE OF THE COMPTROLLER MANAGEMENT AUDIT

Audit Report on the Department for the Aging's Monitoring of Social Adult Day Care Centers

MD19-080A

EXECUTIVE SUMMARY

The Department for the Aging (DFTA) promotes, administers, and coordinates the development and provision of services for older New Yorkers to help them maintain their independence and participation in their communities. DFTA supports a broad range of services, both directly and through over 500 direct service contracts with community-based organizations.

A social adult day care center (SADC) is a structured program that provides functionally impaired older adults with socialization, supervision, personal care (e.g. assistance with mobility, eating, and toileting), and nutrition in a protective setting. Several hundred SADCs are operating in New York City (City), most of which have no contracts with DFTA and do not receive discretionary grants, although they may receive public funds through Medicaid reimbursements, which are partly funded by the City.¹ DFTA categorizes the SADCs that receive *direct* City discretionary funding and enter into contracts with DFTA—currently nine programs—as Social Adult Day Services programs (SADS).

The City Council enacted Local Law 9 of 2015 to establish City oversight, through DFTA, of the several hundred SADCs that operate in the City without receiving discretionary grant funding. The statute requires all SADCs operating in the City to register with DFTA. To carry out certain responsibilities assigned to it by Local Law 9 of 2015, DFTA designated an SADC Ombudsperson and created the Ombuds Office. DFTA, through its Ombuds Office, is responsible under the statute for receiving, investigating, and responding to SADC-related complaints and inquiries. Local Law 9 of 2015 also requires the Ombuds Office to provide a written annual report to the City Council regarding SADCs.

Thereafter, in 2018, the City Council enacted Local Law 9 of 2018, which required DFTA to create an online searchable database of the SADCs operating in the City, including their names, addresses, and hours of operation. In addition, the database is supposed to allow an individual to submit comments or complaints about an SADC electronically to the Ombuds Office.

¹ Approximately 320 SADCs were operating in the City as of May 2019.

A 2018 amendment to the Administrative Code of the City of New York further requires DFTA to provide the Department of Health and Mental Hygiene (DOHMH) with a list of all SADCs registered with DFTA. Finally, DFTA is required to make available on its website information about the SADC inspections conducted by DOHMH.

DFTA's Bureau of Healthcare Connections (HCC) oversees the SADC Ombuds Office, the Caregiver Resource Center, and New York Connects. HCC's program officers also provide ongoing and ad hoc technical assistance to the SADS and are required to conduct annual assessments to ensure the SADS' programs are in compliance with New York State Office for the Aging (NYSOFA) standards and the applicable laws, rules and regulations.

The objectives of the audit were to determine whether DFTA: (1) is in compliance with Local Law 9 of 2015 and Local Law 9 of 2018; and (2) adequately monitors the SADSs with which it contracts to ensure that they operate in accordance with certain applicable requirements and policies.

Audit Findings and Conclusions

The audit found that although DFTA complied with certain aspects of Local Law 9 of 2015 and Local Law 9 of 2018, the agency was noncompliant with both laws in several areas. (See Appendix for a listing of the laws' requirements and our assessment of DFTA's compliance.) In particular, we found that DFTA did not timely adopt rules establishing civil penalties for violations of applicable laws and regulations by SADCs operating in the City as required by Local Law 9 of 2015. Specifically, DFTA did not publish its proposed rules until November 2019, while this audit was in progress, nearly four years past the deadline that Local Law 9 of 2015 established for the agency to adopt final rules. The rules went into effect on February 8, 2020. In addition, DFTA does not conduct any investigations into complaints it receives against SADCs as required by Local Law 9 of 2015.

We also found that DFTA's online public searchable database (website) did not, until very recently, include certain SADC-related information required by Local Law 9 of 2018, such as an SADC's corporate structure and ownership, managed long-term care affiliations, and information about SADC inspections conducted by DOHMH. DFTA's website also does not include information required by Local Law 9 of 2018, such as the following: the number of notices of violations (NOVs) DFTA issued to an SADC; the resolution of any violations issued; and the year and nature of the violations.

We found that DFTA did not consistently track complaint referrals to state oversight agencies and that referrals to these agencies were not performed in a timely manner. Furthermore, we found that DFTA hardcopy files did not contain adequate evidence of complaint processing.

For City-funded SADS, we found insufficient evidence of required self-monitoring, corrective action plans (CAPs) were not submitted in a timely manner by the SADS, and incidents, which occurred at the SADS, were not centrally tracked.

Audit Recommendations

Based on the audit, we make 12 recommendations, including:

- DFTA should ensure that it consistently enforces the recently finalized rules establishing civil penalties that can be assessed against SADCs for violations of Local Law 9 of 2015 and the regulations it references and implement the internal procedures necessary to ensure that notices of violation are issued as warranted.
- DFTA should ensure that it follows the steps outlined in the recently finalized rules for referring and/or investigating complaints against SADCs.
- DFTA should continue to ensure that it posts all required information for SADCs on its website in accordance with the local law, including SADC violations of its recently finalized rules.
- DFTA should draft procedures to help ensure that all complaints are logged and tracked from receipt to disposition and to ensure that when it refers complaints to State and City agencies it adequately documents the referrals and tracks the outcomes.
- DFTA should establish a mechanism to track the timeliness of complaint referrals and to ensure that it makes referrals timely.
- DFTA should ensure that evidence documenting all steps within the complaint process is in the files.
- DFTA should require SADS to complete the NYSOFA Self-Monitoring Tool to ensure compliance with the State standards.
- DFTA should require programs to submit CAPS timely.
- DFTA should establish a mechanism to document all SADS incidents and track the timeliness of incident reports to ensure that SADS are submitting them timely.

Agency Response

DFTA generally agreed with 10 of the audit's 12 recommendations, although it contends that it already complies with 3 of them (#s 3, 7, and 10), and partially agreed with the 2 remaining recommendations (#s 4 and 6).

AUDIT REPORT

Background

DFTA promotes, administers and coordinates the development and provision of services for older New Yorkers to help them maintain their independence and participation in their communities. DFTA's mission is to eliminate ageism and ensure the dignity and quality of life of older adults. DFTA supports a broad range of services, both directly and through over 500 direct service contracts with community-based organizations.

An SADC is a structured program that provides functionally impaired older adults with socialization, supervision, personal care (e.g. assistance with mobility, eating, and toileting), and nutrition in a protective setting. An SADC's decision to admit any individual to its program, and all services provided to each participant, must be based on an assessment of each participant's functional capacities and impairments. Once a person is accepted, an individual written service plan is developed for that person by the SADC's staff in conjunction with the participant, and if applicable the participant's caregiver. These and other requirements for SADCs are set forth in a regulation promulgated by NYSOFA codified at Title 9 of NYCRR § 6654.20.

Several hundred SADCs are operating in the City (as of May 2019, approximately 320 were in operation). Most of them receive no funding from, and have no contracts with DFTA. DFTA categorizes the SADCs that receive direct City discretionary funding and enter into contracts with DFTA as SADS. As of December 2019, nine SADS received City funding, in part through DFTA contracts, and DFTA's HCC monitored those nine programs for compliance with the above-cited NYSOFA regulation and DFTA's policies, procedures and standards. In Fiscal Year 2019, the nine SADS received a total of \$1,116,344 in City funding.²

The City Council enacted Local Law 9 of 2015 to establish City oversight, through DFTA, of the several hundred SADCs that operate in the City without receiving grant funding—or the DFTA oversight that accompanies such funding—from the State or City. The law was enacted after the number of SADCs operating in the City quintupled—from 40 to nearly 200—following a 2011 change in the State's Medicaid program that, in effect, made Medicaid reimbursement available to SADCs.³ According to DFTA, “concerns about potential violations of non-compliance in the SADC industry,” including allegations of widespread client ineligibility and the “sometimes-diminished ability of participants in SADC programs to effectively advocate for themselves,” led to Local Law 9's requirement for the creation of the Ombuds Office within DFTA responsible to receive and investigate complaints about SADCs.⁴

Pursuant to Local Law 9 of 2015, DFTA designated an SADC Ombudsperson and created the Ombuds Office. Thereafter, in 2018, the City Council enacted Local Law 9 of 2018, which required DFTA to create an online searchable database of the SADCs operating in the City.

Local Law 9 of 2015 requires SADCs operating in the City to register with DFTA. DFTA's Ombuds Office is responsible for receiving, investigating, and responding to SADC-related complaints and

² The New York City Council awards discretionary funding every year to nonprofit organizations providing community-based services.

³ New York City Council Committee Report, *Oversight: Social Adult Day Care*, April 23, 2018, at 4-5.

⁴ DFTA, Notice of Public Hearing and Opportunity to Comment on Proposed Rules, November 8, 2019.

inquiries. Individuals can submit complaints through NYC 311 online,⁵ DFTA's SADC home page website, by calling 311,⁶ or by emailing the Ombuds Office. In addition, complaints can be submitted through DFTA's "Contact Us" webpage. DFTA's Policy, Planning and Analysis (PPA) unit reviews and forwards such complaints to the Ombuds Office, utilizing DFTA's electronic Correspondence Tracking System (CTS), which the agency also uses to track inquiries from the Mayor's Office.

Local Law 9 of 2015 also requires the Ombuds Office to provide a written annual report to the City Council regarding SADCs, including the total number of SADCs and their addresses, the number of complaints the Ombuds Office received, a description of each complaint, and the number of investigations the office conducted. The report should also include the outcome of each investigation, the total number of notice of violations issued, the total number of SADCs that failed to register, and any recommendations regarding the operation of SADCs.

Further, Local Law 9 of 2018 requires DFTA to create and maintain an online, public, searchable database of SADCs registered with DFTA, including their names, addresses, telephone numbers, hours of operation, and other information concerning their ownership and management. In addition, the database is supposed to allow an individual to submit comments or complaints about an SADC electronically to the Ombuds Office.

To implement some of the mandates of Local Law 9 of 2015 and Local Law 9 of 2018, DFTA requires each provider operating an SADC in the City, including the 300-plus SADCs that do not contract with DFTA, to create an account on DFTA's Registration Portal. The Registration Portal allows providers to register their SADCs and modify and update their SADC accounts. The SADC's name, address, and days and hours of operation are automatically transferred from the Registration Portal to DFTA's website for the public to view. Once an SADC is registered, the Ombuds Office will provide it with a copy of the SADC Ombuds Office poster (Ombuds poster) and an SADC Participant Rights poster. Each SADC is required to post the Ombuds poster on site in accordance with the 2015 local law. The Ombuds poster provides the public with information on how to contact the Ombuds Office with an SADC-related comment, question, or complaint. Separately, State law requires SADCs to post the Participant Rights poster, which documents every participant's right to be treated with dignity and respect.

