



TESTIMONY

Presented by

Caryn Resnick
Deputy Commissioner, External Affairs

on

Int. 358: Regulating Social Adult Day Care

before the

New York City Council
Committee on Aging & Committee on Health

on

Thursday, September 4, 2014
10:00 A.M.

at

Council Chambers, City Hall
New York, NY 10007

Good morning, Chairperson Chin, Chairperson Johnson and members of the Aging and Health Committees. I am Caryn Resnick, Deputy Commissioner for External Affairs at the New York City Department for the Aging (DFTA). I am joined by Eileen Mullarkey, Assistant Commissioner for Long-Term Care at DFTA; and Elliott Marcus, Associate Commissioner for the Bureau of Child Care at the New York City Department of Health and Mental Hygiene (DOHMH). Thank you for inviting us to testify about Int. No. 358, in relation to regulating social adult day care.

OVERVIEW OF SOCIAL ADULT DAY CARE

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

DFTA currently funds seven SADC programs with baselined funding. These programs were previously supported by Council discretionary funding and monitored by DFTA. Thanks to the generous support and commitment to the older adult population, three additional SADC programs were funded by the City Council and the seven original programs were awarded enhancements in their budgets. DFTA requires the SADCs it funds to meet the standards set forth in the New York State Office for the Aging (NYSOFA) regulations. As the contract agency, DFTA provides oversight for compliance with those standards for the ten programs.

The environment for operating SADC programs has changed with the development of new financing and regulatory arrangements for SADCs in New York's Medicaid program. This appears to have led to an increase in the opening of new SADC programs throughout the five boroughs during the past two years. Social adult day care is a covered benefit under Medicaid Managed Long Term Care (MLTC) plans and prior to two years ago was used less frequently as

a service option. As a result of mandated changes by the Governor's Medicaid Redesign Team, there was a massive influx of Medicaid beneficiaries into MLTCs – many of whom required personal care. Since May 2011, enrollment in Medicaid MLTCs in New York City has tripled, from fewer than 30,000 enrollees to almost 90,000 enrollees in 2013. To serve this influx of new enrollees in a more cost effective manner, Medicaid MLTC plans are quickly expanding their capacity by contracting with comparable but less expensive community based long term care service and support services, like SADC programs. The large influx of clients eligible for this comparatively inexpensive service created an environment ripe for the proliferation of SADC programs in New York City, and the potential for exploitation of a very frail population. It is reported that some are also using SADCs as recruiting sites for their managed care plans. Initially, the MLTC programs were directly responsible for the oversight of these centers. In October of 2013, the State Department of Health (DOH) issued a set of policy requirements for oversight of SADC programs in New York State that contract with MLTC programs.

STATE SOCIAL ADULT DAY SERVICES OVERSIGHT

Because these new SADC providers are being paid for, and contracted through, the State Medicaid program, it falls to the State to provide oversight for ensuring the quality of the services provided and to protect the integrity of the taxpayer funded program. The State has taken several actions in response to the reported problems in the proliferation of Social Adult Day Care programs:

- The State Department of Health established a specific requirement that MLTC plans assess SADC entities for compliance with the minimum NYSOFA requirements prior to an MLTC plan entering into a contract for provision of service. DOH also issued a policy memo to remind MLTC plans that SADC entities must comply with the NYSOFA regulations as per contractual requirements.
- Additionally, MLTC plans were required to conduct initial and annual on-site visits of all SADC contractors in order to monitor compliance with the minimum requirements. MLTCs were prohibited from contracting with any entity that does not meet NYSOFA

requirements. DOH also required MLTC plans to maintain documentation of compliance in their records for all related audit activities.

- DOH contracted with the Island Peer Review Organization (IPRO) to audit the compliance of MLTC plans with NYSOFA regulations. IPRO projected that the on-site reviews of the SADC programs would be completed in 2014. NYSOFA provided initial training to IPRO staff on the use of the monitoring tool, which it developed to complement the standards.

INT. NO. 358: REGULATING SOCIAL ADULT DAY CARE

The Administration shares the concerns prompting the introduction of this bill, and in particular, the opening of a large number of new SADC programs in New York City, and reports that some of the new programs are not providing quality services. Also, there have been accounts that a number of the newly launched SADC programs have been aggressively recruiting participants away from high quality providers.

In light of the specific actions that have been taken by the State to address reported abuses among SADC programs, DFTA believes that there is a noticeable downturn in the number of reported abuses. DFTA, in partnership with the City Council, will continue to work with the State to determine whether the State's actions have had the intended outcome of reducing and eliminating fraud and abuse among SADC providers.

Recognizing that these programs are paid for almost entirely through State Medicaid managed care arrangements, and that City agencies lack the infrastructure and funding to oversee the universe of SADC programs in New York City, we believe it is premature to establish an entirely new regulatory scheme without fully understanding the scope of the current problem. This is particularly true in light of the recent actions taken by the State to address reported abuses.