A 2018 amendment to the Administrative Code of the City of New York further requires DFTA to provide DOHMH with a list of all SADCs registered with DFTA. Finally, DFTA is required to make available on its website information about the SADC inspections conducted by DOHMH.

DFTA's HCC oversees the Ombuds Office, the Caregiver Resource Center, and New York Connects. HCC's program officers also provide ongoing and ad hoc technical assistance to the SADS and are required to conduct annual assessments to ensure the SADS' programs are in compliance with NYSOFA standards and the applicable laws, rules and regulations. HCC sends Initial Assessment Letters to SADSs summarizing the results of their individual assessments. If HCC finds any instances of non-compliance during an annual assessment, such instances are noted in the letter. A SADS that receives notice of non-compliance is then required to submit a

⁵ Comments/complaints are commenced via NYC 311, however, once the user identifies the inquiry as related to an SADC, the user is automatically directed to DFTA's SADC home webpage.

⁶ Once 311 identifies the call as one regarding an SADC, 311 will transfer the caller to HCC's Caregiver Resource Center division to speak with a community associate. If the call occurs after business hours, the caller can leave a voicemail message.

Corrective Action Plan (CAP) to address the non-compliant areas cited in the Initial Assessment Letter.

Objectives

To determine whether DFTA: (1) is in compliance with Local Law 9 of 2015 and Local Law 9 of 2018; and (2) adequately monitors the SADCs with which it contracts to ensure that they operate in accordance with certain applicable requirements and policies.

Scope and Methodology Statement

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was July 1, 2017 through June 30, 2018, with the exception of SADC complaints, which were reviewed for Calendar Years 2017 and 2018.

Discussion of Audit Results with DFTA

The matters covered in this report were discussed with DFTA officials during and at the conclusion of this audit. A preliminary draft report was sent to DFTA and discussed at an exit conference held on January 27, 2020. On February 11, 2020, we submitted a draft report to DFTA with a request for comments. We received a written response from DFTA on February 26, 2020.

DFTA generally agreed with 10 of the audit's 12 recommendations, although it contends that it already complies with 3 of them (#s 3, 7, and 10), and partially agreed with the 2 remaining recommendations (#s 4 and 6). Notwithstanding DFTA's general agreement with the report's recommendations, DFTA disagrees with many of the audit's conclusions. Among other things, DFTA stated that

It appears the Comptroller's report misinterprets Local Law 9 of 2015 by assuming that DFTA has complete oversight responsibility over these SADC programs that are, in fact, under the authority and purview of New York State.

However, DFTA's claim is entirely incorrect and premised a faulty reading of the audit report; nowhere in this report do we state or imply that DFTA has complete oversight responsibility for SADC programs. Rather, the audit focused on DFTA's undisputed statutory responsibilities. Indeed, DFTA acknowledges in its response that "Local Law 9 of 2015 and 2018 required DFTA to create a Social Adult Day Care (SADC) Ombudsman Office to **monitor all SADC programs throughout the City**, including programs directly funded by the City Council." [Emphasis added.] This audit merely assessed the adequacy of such monitoring.

With regard to the finding that DFTA did not timely adopt rules establishing civil penalties for violations of applicable laws and regulations, DFTA stated,

The Comptroller's first finding is misleading, since at the exit interview, DFTA demonstrated that we began developing the rules shortly after Local Law 9 of 2015 was enacted.

As indicated in the report, subsequent to the exit conference, DFTA provided an email dated February 3, 2020 from the City's Law Department's Legal Counsel Division indicating that DFTA first reached out regarding developing the rules in March 2015. Nonetheless, regardless of when discussions began, DFTA was required to develop and adopt—i.e., finalize—its rules by January 2016. It is undisputed that DFTA missed this statutory deadline by a full four years.

With regard to the finding that DFTA does not conduct investigations into complaints it received against SADCs as required by Local Law 9 of 2015, DFTA stated that it “provided the auditors with the SADC Ombuds Office protocols and workflows for processing registrations and handling complaints, which go well above and beyond what the law requires.” DFTA listed six types of actions it takes in connection with SADCs. However, nowhere does the agency claim that it investigates SADC complaints, or that the law does not require it to do so. In sum, DFTA did not dispute the finding or even address it directly.

Concerning the finding that DFTA's website did not include certain SADC-related information and other information required by Local Law 9 of 2018, DFTA stated,

DFTA explained throughout the audit and at the exit interview that the software used at the time of the audit did not have the capacity to include all SADC-related information and required a technical build, which took several months. A new website was created during the 2nd Quarter of Fiscal Year 2019, and DFTA is in full compliance with Local Law 9 of 2018.

As with many of the other audit findings, DFTA does not argue that the finding itself is incorrect. Rather, DFTA's argument is an attempt to provide an explanation for its failure to comply with the law. Further, contrary to its response to the audit, DFTA's website was updated in October 2019, which is the 2nd Quarter of Fiscal Year 2020, not 2019 as DFTA incorrectly claimed, and over one year after Local Law 9 of 2018 went into effect. Finally, as of this writing, DFTA still does not have a field indicating whether any notices of violation have been issued and the outcome of any adjudication. We noted that DFTA's website includes fields in other instances where the information may not be applicable—for example, a SADC's website address, or other business name. For clarity and full disclosure and the removal of any ambiguity, DFTA should include a notice of violation field on its website, regardless of whether violations have been issued. In instances where no violations have been issued the field can remain blank or a zero can be inserted.

With respect to the finding that DFTA's files lacked required complaint documentation, such as referral letters to oversight agencies, DFTA stated,

The Comptroller's finding also focused solely on the written hard copies, which are only a part of the entire complaint record; our complaint data and records are recorded in both the digital and hard copies. Additionally, on September 12, 2019, the auditors reported that certain hardcopy files could not be found. DFTA provided the auditors with the hardcopy files on September 13, 2019, but the auditors did not correct the record once we provided the files.

However, DFTA's claim here is incorrect. Our findings did not focus solely on the hardcopy records. Further, we amended the report findings in every instance where DFTA provided us with acceptable hardcopy files it printed from its digital records after we pointed out that required documents were missing from DFTA's hardcopy files. Ultimately, our review of both the hardcopy and digital records found that 7 (17 percent) of the 42 sampled complaints were missing referral letters to all three State Oversight agencies that should have been sent them under DFTA'S complaint procedure.

After carefully reviewing DFTA's arguments, we find no basis to alter any of the report's findings or conclusions. The full text of DFTA's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The audit found that although DFTA complied with certain aspects of Local Law 9 of 2015 and Local Law 9 of 2018, the agency was noncompliant with both laws in several areas. (Please refer to the Appendix for a full list of the requirements for both laws and our determinations regarding DFTA's compliance.) Specifically, we found that:

- DFTA was not timely in adopting rules that establish civil penalties for violations of applicable laws and regulations by SADCs operating in the City as required by Local Law 9 of 2015. Only recently, during the course of this audit, did the agency take the necessary step of posting draft rules for public review and comment, as of November 2019, nearly four years after the statutory deadline for DFTA's adoption of final rules. The rules went into effect on February 8, 2020.
- DFTA does not conduct any investigations into complaints received against SADCs as required by Local Law 9 of 2015. Rather, DFTA refers complaints to State and City oversight agencies.
- DFTA's online public searchable database (website) did not, until very recently, include certain SADC-related information required by Local Law 9 of 2018, such as an SADC's corporate structure and ownership, the name, address and telephone number of any managed long-term care company with which an SADC has a formal agreement, and information about SADC inspections conducted by DOHMH.
- DFTA's website also does not include information required by Local Law 9 of 2018, such as the following: the number of notices of violations DFTA issued to an SADC; the resolution of any violations issued; and the year and nature of the violations. DFTA did not issue any violations to SADCs during the audit scope period and did not adopt the rules necessary to do so.

Furthermore, we found that DFTA does not ensure that it properly records the actions taken for complaints it receives, including referrals to State and City oversight agencies. DFTA also lacked required complaint documentation, such as referral letters to oversight agencies, in the agency's hardcopy and electronic files.

With regard to DFTA's monitoring of the SADCs with which it has contracts (identified as SADS throughout this report), we found, with some exceptions, that DFTA adequately monitored them to help ensure compliance with NYSOFA regulations and DFTA's SADS standards. DFTA conducted annual assessments, ensured that SADS submitted required monthly reports, and provided technical assistance to the SADS. However, we identified some weaknesses in DFTA's monitoring of SADS. Specifically, DFTA did not consistently ensure that SADS conducted required annual self-evaluations and submitted CAPS timely. In addition, DFTA did not establish a centralized tracking mechanism for monitoring incidents at the SADS and did not establish a procedure for the actions to take when financial irregularities were suspected.

Non-Compliance with Local Laws 9 of 2015 and 9 of 2018

DFTA Was Not Timely in Adopting Rules for Issuing Violations and Civil Penalties to Non-Compliant SADCs

As a means of enforcing compliance with the provisions of the law, Local Law 9 of 2015 requires DFTA to adopt rules establishing civil penalties to be assessed against SADCs for violations of Local Law 9. The rules DFTA adopts under the local law, among other things, must specify the violations subject to penalty. The law states that the penalties are to range from \$250 to \$500 per day. In addition, the 2015 law provides that SADCs that fail to register with DFTA will be subject to a civil penalty ranging from \$250 to \$1,000 for each day the SADC operates without registering. Local Law 9 of 2015 states that the provision requiring DFTA to adopt the abovementioned rules would take effect 12 months after the law's enactment, unless a New York State law, rule, or regulation establishing civil penalties or fines for SADCs' violations of applicable regulations was enacted in the interim. Local Law 9 of 2015 was enacted on January 17, 2015, and no relevant State law or regulation was enacted in the next 12 months, or thereafter. Accordingly, Local Law 9 required DFTA to adopt final rules by January 2016.

However, DFTA did not timely develop and adopt the rules that Local Law 9 of 2015 prescribes. During the course of our audit fieldwork, DFTA officials informed us that DFTA's legal counsel and the City's Law Department were working to establish and finalize the rules. Officials stated that once the rules were established, DFTA would develop internal policies and procedures to enforce the law. Subsequent to the exit conference, DFTA provided an email dated February 3, 2020 from the City Law Department's Legal Counsel Division indicating that DFTA first reached out regarding developing the rules in March 2015. However, DFTA did not explain the reason for its nearly four-year delay in proposing the required rules.

On November 8, 2019, DFTA published its proposed rules for public comment, with a notice of a public hearing scheduled for December 20, 2019. The rules went into effect on February 8, 2020. According to the rules, DFTA will assess a penalty of \$1,000 per day against SADCs that fail to register with DFTA and \$500 per day for each violation of NYSOFA regulations. The rules also indicate that all violations of NYSOFA standards are subject to a \$500 penalty per day for each violation. However, under the rules, for violations other than failure to register, DFTA is authorized to issue a notice of violation **only** after the Ombudsperson provides the SADC in question with a written request for a CAP, which thereafter is not implemented within 60 days, or where the Ombudsperson finds that the SADC has failed to implement it.

DFTA's failure to establish the rules prescribed by Local Law 9 of 2015 within the 12-month period required by the law created an increased risk that the agency did not identify and take appropriate action to address regulatory violations by SADCs, should they exist. Such violations could include SADCs' failures to adhere to the standards established by NYSOFA and adopted by Local Law 9 that are intended to (1) protect the functionally impaired adults who may participate in such programs, and (2) deter abuse of City-funded Medicaid programs—two concerns that led to the law's enactment.⁷ DFTA's delay in acting may have allowed non-compliant practices by SADCs, if they exist, to continue.

⁷ In Fiscal Year 2019, the City's share of NYS Medicaid costs was \$4.9 billion. Citizens Budget Commission, *Still a Poor Way to Pay for Medicaid*, October 1, 2018, at Figure 1.

In addition, without the timely adoption of finalized rules, identifying what it deems to be violations of the law's provisions and the civil penalties that will be assessed, DFTA's ability to enforce compliance among SADCs was significantly hindered. Furthermore, DFTA forwent potential revenues from civil penalties that the City might otherwise collect from SADCs that violate the Local Laws. For example, DFTA identified two unregistered SADCs operating in the City during Fiscal Year 2018.⁸ Based on the civil penalty provisions outlined in Local Law 9 of 2015, these SADCs could have been assessed a civil penalty. Penalties for those two unregistered SADCs could have ranged between a minimum of \$52,750 to a maximum of \$211,000.⁹ Based on DFTA's newly effective penalty of \$1,000 per day, these SADCs would have been charged the maximum penalty totaling \$211,000.

DFTA Does Not Investigate SADC Complaints

Under Local Law 9 of 2015, specifically, § 21-204 (d)(1)(iii), DFTA's Ombudsperson is required to investigate complaints concerning SADCs that may be in violation of applicable NYSOFA rules and standards or other requirements imposed by the local law. However, since the inception of the law, DFTA has not conducted any such investigations. Instead, DFTA's policy has been to refer SADC complaints to three State oversight agencies: the New York State Department of Health (NYSDOH); NYSOFA; and the Office of Medicaid Inspector General (OMIG). DFTA also refers complaints to City agencies as it deems appropriate.

NYSDOH, which is a principal recipient of complaint referrals from DFTA, operates under a policy of referring those complaints for investigation to the respective Managed Long Term Care (MLTC) companies that have contracts with the SADCs in question.¹⁰ If an SADC has contracts with multiple MLTCs, each MLTC is required to investigate such a complaint concerning that SADC, notwithstanding the fact that multiple entities would thereby be investigating the same matter. Thus, in referring SADC-related complaints to NYSDOH, DFTA in effect leaves the responsibility for investigating them to the MLTCs that contract for their services. However, although NYSDOH provides DFTA with the outcomes of the MLTCs' investigations of *some* DFTA-referred complaints, many of the referrals did not result in DFTA's receipt of such outcomes, as discussed further below. Moreover, DFTA officials are generally unaware of the MLTCs' policies and procedures for investigating such complaints and do not follow-up on their outcomes. Additionally, an MLTC that procures an SADC's services for clients may face a potential conflict in investigating complaints that could involve wrongdoing by the SADC, which may pose potential liability concerns for the contracting MLTC. Under these circumstances, DFTA's practice of not itself investigating SADC-related complaints increases the risk that issues at the SADCs that need corrective action may go unaddressed, especially since DFTA has no oversight over the MLTCs and therefore cannot ensure that those investigations are properly conducted.

As noted, according to DFTA officials, DFTA did not investigate SADC complaints itself because it had not yet finalized the rules, as discussed in the preceding section of this report. DFTA officials informed us that the SADC Ombuds Office, with the assistance of the Law Department, has developed and defined the term "investigation" for inclusion in the rules and integration into the

⁸ One SADC was identified by a match with NYSDOH records and one was identified through a complaint received by the Ombuds Office.

⁹ The minimum penalties for each SADC ranged from \$3,750 to \$49,000 (# of days in operation without registering * \$250), while the maximum ranged from \$15,000 to \$196,000 (# of days in operation without registering * \$1,000), respectively.

¹⁰ Managed long-term care is a system that streamlines the delivery of long-term services to people who are chronically ill or disabled and who wish to stay in their homes and communities. These services, such as home care or adult day care, are provided through managed long-term care plans that are approved by the NYSDOH.

SADC Ombuds office procedures. Under the recently finalized rules, however, only limited categories of complaints would require investigation by the Ombuds Office, as described below.

Under DFTA's rules, the Ombuds Office will continue to refer, rather than investigate, complaints where: (1) the complaint includes a matter within the sole jurisdiction of another agency; or (2) a complaint includes a matter partly within the jurisdiction of another agency and the Ombudsperson determines that it is appropriate for the entire complaint to be investigated by a single agency.¹¹ In addition, the rules establish limited categories of persons who may file complaints that the Ombudsperson must acknowledge and accept for processing, specifically, a participant or the participant's parent, child, spouse, sibling, or legal guardian, or a person working at an SADC as an employee, contractor, or volunteer. Complaints concerning SADCs filed by any other person "may also be received at the discretion of the Ombudsperson" based on specific criteria outlined in the rule.

Limited Evidence That Referrals to Oversight Agencies Are Adequately Investigated

As stated previously, NYSDOH refers the complaints received from DFTA to the MLTCs that contract with the SADCs about which the complaints have been made. Since an SADC may have contracts with multiple MLTCs, one complaint involving a single SADC may result in multiple dispositions—one from each MLTC that contracts with that SADC.

However, we found no evidence that DFTA received resolutions for a significant portion—55 percent—of the complaints that under DFTA policy, should have been referred to NYSDOH and, under NYSDOH policy, to the MLTCs for investigation. While DFTA received 192 complaints from the public in 2017 and 2018, the MLTCs collectively provided NYSDOH with resolutions for only 87 (45 percent) of them.¹² The total number of resolutions DFTA received, through NYSDOH, from the MLTCs for these 87 complaints pertained to 41 SADCs. Since these 41 SADCs most often had contracts with multiple MLTCs, there were multiple resolutions for some of the 87 complaints, which resulted in a total of 470 resolutions being received by DFTA for 87 complaints. Of the 470 resolutions, 440 (94 percent) were deemed unsubstantiated, and 30 (6 percent) were deemed substantiated. However, we identified contradictory responses from MLTCs for 18 (21 percent) of the 87 complaints. For example, for a single complaint pertaining to one SADC, DFTA received dispositions from six MLTCs: three MLTCs deemed the complaint unsubstantiated and three others deemed it substantiated, raising questions as to why the MLTCs came to different conclusions.

Moreover, as discussed more fully in a later section of this report, DFTA does not consistently track its referrals to State oversight agencies, which diminishes its ability to ensure that the complaints are referred for investigation. For example, DFTA's records contain evidence that it referred only 112 (58 percent) of the 192 complaints it received to NYSDOH and that NYSDOH provided DFTA with a reference case number, acknowledging receipt, for only 58 (52 percent) of those. We found no evidence that DFTA referred the remaining 80 complaints it received to NYSDOH.

In addition, based on a review of DFTA's complaint spreadsheets for 2017 and 2018, DFTA obtained *no* evidence that the two other State oversight agencies to which it has been referring

¹¹ The agencies to which such complaints will be referred under the rules include but are not limited to the Department of Buildings (DOB), DOHMH, the Fire Department, the Commission on Human Rights, and OMIG.

¹² DFTA received 99 complaints in Calendar Year 2017 and 93 complaints in Calendar Year 2018.

complaints ever investigated them. NYSOFA and OMIG did not provide DFTA with any reference case numbers or acknowledge receipt of DFTA's referrals in any other way.

Furthermore, DFTA had only limited evidence that City agencies investigate the complaints DFTA refers to them. Of 44 complaints DFTA referred to 4 City agencies—DOB, DOHMH, the New York City Fire Department, and the Commission on Human Rights—DFTA received dispositions for only 6; DOB and DOHMH each provided 3 dispositions. Moreover, while DFTA has been referring complaints for investigation to other agencies, without consistent follow-up and evidence of the outcomes, DFTA does not have adequate assurance that complaints it refers are appropriately investigated.

DFTA's rules indicate that when the Ombudsperson refers entire complaints to other agencies, they will be "dismissed" before the Ombudsperson. However, nothing in the rules indicates that the Ombudsperson will be required to obtain final dispositions for the referred complaints from the agencies that receive the Ombudsperson's referrals. As a result, DFTA will continue to have only limited assurance that SADC complaints are adequately investigated.

DFTA's Website Lacks Required SADC Information

According to Local Law 9 of 2018, § 21-204 (e), DFTA's public online database (DFTA's website) shall include the following information concerning SADCs registered with DFTA:

- The name, address, telephone number, and website, if any;
- The corporate structure and ownership;
- The days and hours of operation;
- The year the SADC was established;
- The name, address and telephone number of any MLTC company with which the SADC has a formal agreement;
- If applicable, the number of notices of violations issued, and the year, nature, and outcomes of any adjudicated violations (DFTA has not issued any violations to date); and
- Information regarding SADC inspections conducted by DOHMH, as required by an amendment to the local law [§ 21-204.1 (b)].

However, we found that DFTA's website lacked required information concerning the SADC's corporate structure and ownership, the year the SADC was established, the name, address, and telephone number of the MLTC companies that have agreements with the SADC, the SADC's website address, when applicable, and information concerning any violations involving the SADC. In addition, DFTA did not post DOHMH inspection results of SADCs, as required.