At the present time, DFTA logs reported complaints that come to our attention about SADC providers and refers them directly to a designated staff person at the State Department of Health. Int. No. 358 requires the establishment of a Social Adult Day Care Ombudsman at DFTA whose

role it would be to investigate complaints at all SADC programs and refer them to the State; obtain an annual list of all providers operating SADC programs; make recommendations to the Commissioner regarding the operation of SADCs; post signs indicating how to contact the Ombudsman on the premises of SADCs; make information available on its website about how to contact the Ombudsman; and provide a written report to the City Council by April 1st of each year documenting all of the actions of the previous year.

This would require that DFTA expand from its current role of enforcing contract terms for 10 SADC programs that we directly fund, to acting as an Ombudsman for potentially hundreds of programs with thousands of participants. This expansion would be costly.

CONCLUSION

We will continue to monitor this issue, work with the State and collaborate with our colleagues in the City Council to ensure that the State DOH oversight initiatives are effective in monitoring and ensuring quality service delivery in all SADC programs. At this time, we are eager to continue carefully monitoring SADC complaints and working to resolve issues with the Council and the State.

Thank you again for this opportunity to provide testimony on Int. No. 358. I am pleased to answer any questions you may have.



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FOR BETTER HEALTH AND WELL-BEING

Testimony before NYC Council Committee on Aging
Intro. No. 358 – Regulation of Social Day Programs
September 4, 2014

VillageCare is a highly regarded, not-for-profit provider of high quality care for people with chronic diseases, as well as older adults and individuals in need of continuing care, rehabilitation and medical services. What started as one nursing home in the West Village in 1977 has grown into a network of services addressing the City’s frail and vulnerable population, with VillageCare serving over 14,000 individuals in 2013.

Among the network of services that VillageCare provides includes AIDS Day Treatment, Adult Day Treatment, and a Managed Long Term Care Plan (MLTC). It is with the perspective of these programs that VillageCare is very supportive of Intro No. 358.

Social adult day services are an important component of community-based care that helps to delay or prevent nursing home placement and the need for other very costly services, while providing vital assistance to the older person with cognitive and/or physical impairments and supporting their informal caregivers. At the same time, there exists very little in the way of oversight or regulation over these programs, unless they are receiving funding from the NYS Office of the Aging. As a result, there is wide variance in the level of quality that is provided between different social day programs.

VillageCare has long operated a Medicaid funded and highly regulated Adult Day Treatment Program and an AIDS Day Treatment Program. While the level of services provided by Day Treatment Programs is more intensive than Social Day Programs, we are essentially in competition with social day programs for clients and contracts with managed care plans. Day treatment programs are regulated on staffing levels, including requirements for clinical staff, the type of medical equipment that must be provided on site, the services that must be provided, how many clients we may accept, hours of operation, and other minimum standards. In contrast, social day programs have virtually zero regulatory obligations. For many frail elderly individuals, social day programs may be wholly unequipped to handle the multiple and complex health needs of these individuals.

Social day programs, alternatively unless funded by the NYS Office of the Aging or receive funding from Medicaid managed care providers, operate in a “wild

Residential Care

Rivington House

VillageCare Rehabilitation
and Nursing Center

46 & Ten

Community Care

Adult Day Health Care

AIDS Day Treatment

Community Care
Management

Home Care

Health Center

Managed Long-Term Care

VillageCareMAX

west” environment with little to no government oversight. We believe this is essentially unfair to both day treatment programs and other social day programs, and may very well pose a hazard to some of their clients. Both in the interest of good public health and ensuring a fair and level playing field, absent State action, the City has an obligation to ensure that all social day programs, regardless of where they receiving funding, meet minimum standards.

In addition to running Medicaid funded Day Treatment Programs, VillageCare also has a Managed Long Term Care Program, or MLTC, called VillageCare Max. We currently have enrolled over 3,200 individuals in our MLTC program. Social day programs are an important and integral part of the set of services we are required to provide through our MLTC. While the MLTC program is obligated to use state regulations in determining which programs are eligible for contracts, the challenge comes because currently there are no licensing or certification requirements for these programs. With every managed care plan engaged in this process, the result is a duplicative and fragmented hodge-podge of oversight.

If this legislation were to be enacted, we would still put social day programs through our credentialing process, but it would significantly reduce the level of duplicated administrative efforts to collect documentation, since the program would have an external certification from some objective reviewer. Like with nursing homes, home health care, and other medical services, there would be a regulatory review process that we could use as evidence that they are meeting basic requirements.

These are seniors with complex health care needs, and we have an obligation to ensure that services meet the needs of this vulnerable population. This legislation will in many ways help to bring a little order to what is now currently a very chaotic environment.

For these reasons, VillageCare supports passage of this legislation.