According to DFTA officials, the website platform did not support the capabilities needed to report complete SADC information, and they were working with their Information Technology (IT) unit to add these features to DFTA's website. DFTA officials also explained that DOHMH did not report its SADC inspection reports on its website until the summer of 2019. As of October 2019, after our audit testing, DFTA began to include the required SADC information, with the exception of the

SADC violations, on its website. With regard to the DOHMH inspection results, DFTA's website now provides a link to DOHMH's website to enable the public to view this information.

Without all required SADC information on DFTA's website, the public may be hindered in obtaining the information needed to make an informed decision when choosing an SADC.

Recommendations

1. DFTA should ensure that it consistently enforces the recently finalized rules establishing civil penalties that can be assessed against SADCs for violations of Local Law 9 of 2015 and the regulations it references and implement the internal procedures necessary to ensure that notices of violation are issued as warranted.

DFTA Response: "DFTA has already implemented this action."

2. DFTA should ensure that it follows the steps outlined in the recently finalized rules for referring and/or investigating complaints against SADCs.

DFTA Response: "DFTA has already implemented this action."

3. DFTA should continue to ensure that it posts all required information for SADCs on its website in accordance with the local law, including SADC violations of its recently finalized rules.

DFTA Response: "DFTA is already in compliance with this action. All required fields are posted on the SADC public portal. The fields related to the NOV's will only be posted and viewable if there is an SADC violation and the violation is issued. If an SADC does not have a violation, then the NOV field will not appear in the portal."

Auditor Comment: Regardless of whether an SADC has been issued an NOV, in order to provide full disclosure to the public and remove any ambiguity, DFTA should include an NOV field, which should be visible on the public portal to indicate whether any NOV's were issued. In instances where no violations have been issued the field can remain blank or a zero can be inserted.

Inadequate Tracking of Complaint Data

DFTA Did Not Consistently Track Complaint Referrals to State Oversight Agencies

According to Comptroller's Directive #1, *Principles of Internal Control*, City agencies must clearly document all transactions and significant events and keep the documentation readily available for use or examination. In addition, management requires both operational and financial data to determine whether their agencies are meeting their strategic and annual performance plans. According to DFTA officials, all complaints that appear to involve possible violations of NYSOFA SADS Standards (9 N.Y.C.R.R 6654.20) are referred to NYSDOH, NYSOFA, and OMIG. DFTA has developed an Excel spreadsheet to track such complaints.

Based on a review of the spreadsheets DFTA uses to track the complaints it received in 2017 and 2018, we determined that DFTA did not consistently document its referrals to State agencies. We

found, for example, that the columns on DFTA’s spreadsheets that were used to denote the entities to which the referrals were, or should have been, sent contained varying text to indicate the status of the referrals, including “Y,” (yes) “pending referrals,” or a NYSDOH reference number. As a result, in instances where a NYSDOH referral number is not recorded, DFTA may be hindered in tracking the disposition of the investigations for those complaints.

Moreover, DFTA’s spreadsheets lacked evidence that it referred significant percentages of the complaints it received to the three State oversight agencies that its procedures identify as the proper recipients of complaints—NYSDOH, NYSOFA, and OMIG. Specifically, DFTA received 192 complaints in 2017 and 2018. Under DFTA’s procedure, each complaint required a referral to all three State oversight agencies; however, DFTA’s tracking record—its spreadsheets—lacked evidence that 101 (53 percent) of the 192 complaints were referred as required to one or more of the three State agencies. Under DFTA’s protocols, each of the 192 complaints DFTA received should have resulted in 3 referrals—1 to each of the 3 state agencies—for a total of 576 referrals. DFTA’s spreadsheets, however, contained no notations to show that DFTA made 219 (38 percent) of them. Table I provides a breakdown regarding the number of complaints lacking such evidence.

Table I

Total Number of Complaints Lacking Evidence of Referrals to Each of the State Oversight in the Tracking Spreadsheets

Category	# of Complaints
Number of complaints received by DFTA in 2017 and 2018	192
Number of referrals required (192 * 3)	576
Complaints missing evidence of referral to NYSDOH	80
Complaints missing evidence of referral to NYSOFA	72
Complaints missing evidence of referral to OMIG	67
Required referrals not recorded in DFTA’s spreadsheets	219 (38%)

The Ombuds Office does not make centralized tracking of SADC complaint referrals a priority. According to DFTA officials, they do not consider the columns in the spreadsheet designated for referrals to State oversight and City agencies to be critical fields, i.e., fields that call for information deemed necessary for a proper record of DFTA’s handling of the complaint. However, considering that DFTA’s policy during the audit scope period involved referring such complaints to State and City agencies, rather than investigating them as mandated by Local Law 9 of 2015, it was essential for DFTA to properly track its referrals to demonstrate that the complaints had been reviewed and referred for investigation.

We observed that DFTA uses a different system—the Correspondence Tracking System (CTS)—to track and process other types of complaints and inquiries it receives via 311 or from the Mayor’s Office, but does not use CTS for the SADC complaints. CTS, unlike DFTA’s above-described spreadsheets, employs basic data control and reporting functions, including edit checks that

inform users when information is not entered into required fields, an internal tracking mechanism for a complaint's due date (based on DFTA policy), and a built-in feature to generate reports. Despite the availability of CTS, DFTA generally does not use it to track SADC complaints and the Ombuds Office's referrals of SADC complaints to State oversight and City agencies. Instead, DFTA uses the above-mentioned Excel spreadsheet, which does not have similar edit and tracking features, to track SADC complaints and as a result, DFTA lacks information in its records to show the action taken on a significant number of the complaints it receives. According to an Ombuds official, the office has been working with DFTA's Information Technology unit to begin using CTS for tracking complaints.

By not recording critical complaint data, DFTA may be hindered in determining whether all complaints were referred to oversight agencies, in accordance with its policy.

Complaint Referrals Are Not Made Timely

According to an Ombuds official, DFTA should address and refer complaints to State oversight and City agencies "as soon as possible," although the official would not specify a specific target timeframe for doing so. Nevertheless, personnel from DFTA's Executive Office and the agency's Policy, Planning and Analysis Unit informed us that DFTA's agency-wide policy is to address complaints within 14 calendar days of receipt. Accordingly, we used this 14-day benchmark to assess DFTA's timeliness in referring complaints.

As stated previously, for the 192 SADC complaints, DFTA's protocol dictates that it should have made 576 referrals to State oversight entities. DFTA's records also indicate that it made 44 referrals to City agencies—for a total of 620 referrals in all that were either made or should have been made in accordance with DFTA policy. However, DFTA did not track the referral dates for 408 (66 percent) of those 620 referrals. In fact, from the 112 referrals to NYSDOH, there were 96 instances (86 percent) where no referral dates were recorded. Concerning the absence of such tracking, a DFTA official informed us that DFTA did not consider the referral dates critical. However, due to the absence of referral dates, neither DFTA nor we can assess the timeliness of the referrals. Of the remaining 212 instances—those in which DFTA recorded the referral dates—we found that 70 (33 percent) were sent more than 14 calendar days after DFTA received the complaints. The breakdown is as follows:

- Of the 16 complaints referred to NYSDOH, 9 (56 percent) were sent more than 14 calendar days—ranging from 18 to 260 calendar days—after DFTA's receipt.
- Of the 87 complaints referred to NYSOFA, 28 (32 percent) were sent more than 14 calendar days—ranging from 17 to 260 calendar days—after DFTA's receipt.
- Of the 89 complaints referred to OMIG, 29 (33 percent) were more than 14 calendar days—ranging from 17 to 351 calendar days—after DFTA's receipt.
- Of the 20 complaints referred to City agencies, 4 (20 percent) were sent more than 14 calendar days—ranging from 17 to 128 calendar days—after DFTA's receipt.

As illustrated by the above-described analysis, DFTA does not employ an adequate system for tracking the dates of its referrals of SADC-related complaints to State oversight and City agencies. The spreadsheets DFTA uses to record such complaints lack designated fields for DFTA to record referral dates. (In some instances, DFTA recorded the dates in a comments field.) Moreover, DFTA

has not developed an alternative system or used its existing CTS system to track the timeliness of its referrals of SADC-related complaints.

Of the 192 complaints DFTA recorded as received in 2017 and 2018, DFTA categorized 70 complaints as relating to possible participant rights violations, 65 as possible instances of Medicaid fraud, 34 as relating to the SADC's physical environment & safety, and 32 relating to nutrition and food. Table II provides a breakdown of DFTA's categorization of the potential violations based on the 192 complaints.¹³

Table II

List of Potential Violation Categories

Violation Category	Number	Percentage
Participant Rights	70	25.3%
Possible Medicaid Fraud	65	23.5%
Physical Environment & Safety	34	12.3%
Nutrition and Food	32	11.5%
Staff & Staff Training	30	10.8%
Participant Eligibility	20	7.2%
Other ¹⁴	26	9.4%
Totals	277	100%

When DFTA chooses to refer, rather than investigate, complaints, and then fails to ensure that its referrals are timely, the issues raised by those complaints—including the identification and resolution of situations that pose a threat to participants' health and safety—may be unnecessarily delayed, further increasing the risk to participants.

Although DFTA's recently-finalized rules establish some procedures for the Ombudsperson's initial processing of complaints, and expressly authorizes the Ombudsperson to refer complaints to external agencies, the rules do not establish procedures for the Ombudsperson to document complaint referrals or to track them to determine what if any action the external agencies take. In addition, the rules do not establish timeframes within which the Ombudsperson should review incoming complaints, determine what action is warranted, and complete external referrals of those that warrant referral. The rules also fail to address the issue of whether and how the Ombudsperson may properly reject complaints, or determine that no action is warranted on complaints, and how to document those determinations.

Recommendations

4. DFTA should draft procedures to help ensure that all complaints are logged and tracked from receipt to disposition and to ensure that when it refers complaints to State and City agencies it adequately documents the referrals and tracks the outcomes.

DFTA Response: "The Rule needed to be complete before this action could be taken. Where necessary, DFTA will track referrals made to outside agencies;

¹³ One complaint may contain multiple alleged violations; therefore, the alleged number of violations is greater than the number of complaints received during our scope period.

¹⁴ Examples of these complaints include inadequate SADC records and general service complaints.

however, if a case is referred to a State or City agency then the case is considered 'closed' with DFTA. DFTA is not required to and does not have the authority or jurisdiction to pursue the outcome or final determination made by outside agencies of complaints we refer. If an outside agency voluntarily provides DFTA with an outcome or final determination, DFTA will document the outcome in the complaint folder and in the SADC Ombuds Correspondence Tracking System."

Auditor Comment: DFTA appears to partially agree with this recommendation. Since DFTA already established a computerized system to track complaints, it is unclear why DFTA contends that the Rules must be finalized before action is taken to ensure that all complaints are adequately documented and tracked. In addition, without tracking outcomes or final determinations on referred complaints, DFTA has limited assurance that complaints are adequately investigated and addressed. Inasmuch as DFTA's Ombudsperson will have the discretion under the agency's recently-adopted rules to refer complaints to other agencies or retain them for investigation, the Ombudsperson needs to know the extent to which those agencies address, or do not address, the issues presented in the complaints in order to make informed discretionary decisions on subsequent complaints. We urge DFTA to take a more proactive approach and follow up with outside agencies to obtain the final complaint determinations.

5. DFTA should utilize CTS as a centralized system to process and track all complaints.

DFTA Response: "DFTA is moving forward with this action. At the January 27, 2020 exit interview, DFTA informed the auditors that DFTA will launch the SADC Ombuds Correspondence Tracking System in the Spring of 2020. The system will track all required activities related to complaints."

6. DFTA should establish a mechanism to track the timeliness of complaint referrals and to ensure that it makes referrals timely.

DFTA Response: "Please see DFTA Response #5. Additionally, at the January 27, 2020 exit interview, DFTA informed the auditors that timeliness of working on a complaint is on a case to case basis as some complaints require more time to process than others before referring to another agency."

Auditor Comment: DFTA appears to partially agree with this recommendation. Although DFTA states it has a complaint-tracking mechanism, which apparently would enable the agency to track its complaint referrals "where necessary" (DFTA's response to Recommendation #4), DFTA disagrees that a standard timeframe, or any other defined standards, to measure and ensure the timeliness of its complaint referrals, should be established. As stated in this report, we found that 70 (33 percent) of the 212 referrals in which DFTA recorded the referral dates were neither addressed nor referred by DFTA within 14 days, in accordance with DFTA's agency-wide policy for addressing complaints. When DFTA fails to ensure that its complaint referrals are timely, the issues raised by those complaints may be unnecessarily prolonged, further increasing the risk to participants. Therefore, we urge DFTA to fully implement the recommendation.

DFTA Files Do Not Contain Adequate Evidence of Complaint Processing

According to DFTA's *Filing Complaint Files* procedures for SADC complaints, documentation for referrals to NYS Agencies should be kept in hardcopy and electronic complaint files. The procedures also require DFTA's Ombuds Office to send Complaint Notification Letters (CNLs) to SADCs informing them of its receipt of the complaints against them. These CNLs are to be kept in the hardcopy and electronic files. The procedures also require DFTA to acknowledge receipt of complaints. Acknowledgments are also to be kept in the hardcopy and electronic files. Per officials, DFTA will notify complainants who provide their contact information to inform them that DFTA received their complaint and it is being addressed.¹⁵

Based on a review of the 45 hardcopy and electronic complaint files sampled, we found that:

- Files for 7 (17 percent) of the 42 complaints for which DFTA reportedly made referrals were missing referral letters to all three State Oversight agencies. (DFTA decided not to refer 3 of the 45 sampled complaints.)
- Files for 7 (16 percent) of 44 complaints for which DFTA reportedly sent CNLs to the SADCs were missing the CNLs. (DFTA decided not to send a notification letter for 1 of the 45 sampled complaints.)
- Files for 5 (22 percent) of 23 complaints in which the complainant provided a name and contact information were missing evidence that DFTA notified the complainants that the agency had received their complaints.

We found that DFTA did not establish a control (e.g., supervisory review of files) to help ensure that it issued and maintained the prescribed referral letters and notifications in the complaint files in accordance with its written procedures. Without evidence in the files that DFTA complied with the complaint procedures, DFTA has limited ability to determine that action is being taken to address complaints, which increases the risk that conditions meriting attention may not be corrected. In addition, when DFTA does not notify SADCs about complaints against their programs, SADCs do not have an opportunity to investigate and address the complaint or correct the conditions cited, if warranted. Furthermore, when DFTA does not notify complainants that it received their complaints, the complainants do not necessarily have any assurance that their complaints are being investigated or addressed. This lack of assurance could lead to complainants either being discouraged from submitting future SADC-related complaints or submitting multiple complaints for the same issue.

Recommendation

7. DFTA should ensure that evidence documenting all steps within the complaint process is in the files, specifically, (1) referrals of complaints to State oversight agencies; (2) CNLs sent to SADCs; and (3) notification of complaint receipt to complainants, when applicable.

¹⁵ Complainants may submit complaints anonymously or without complete contact information.

DFTA Response: “DFTA has remained in compliance with this action. DFTA adhered to this practice even before the audit. At the January 27, 2020 exit interview, DFTA provided auditors with a workflow that described the process of handling and filing complaints.”

Auditor Comment: Contrary to DFTA’s assertion, we did not find sufficient evidence that DFTA properly documented all the steps in the complaint process. In addition, while DFTA did provide a workflow process for handling and filing complaints, the case files we reviewed did not contain adequate documentation to show that DFTA performed all of the steps outlined in that process.

Other Oversight Weaknesses

Insufficient Evidence of Self-Monitoring Performed by City-funded SADS

According to NYSOFA, the required “SADS Self-Monitoring Tool is designed to determine whether Social Adult Day Services are in compliance with the standards under New York State Office for the Aging Social Adult Day Care regulation NYCRR Title 9.” In addition, DFTA’s Social Adult Day Services Discretionary Programs Policies and Procedures state that a program is required to complete a program self-evaluation in the form of either the NYSOFA self-monitoring tool or a Program-initiated self-evaluation. Furthermore, both the NYSOFA Self-Monitoring Tool and the Program Assessment Questions (used by DFTA when conducting the SADS annual assessments) state that programs should conduct self-evaluations of their “administrative, fiscal, and program operations, including feedback from participants and caregivers.”¹⁶ We confirmed with DFTA officials that DFTA should maintain copies of the SADS’ self-evaluations on file.

However, a review of the SADS’ files found that six of the nine SADS had no evidence of a NYSOFA Self-Monitoring Tool.¹⁷ In addition, DFTA had no evidence in its files that these six programs completed the required self-evaluations. Three of the six had no evidence of a self-evaluation and the remaining three had incomplete self-evaluations. Of the three programs with incomplete self-evaluations, the files for two contained only evidence of participants’ satisfaction surveys; no evaluations of the SADC’s administrative, fiscal or program operations were found in the two files. The remaining program’s file contained a partial program-initiated self-evaluation but did not include a participants’ satisfaction survey.

The lack of required, complete self-evaluations or monitoring by six of the nine SADS occurred primarily because DFTA has not enforced the policy requiring programs to complete either the NYSOFA Self-Monitoring Tool or the self-evaluations. In addition, DFTA personnel are unclear on the requirements for self-evaluations. According to DFTA officials, they accept participant surveys as an equivalent to a self-evaluation. However, the self-evaluation also requires a review of administrative, fiscal, and program operations in addition to feedback from participants.

Without a completed NYSOFA Self-Monitoring Tool or a complete program-initiated self-evaluation, the SADS may be hindered in identifying their own areas of non-compliance in order to timely correct them. As a result, DFTA may lack the appropriate level of assurance that the programs it contracts with are complying with the regulations.

¹⁶ SADSs generally obtained feedback via a satisfaction survey, which a participant, caregiver, or both could complete, depending on whether the participant’s impairment prevents the participant from completing the survey.

¹⁷ One of the 10 SADS closed during Fiscal Year 2018 and did not require a self-evaluation.

Two of Six CAPs Not Submitted Timely

According to DFTA's internal *Social Adult Day Services Discretionary Programs Policies and Procedures*, Programs are required to respond to DFTA's assessments of non-compliance by way of a CAP within three weeks of the date of the assessment letter.

We found that six SADS had non-compliance issues for which DFTA required a CAP. Two SADS submitted their CAPs after the required three-week time frame—one was 3 days late, while the other was 38 days late. According to DFTA officials, they were providing technical assistance to the two programs between the times that DFTA issued the assessment letters and the times that the SADCs submitted their CAPs. However, DFTA was unable to provide any evidence (e.g., emails or memos) of this technical assistance or that it granted extensions to submit the CAPS in these instances. When DFTA does not ensure timely submission of CAPS, there is an increased risk that the issues requiring correction will not be addressed timely, which could leave participants at risk.

SADS' Incidents Not Centrally Tracked

According to Comptroller's Directive #1, *Principles of Internal Control*, all transactions and significant events need to be clearly documented and the documentation readily available for use or examination. In addition, under DFTA's *Social Adult Day Services Discretionary Programs Policies and Procedures*, SADS are required to complete and submit incident reports to the DFTA program officer.¹⁸ Therefore, DFTA should have a mechanism to track these incidents to help assess compliance with this requirement.

However, we found that DFTA does not have a centralized tracking mechanism to track incidents at the SADS sites, which results in the information not being readily available, in violation of Directive #1. Only during a review of the SADS individual program files did we identify whether incidents occurred at a SADS. Our review of the 10 SADS' program files showed that 5 SADS submitted a total of 8 incident reports to DFTA.¹⁹ DFTA did not see a need to create a centralized tracking system for incidents at the SADS. Without a centralized tracking mechanism, DFTA is less able to readily identify the total number of SADS incidents that occurred in a given year. In addition, DFTA may be unable to identify possible trends (e.g. alleged elder abuse, participant slip and falls) at a specific program and the number of instances where City emergency services was involved. Currently, DFTA would need to review all SADS program files to locate individual incident reports.

Recommendations

8. DFTA should require SADS to complete the NYSOFA Self-Monitoring Tool, including both the full annual self-evaluation in all specified areas and the required feedback from participants in order to ensure compliance with the State standards.

¹⁸ Incidents include physical injuries, slip and falls, elder abuse, workplace violence, contagious disease exposure, property damage and illness.

¹⁹ In the beginning of Fiscal Year 2018 there were 10 SADS with DFTA contracts; however, one SADS closed in December 2017.

DFTA Response: “DFTA has already satisfied this action. DFTA standardized the self-monitoring tool by requiring all SADS to use the NYSOFA Self-Monitoring Tool.”

9. DFTA should require programs to submit CAPS timely. In instances where SADS may not be able to submit a CAP timely, DFTA should require SADS to submit written requests for extensions and should document its decisions on whether to grant them.

DFTA Response: “DFTA is in the process of updating the DFTA SADS Standards and SADS Standard Operation Procedure (SOP) to reflect the above recommendation.”

10. DFTA should establish a mechanism to document all SADS incidents and track the timeliness of incident reports to ensure that SADS are submitting them timely.

DFTA Response: “DFTA was previously in compliance with this action. DFTA implemented an Incident Tracking System (ITS) for SADS in 2018 and continues to utilize ITS to document and track all SADS incident reports.”

Auditor Comment: At no point during the course of our audit, other than in its response, has DFTA mentioned an incident tracking system; therefore, we cannot confirm its existence. We are pleased that DFTA recognizes the importance of tracking SADS incidents and hope that the system it claims to be utilizing works efficiently.

Other Matters

No Internal Referrals to DFTA Units for Possible Double Dipping

According to DFTA officials, DFTA should pay for participants’ SADS services only in instances where the SADS is not receiving payment from an insurance company.²⁰ However, we found that DFTA has not established a policy for reviewing files for DFTA-funded SADS clients to ensure that DFTA is not paying for services for which the SADS are also receiving funds from other parties, such as insurance companies.

Currently, DFTA’s SADS Discretionary Programs Policies and Procedures do not include a review to identify whether another entity is paying or is available to pay for services provided. During a participant file review, DFTA identified one SADS program that appeared to be billing an insurance company and DFTA for the same days of service for a participant. HCC program officers did not confirm whether a private insurance should be billed first for services a SADS provides to insured participants, which raises questions as to whether they are aware of the payment hierarchy other DFTA officials described. Officials also stated that DFTA does not get involved in insurance/Medicaid decisions. Furthermore, DFTA suggested that the SADS designate a section in each participant’s folder related to financing by DFTA, separate from the section of the same folder containing information related to financing by other payers, a suggestion that if followed could hinder the identification of double dipping. However, there was no evidence that DFTA referred the suspected case of double dipping to the appropriate unit for review.

²⁰ In some cases, insurances/MLTCs may not pay for a full week of services. For example, an insurance/MLTC may pay for three days of service while DFTA agrees to pay for two days of service.

Without adequate controls to help ensure the proper coordination of benefits, DFTA incurs an increased risk that it may inappropriately pay for services a program renders to a client covered by insurance. This may result in payments to the program that it is not entitled to and a decrease in the funds available to DFTA to pay for services to other clients.

Recommendations

11. DFTA should update its policies and procedures to include a review of each participant's insurance status and the number of service days that should be paid by the insurer. DFTA should reimburse SADS only for the days of service they provide to eligible participants that are not covered by the insurance.

DFTA Response: "DFTA agrees with this recommendation regarding City Council funded discretionary contracts. DFTA is updating the DFTA SADS Standards and SADS SOP to reflect the above recommendation."

12. DFTA should conduct a full review of participants' files to ensure DFTA is not paying for days of service for which an insurer should be paying and refer any instances of possible double dipping to the appropriate DFTA unit for further investigation.

DFTA Response: "DFTA has already taken action to update the DFTA SADS Standards and SADS SOP to reflect the above recommendation."

DETAILED SCOPE AND METHODOLOGY

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 objective. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was July 1, 2017 through June 30, 2018, with the exception of SADC complaints, which were reviewed for Calendar Years 2017 and 2018.

To obtain an understanding of the organizational structure and operations within HCC, we reviewed the HCC's organizational chart. In addition, to obtain an understanding of the operations within HCC and the responsibilities of the Bureau's personnel at different levels of the organization, we conducted interviews with the Assistant Commissioner, Associate Program Officer, Program Officer, SADC Ombuds Office Director, Community Coordinator, and Community Associates. We also interviewed the Controller, Deputy Assistant Controller, Director, and Vendor Payments Supervisor of DFTA's Contract Accounting Unit. We then obtained written confirmations of key information obtained during the interviews.

To determine HCC's responsibilities with regard to monitoring of SADS and regulating of SADC programs, we reviewed and, where applicable, used as audit criteria: (1) the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 9, Subtitle Y, New York State Office for the Aging (NYSOFA) Chapter II, Part 6654, Section 6654.20, Social Adult Day Care Programs; (2) the NYSOFA SADS Self-Monitoring Tool; (3) Local Law 9 of 2015; (4) Local Law 9 of 2018; (5) Amendment to the New York City Administrative Code, Chapter 2, Department For the Aging, Title 21, §21-204.1; (6) DFTA SADS Discretionary Programs Policies and Procedures; (7) Model SADS Standards; (8) DFTA's HCC's Filing Complaint Files procedure; (9) Workflow for Processing Complaints; (10) Workflow for Processing New SADC Registration; (11) Complaints Against Unregistered SADC programs; (12) Review SADC Registration Form; (13) the New York City Council's online records detailing the legislative history of Local Law 9 of 2015 and Local Law 9 of 2018; (14) New York City Council Committee Report, *Oversight: Social Adult Day Care*; and (15) DFTA Notice of Public Hearing and Opportunity to Comment on Proposed Rules.

To determine whether HCC conducts adequate monitoring of SADS and to obtain a better understanding of how SADS are operated, we selected one of the nine SADS and interviewed the Program Executive Director and SADS Coordinator. Next, we randomly selected four of the eight remaining SADSs and conducted unannounced visits. In addition, we interviewed Program Directors at all four SADSs. We inspected the five SADS to determine whether the SADS maintain a clean and safe site for the participants; post required certificates including Participants' Rights and DFTA's SADC Ombuds Poster for the public to see; and establish a structured daily schedule for the participants.

To obtain an understanding of how DFTA records and tracks SADS' annual assessments, we conducted an observation of DFTA's Program Assessment System (PAS) with the Associate Program Officer. In addition, we requested and reviewed PAS annual assessment reports completed by DFTA for the 10 SADS for Fiscal Year 2018.

To determine whether DFTA adequately monitors SADS and conducts annual assessments of such SADS, we obtained hard copy SADS records from DFTA and conducted a detailed review. We also obtained remote access to a replica of PAS where annual assessments should be recorded for each SADS.

To obtain an understanding of the process through which units within DFTA refer complaints to HCC, we conducted interviews with the Deputy Director, Chief Policy and Planning Officer and Correspondence and Language Access Specialist from DFTA's Policy, Planning and Analysis Unit. In addition, we obtained an understanding of DFTA's Complaint Tracking System (CTS) used for recording and tracking of SADC complaints. We also interviewed the Executive Assistant to the Commissioner from DFTA's Executive Office to obtain an understanding of the internal complaint referral process prior to the implementation of CTS.

To obtain an understanding of how SADC complaints are processed, we interviewed DFTA's Assistant Commissioner and SADC Ombuds Office Director. To determine whether SADC complaints were referred to State oversight and City agencies, and whether SADCs were informed in writing that complaints were filed, we tested data columns from the complaint spreadsheets to see whether appropriate entries were made. To determine the timeliness of the referrals, in instances where referral dates were listed, we copied and pasted the text from comment boxes within the complaint spreadsheets and created a new Excel column in order to calculate the number of days it took to make referrals. Further, we reviewed the data for duplicate complaint records; instances where it appears that the same complaint was submitted regarding the same SADC to determine whether DFTA duplicated efforts in referring the complaints.

To determine whether DFTA adequately maintains required documentation in its files, we selected a random sample of 22 complaints received and processed by DFTA in Calendar Year 2017 and 21 complaints received and processed by DFTA in CY 2018 and obtained and reviewed the files.

To obtain an understanding of how DFTA records and tracks SADC complaints on their Microsoft Excel complaint spreadsheet we met with the SADC Ombuds Office Director. In addition, we researched DFTA's website and NYC.gov to identify how to submit an SADC complaint.

To determine whether DFTA is in compliance with Local Law 9 of 2015 and has adopted rules for establishing civil penalties and had issued any violations, where applicable, we requested DFTA's established rules associated with Local Law 9 of 2015.

To obtain an understanding of how SADCs are required to register with DFTA, we conducted an observation of DFTA's SADC Online Registration portal with the SADC Ombuds Office Director, Community Coordinator, and Community Associate.

To determine whether any SADC programs are operating in the City without having registered with DFTA, we conducted an online search and identified potential SADC programs that were not included in the list of registered SADC programs operating in Calendar Years 2017 and 2018 provided to us by DFTA. We contacted some of the potentially unregistered SADC programs via telephone and conducted unannounced field visits to some of them to determine whether they were operating as SADCs and, if so, to obtain the dates the programs started their operations. In addition, DFTA identified two SADCs operating within the City during our scope period, without registering. Using the obtained operation start dates, we calculated potential monetary penalties DFTA could have imposed upon the SADCs for not registering with DFTA in compliance with Local Law 9 of 2015.

To determine whether DFTA had established a system to receive comments and complaints with respect to any SADC, we searched DFTA's website to ensure that the public can file complaints online and interviewed DFTA's Ombuds Office personnel to determine whether the public can file complaints via telephone.

We also determined whether DFTA provides a written report to the City Council regarding SADCs by requesting copies of written reports for Calendar Years 2017 and 2018.

To determine whether DFTA requests a list of SADCs certified with the New York State Department of Health annually, we reviewed e-mail communication and a list of the SADCs certified with the State.

To determine whether DFTA made available on its website the contact information of the Ombudsperson, we reviewed DFTA's website.

To determine whether DFTA is in compliance with Local Law 9 of 2018 and maintains an online public searchable database (DFTA website) of SADCs registered with DFTA we randomly selected a sample of 33 active SADC programs operating in Calendar Years 2017 and 2018. We tested to determine whether SADCs could be identified by the name under which the SADC registered, by the name under which SADC is doing business, by borough, and by zip code. In addition, we tested whether DFTA's website included the name, address, telephone number, a website address (if applicable), corporate structure and ownership, the days and hours of operations, the year the SADC was established, and the name, address and telephone number of any MLTCs which with the SADC has a formal agreement. Furthermore, to determine whether DFTA is in compliance with Title 21: §21-204.1 with regard to DOHMH food inspections; we reviewed DFTA's website to determine whether DFTA made available for the public information about DOHMH food service inspections.

To determine whether DFTA is in compliance with an Amendment to the New York City Administrative Code and provides the DOHMH a list of all SADCs registered with DFTA on an annual basis, we requested evidence of such communication with NYS DOHMH from DFTA.

To assess the reliability of the computer-processed data received from DFTA, we examined an electronic listing of SADC programs registered and operated in Calendar Years 2017 and 2018 called SADC Calendar Year 2017 and 2018 LIST. The listing was generated by DFTA in Excel format and contained two tabs: 2017 that included a list of SADC programs operating in Calendar Year 2017 and 2018 that included a list of SADC programs operating in Calendar Year 2018. Next, utilizing Audit Command Language (ACL) audit computer program, we compared the two lists to determine what SADC programs appeared to still be active and SADC programs that possibly closed during or after Calendar Year 2017. To test the accuracy and validity of the computer-processed data, using ACL, we randomly selected a sample of 33 active SADC programs operating in Calendar Years 2017 and 2018 and verified the information from the electronic data fields by comparing it to the documentation in the hard-copy files. In addition, to test the completeness and further test the accuracy and validity of the data, we selected 33 hard-copy active SADC registration files from DFTA's Ombuds Office file cabinets to ensure the SADCs were on the electronic list provided by the Ombuds Office and to compare the hard-copy information to the electronic data. Further, we randomly selected a sample of 22 and pulled nine hard-copy files for inactive SADC programs operating in 2017 and 2018 to determine whether electronic data was accurate and complete.

To assess the reliability of the computer-processed data contained in the electronic file called complaint reports 2017 2018 2.22.19 (complaint spreadsheet), using Excel's Sort command we

reviewed the data columns and verified whether all the columns contained data. For example, we verified whether the complaint narrative and potential violations field contained data.

Although the results of our sampling tests were not statistically projected to their respective populations, these results, together with the results of our other audit procedures and tests, provide a reasonable basis for us to assess DFTA's compliance with the local laws, processing of public SADC complaints and monitoring of SADS.

APPENDIX

Local Law 9 of 2015			
Law Requirements	Compliant	Non-Compliant	N/A
Social Adult Day Care Registration			
An entity's registration shall include registrant's name, address, corporate structure and ownership, and other information as DFTA may require and DFTA may require SADCs to register electronically.	X ²¹		
Civil Penalties and Notice of Violations			
Adopts rules for establishing civil penalties. Such rules establishing civil penalties shall specify the violations subject to penalty.		X	
Any entity operating as an SADC without registering with DFTA shall be subject to a civil penalty each day SADC operates without registering.		X ²²	
DFTA and officers and employees of city agencies designated by the mayor shall have the authority to issue notices of violation for violations of this section or any rules promulgated by DFTA pursuant to such section.			X ²³
Social Adult Day Care Ombudsperson			
DFTA shall designate an Ombudsperson.	X		
The Ombudsperson duties shall include:			
Establishing a system to receive comments and complaints with respect to any SADC.	X		
Requesting a list from the NYSDOH at least once annually of providers operating SADCs within the city of New York.	X		
Investigating complaints received related to any SADC.		X	
Promptly informing SADCs and any MLTC organizations known to be reimbursing such SADC in writing of complaint findings and requesting any informed MLTC to respond to the Ombudsperson in writing as to whether and how such violations will be addressed.			X ²⁴

²¹ As of April 2018, DFTA requires all SADCs to register and update their program's information online via DFTA's SADC Online Registration portal.

²² DFTA only adopted the rules necessary to assess such penalties on February 8, 2020.

²³ Although DFTA has been designated to issue notices of violation, the agency did not adopt rules to do so, as stated in this report.

²⁴ Because DFTA is not currently investigating SADC complaints, DFTA cannot inform the SADCs or the MLTCS of complaint findings.

Local Law 9 of 2015			
Law Requirements	Compliant	Non-Compliant	N/A
At the Ombudsperson's discretion, forwarding the results of a complaint investigation to the department of investigation, NYSDOH or any office, agency, or entity responsible for the prevention, detection, and investigation of fraud and abuse in the medical assistance program.			X ²⁵
SADCs shall post in a conspicuous location on its premises a sign indicating how to contact the DFTA Ombudsperson and a statement indicating that any person may contact such Ombudsperson if such person has a comment or complaint regarding an SADC.	X ²⁶		
Any person may contact such Ombudsperson with a comment or complaint on DFTA's website.	X		
Except as otherwise required by law, DFTA shall not share information that identifies any individual who made a complaint to the Ombudsperson.	X ²⁷		
Ombudsperson Report			
The Ombudsperson shall provide a written annual report to the council regarding SADCs no later than January 1st of that year.	X ²⁸		
Each such report shall include, but not be limited to:			
The total number of SADCs and the name and street address of each SADC.	X		
The total number of complaints received by the Ombudsperson.	X		
A general description of the reason for each complaint.	X		
The total number of investigations conducted by the Ombudsperson, a general description of the reason for each investigation, any findings that an SADC had violations, and the outcome of each investigation.	X		

²⁵ Because DFTA is not currently investigating SADC complaints, DFTA cannot forward complaint findings to other agencies.

²⁶ Based on our visits to five SADCs, we observed that SADCs posted the Ombuds Poster in a visible area.

²⁷ Based on our review of the CNLs sent to the SADCs, DFTA did not identify the complainant on the letters.

²⁸ While DFTA submitted the Ombudsperson Report to the City Council, it did not submit it until February 2019.

Law Requirements	Compliant	Non-Compliant	N/A
The total number of notices of violation issued, disaggregated by the specific violation for which the notice was issued.	X		
The total number of SADCs that failed to register.	X		
Any recommendations regarding the operation of SADCs.	X		
Local Law 9 of 2018			
Online Searchable Database			
DFTA shall create and maintain an online public searchable database of SADCs registered with DFTA.	X		
Public shall be able to search by:			
The name under which the SADC registered.	X		
The name under which the SADC is doing business.	X		
By borough.	X		
By zip code.	X		
The database shall include the following information:			
The name, address, telephone number, and website, if any, of the SADC.	X		
The corporate structure and ownership of the SADC.		X	
The days and hours of operation of the SADC.	X		
The year the SADC was established.		X	
The name, address and telephone number of any MLTC company with which the SADC has a formal agreement.		X	
The number of notices of violations issued.		X	
The outcomes of the violation.		X	
The year and nature of the notice of violation.		X	
The database shall allow an individual to submit complaints electronically about an SADC to the Ombudsperson.	X		

Amendment to the Administrative Code			
Law Requirements	Compliant	Non-Compliant	N/A
DFTA shall provide the DOHMH a list of all SADCs in the city registered with DFTA on an annual basis and update the DOHMH monthly of any changes to either list.	X		
DFTA shall make available on its website information about the inspections of SADCs conducted by the DOHMH.		X	
Totals	24	10	3



Lorraine Cortés-Vázquez
Commissioner

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February 26, 2020

Marjorie Landa
Deputy Comptroller for Audit
City of New York
Office of the Comptroller
1 Center Street, Room 1100
New York, NY 10007

Dear Deputy Comptroller Landa:

Below please find the Department for the Aging's (DFTA or Agency) response to the New York City Comptroller's "*Audit Report on the Department for the Aging's Monitoring of Social Adult Day Care Centers*," MD19-080A.

DFTA is committed to improving the quality of life of older adults with disabilities through direct monitoring of the nine New York City Council discretionary funded Social Adult Day Services (SADS) programs. The SADS programs offer daytime services to frail, vulnerable older New Yorkers, providing respite for their caregivers. Local Law 9 of 2015 and 2018 required DFTA to create a Social Adult Day Care (SADC) Ombudsman Office to monitor all SADC programs throughout the City, including programs directly funded by the City Council.

In April 2019, DFTA's leadership changed; the Commissioner put in place a new Executive team and restructured the Agency to better reflect the Administration's priorities. Building out the SADC Ombuds Office has been one of DFTA's key priorities, including promulgating the Rules as required within ten months of the new Administration.

On the SADS audit findings, the Agency is pleased that the Comptroller's Office found that "DFTA adequately monitored them [the 9 SADS] to help ensure compliance with NYSOFA regulations and DFTA's SADS standards."

However, the audit report does not adequately represent certain areas of DFTA's compliance with Local Law 9 of 2015 and 2018. As a result, many of the conclusions are inaccurate, incomplete and inappropriate. DFTA asserts the following:

1. Prior to promulgating the Rules that govern Local Law 9 of 2015, DFTA developed internal processes that aligned with the intent of Local Law 9 of 2015 and addressed certain inaccuracies or misunderstandings. For example, Local Law requirements such as issuing Notices of Violation (NOVs) were not applicable and should have been categorized as such.

2. The Comptroller's report and findings do not reflect the reality of DFTA's role relative to that of the State and Managed Long-Term Care (MLTC) plans have with SADCs.

It appears the Comptroller's report misinterprets Local Law 9 of 2015 by assuming that DFTA has complete oversight responsibility over these SADC programs that are, in fact, under the authority and purview of New York State. Currently the State does not require SADCs to have any permit or license to operate. Typically, these SADC programs contract with MLTC plans, and are funded with Medicaid dollars received from the New York State Department of Health (NYSDOH). NYSDOH and MLTCs bear the responsibility of ensuring that services are provided to eligible individuals in accordance with New York State regulations and standards. NYSDOH also requires that MLTCs conduct initial and annual site visits of all their contracted SADCs in order to monitor compliance with the minimum State regulations and requirements, including NYSOFA SADC standards. MLTCs are mandated to assess the cognitive and physical status of all potential SADC participants prior to authorizing attendance and must ensure that SADC providers are following and maintaining documentation of such compliance for all related audits. Additionally, NYSDOH requires that all MLTC-contracted SADCs self-certify annually with the New York State Office of the Medicaid Inspector General (OMIG), attesting that they are following NYSOFA Social Adult Day Standards, as well as adhering to local building, fire safety, and health codes. DFTA does not have any regulatory authority over SADC programs that are not contracted with DFTA. Conversely, Local Law 9 of 2015 requires any SADC operating within New York City to register with DFTA and required the creation of the Ombuds Office to field complaints related to SADCs operating within New York City. Additionally, the law requires the issuance of NOV's and civil penalties where SADCs are non-compliant with the State's SADC standards.

The Comptroller's report recognizes DFTA's compliance with the laws as evidenced by the matrix in Appendix A indicating that DFTA was compliant with 24 out of 34 requirements of the laws at the time of the audit. As discussed below, DFTA is now compliant with all 34 requirements, as the Rules became effective on February 8, 2020, and the online public search portal contains all required SADC information. Of the 12 recommendations in the Comptroller's report, three were already in place at DFTA, three have been implemented during the audit process, and six are in progress toward completion.

FINDINGS

Comptroller Finding 1: DFTA was not timely in adopting rules that establish civil penalties for violations of applicable laws and regulations by SADCs operating in the City as required by Local Law 9 of 2015. Only recently, during the course of this audit, did the agency take the necessary step of posting draft rules for public review and comment, as of November 2019, nearly four years after the statutory deadline for DFTA's adoption of final rules. The rules went into effect on February 8, 2020.

The Comptroller's first finding is misleading, since at the exit interview, DFTA demonstrated that we began developing the rules shortly after Local Law 9 of 2015 was enacted. DFTA also explained that our Agency is historically a social services agency, and that Local Law 9 of 2015 is the first legislation requiring DFTA to act as an enforcement agency.

While working with the Law Department on developing the Rules, DFTA developed processes that aligned with the spirit of the requirements of Local Law 9 of 2015 and 2018 while remaining in the legal bounds of what was possible, particularly as related to the State's jurisdiction.

Rules were clarified, investigation protocols established, and the final Rules were adopted on February 8, 2020. This has enabled DFTA to begin issuing civil penalties related to SADC registration and non-compliance with

NYSOFA Social Adult Day Standards. The legislated online searchable database includes all required fields, including a link to the DOHMH website.

Comptroller Finding 2: DFTA does not conduct any investigations into complaints received against SADCs as required by Local Law 9 of 2015. Rather, DFTA refers complaints to State and City oversight agencies.

During the audit and at the exit interview, DFTA provided the auditors with the SADC Ombuds Office protocols and workflows for processing registrations and handling complaints, which go well above and beyond what the law requires. Below are such examples:

- DFTA processes complaints by thoroughly reviewing the validity of the complaint. At times, DFTA conducts site visits to SADCs. Copies of site visit reports were submitted to the auditors at the exit interview.
- Upon review of complaints, DFTA refers complaints to appropriate government agencies for investigations, as appropriate. Through these SADC referrals, DFTA has collaborated with various State and City agencies and addressed real concerns that affect frail older New Yorkers who attend SADC programs. State and City agencies are responsive to DFTA referrals and, when able, share investigation outcomes to DFTA.
- DFTA attends bi-monthly MLTC plan meetings conducted by OMIG to share information and provide updates related to Medicaid-funded programs.
- DFTA has partnered with the NYC Department of Health and Mental Hygiene (DOHMH) and NYSOFA to conduct trainings for MLTCs and SADC providers on nutrition and the importance of obtaining food service establishment permits. These trainings have increased SADC providers' understanding of the nutrition requirements and decreased complaints related to nutrition, which is promising evidence that SADC clients are receiving higher quality food, in line with the goals of these laws.
- DFTA has partnered with the NYC Department of Buildings (DOB) and the Fire Department of New York (FDNY). Both agencies conduct trainings for MLTCs on their respective municipal laws and regulations as they relate to SADCs.
- DFTA is developing an SADC Ombuds Correspondence Tracking System (SCoTS) that will track all complaints, referrals, investigations and citations as required by the Rules that were promulgated on February 8, 2020. This tracking system is anticipated to be launched in the 44th Quarter of City Fiscal Year 2020.

Comptroller Finding 3: DFTA's online public searchable database (website) did not, until very recently, include certain SADC-related information by Local Law 9 of 2018, such as an SADC's corporate structure and ownership, and the name, address and telephone number of any managed long-term care company with which an SADC has a formal agreement.

Comptroller Finding 4: DFTA's website also does not include information required by Local Law 9 of 2018, such as the following: the number of notices of violations DFTA issued to an SADC; the resolution of any violations issued; the year and nature of the violations; and information about SADC inspections conducted by DOHMH. DFTA did not issue any violations to SADCs during the audit scope period and did not adopt the rules necessary to do so.

DFTA explained throughout the audit and at the exit interview that the software used at the time of the audit did not have the capacity to include all SADC-related information and required a technical build, which took several months. A new website was created during the 2nd Quarter of Fiscal Year 2019, and DFTA is in full compliance with Local Law 9 of 2018. Additionally, as discussed at the exit interview, the three requirements not currently posted on the searchable database are: (1) the NOV's issued; (2) the outcomes of the violations; and (3) the year and nature of the NOV's. DFTA explained that, to date, we have not issued any NOV's; therefore, there is not yet any information to post in these fields in the online public searchable database. Local Law 9 of 2018 does not require NOV fields to be posted in the searchable database if no NOV's were issued. Nonetheless, the Comptroller's Office scored DFTA as being non-compliant with these three requirements, rather than more accurately scoring this requirement as not applicable. DFTA's database is now final and will begin demonstrating information in the fields above when appropriate.

The Comptroller's finding also focused solely on the written hard copies, which are only a part of the entire complaint record; our complaint data and records are recorded in both the digital and hard copies. Additionally, on September 12, 2019, the auditors reported that certain hardcopy files could not be found. DFTA provided the auditors with the hardcopy files on September 13, 2019, but the auditors did not correct the record once we provided the files.

RECOMMENDATIONS

DFTA has carefully reviewed and taken into consideration the recommendations issued by the Comptroller's Office in its draft audit report. The draft report provides 12 recommendations, for which we have provided responses below.

1. **DFTA should ensure that it consistently enforces the recently finalized rules establishing civil penalties that can be assessed against SADCs for violations of Local Law 9 of 2015 and the regulations it references and implement the internal procedures necessary to ensure that notices of violations are issued as warranted.**

DFTA response: DFTA has already implemented this action.

2. **DFTA should ensure that it follows the steps outlined in the recently finalized rules for referring and/or investigating complaints against SADCs.**

DFTA response: DFTA has already implemented this action.

3. **DFTA should continue to ensure that it posts all required information for SADCs on its website in accordance with the local law, including SADC violations of its recently finalized rules.**

DFTA response: DFTA is already in compliance with this action. All required fields are posted on the SADC public portal. The fields related to the NOV's will only be posted and viewable if there is an SADC violation and the violation is issued. If an SADC does not have a violation, then the NOV field will not appear in the portal.

4. **DFTA should draft procedures to help ensure that all complaints are logged and tracked from receipt to disposition and to ensure that when it refers complaints to State and City agencies it adequately documents the referrals and tracks the outcomes.**

DFTA response: The Rule needed to be complete before this action could be taken. Where necessary, DFTA will track referrals made to outside agencies; however, if a case is referred to a State or City agency then the case is considered "closed" with DFTA. DFTA is not required to and does not have the authority or jurisdiction to pursue the outcome or final determination made by outside agencies of complaints we refer. If an outside agency voluntarily provides DFTA with an outcome or final determination, DFTA will document the outcome in the complaint folder and in the SADC Ombuds Correspondence Tracking System.

5. DFTA should utilize CTS as a centralized system to process and track all complaints.

DFTA response: DFTA is moving forward with this action. At the January 27, 2020 exit interview, DFTA informed the auditors that DFTA will launch the SADC Ombuds Correspondence Tracking System in the Spring of 2020. The system will track all required activities related to complaints.

6. DFTA should establish a mechanism to track the timeliness of complaint referrals and to ensure that it makes referrals timely.

DFTA response: Please see DFTA Response #5. Additionally, at the January 27, 2020 exit interview, DFTA informed the auditors that timeliness of working on a complaint is on a case to case basis as some complaints require more time to process than others before referring to another agency.

7. DFTA should ensure that evidence documenting all steps within the complaint process is in the files, specifically, (1) referrals of complaints to State oversight agencies; (2) CNLSs sent to SADCs; and (3) notification of complaint receipt to complainants, when applicable.

DFTA response: DFTA has remained in compliance with this action. DFTA adhered to this practice even before the audit. At the January 27, 2020 exit interview, DFTA provided auditors with a workflow that described the process of handling and filing complaints.

8. DFTA should require SADS to complete the NYSOFA Self-Monitoring Tool, including both the full annual self-evaluation in all specified areas and the required feedback from participants in order to ensure compliance with the State Standards.

DFTA response: DFTA has already satisfied this action. DFTA standardized the self-monitoring tool by requiring all SADS to use the NYSOFA Self-Monitoring Tool.

9. DFTA should require programs to submit CAPS timely. In instances where SADS may not be able to submit a CAP timely, DFTA should require SADS to submit written requests for extensions and should document its decisions on whether to grant them.

DFTA response: DFTA is in the process of updating the DFTA SADS Standards and SADS Standard Operation Procedure (SOP) to reflect the above recommendation.

10. DFTA should establish a mechanism to document all SADS incidents and track the timeliness of incident reports to ensure that SADS are submitting them timely.

DFTA response: DFTA was previously in compliance with this action. DFTA implemented an Incident Tracking System (ITS) for SADS in 2018 and continues to utilize ITS to document and track all SADS incident reports.

- 11. DFTA should update its policies and procedures to include a review of each participant's insurance status and the number of service days that should be paid by the insurer. DFTA should reimburse SADS only for the days of service they provide to eligible participants that are not covered by insurance.**

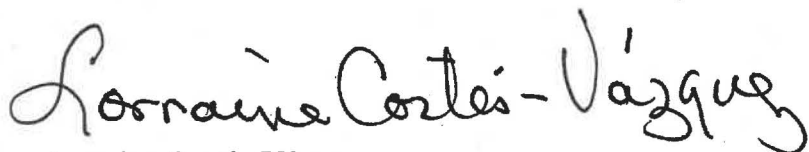
DFTA response: DFTA agrees with this recommendation regarding City Council funded discretionary contracts. DFTA is updating the DFTA SADS Standards and SADS SOP to reflect the above recommendation.

- 12. DFTA should conduct a full review of participants' files to ensure DFTA is not paying for days of service for which an insurer should be paying and refer any instances of possible double dipping to the appropriate DFTA unit for further investigation.**

DFTA response: DFTA has already taken action to update the DFTA SADS Standards and SADS SOP to reflect the above recommendation.

We look forward to working with you on this important endeavor to protect frail New Yorkers from fraud, waste and abuse practices in an SADC setting.

Sincerely,

A handwritten signature in cursive script that reads "Lorraine Cortés-Vázquez". The signature is written in black ink and is positioned above the printed name and title.

Lorraine Cortés-Vázquez
Commissioner