If you have any questions, please contact:

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**Testimony of United Neighborhood Houses
Before the New York City Council
Committees on Aging and Health**

Int. 0358-2014

**Submitted by Valerie Rosenberg, Policy Analyst
September 4, 2014**

**Honorable Margaret Chin, Chair, Committee on Aging
Honorable Corey Johnson, Chair, Committee on Health**

Thank you for convening today's hearing. I am Valerie Rosenberg, a policy analyst at United Neighborhood Houses (UNH). UNH is the federation of 38 settlement houses that collectively benefit over half a million New Yorkers annually—from infancy through old age—with a variety of services at over 500 sites throughout the city. We thank you for this year's Social Adult Day funding enhancement, and we are here today to collaborate with you on the improvement of this vital service that keeps older adults safe in their communities and provides support for their families and caregivers.

UNH supports the regulation of Social Adult Day Services to ensure consistent, high-quality programs. UNH members' Social Adult Day programs have suffered as a result of budget cuts since 2008, as well as from the negative attention on these programs in recent years. With combined City and State funding at about \$2 million for this fiscal year, the field is struggling. Better regulation could discourage unsavory opportunism among disingenuous entrepreneurs seeking to earn profits without providing the services their names imply. Better accountability could help restore the public confidence in Social Adult Day Services that precipitated the original funding by the Council in 1998. We believe that, as with other social services for vulnerable populations, regulation is justified even when programs are not receiving public funding.

While we support quality control for Social Adult Day Services, we urge caution in approaching local regulation, and we have identified several aspects of Int. 358 that could create unintended consequences:

For programs that currently receive State funding and therefore already follow Section 215 of the State Elder Law, would this legislation require that they be doubly evaluated along the same parameters? Because the proposed local rules of operation are taken from the State rules, any audits, site visits, and reporting requirements by the City would be redundant and would create unnecessary burdens on Social Adult Day personnel.

We are also concerned about the split oversight of the proposed system. It is important that any roles for the Department of Health and Mental Hygiene (DOHMH) and the Department for the Aging (DFTA) are well defined and not duplicative. Audits are often lengthy and can be disruptive, even when a small amount of funding is at stake. If the organizations that do not receive public funding are expected to adhere to the same regulations as those that do, it is important that an undue burden does not result.

Regarding the establishment of civil penalties for breaches of the new regulations, UNH urges the creation of a process and a timeline for response to and cure of any such violations. Aside from the “pop-up” centers of recent years, there may be providers of older adult services who do not receive public funds for their Social Adult Day Services but who, with some adjustments to meet the regulations set forth in Section 215 of New York State Elder Law, could improve their programs to give invaluable and reliable support to their communities. In developing these civil penalties, specification of the degree of violation that warrants financial remedy is also important.

Finally, the creation of an ombudsman for Social Adult Day Services with no dedicated resources is problematic. DFTA already functions as a sort of ombudsman by receiving and reporting complaints of bad practices to the Long-Term Care Division of the State Department of Health. As DFTA is one of the smallest City agencies, we are concerned that it lacks the financial resources to dedicate a staff person to the fulfillment of the responsibilities listed in the legislation. Receiving complaints, investigating claims, generating reports, and advising hundreds of Social Adult Day programs on best operating practices would be a full-time job that would not be possible within DFTA’s current funding and structure.

Safety for frail New Yorkers is a serious issue that will only become more urgent as life expectancies increase and the older adult population grows. We hope that any regulation of Social Adult Day Services would restore the former confidence in this system and lead to increased financial support in the City and State budgets. We are encouraged to have leaders that are examining ways to create consistency among programs, and we want to ensure that any regulation has its intended effect. The City Council has often been the lead in establishing and expanding important programs for older New Yorkers, and we appreciate the attention that you are placing on this crucial issue. Thank you.

Testimony of

Granat Alzheimer's Center

at



**Parker Jewish Institute for
Health Care & Rehabilitation**

Submitted

at

New York City Council

Committee on Health

Committee on Aging

“Oversight: Social Adult Day Services Programs”

Thursday, September 4, 2014

Parker Jewish Institute for Health Care & Rehabilitation

271-11 76th Avenue, New Hyde Park, NY 11040-1433

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My name is Martha Wolf, and I am the Director of Community Dementia Care at Parker Jewish Institute for Health Care & Rehabilitation.

On behalf of the more than 7,000 older adults served by Parker each year, as well as Parker's President and CEO, Michael N. Rosenblut, thank you for the opportunity to provide testimony at this hearing.

Parker Jewish Institute for Health Care & Rehabilitation, now in its 107th year of service, is one of the nation's leading centers for the health care and rehabilitation of older adults. An independent, nonprofit, we offer post-acute care, short term rehabilitation, long term care, adult day health care, Chinese adult day health care, home health care, a community and in-patient hospice program, on-site dialysis, medical transportation -- as well as a unique Alzheimer's day care program.

Funds that are provided for Parker's Alzheimer's program are not luxury. They are, in fact, key to life-saving services we provide for Alzheimer's participants and their family caregivers. Funds provided for this and many other social day care programs are not City costs, but cost-savings, because they help adults avoid more costly hospitalization and institutionalization. They help keep adults where they most want to be --in their communities, with their families and friends, in the comfort of their homes. Parker's Alzheimer's day care program allows family caregivers to work, and work productively, comforted by the knowledge that their loved ones are being cared for by compassionate professionals in a safe, wholesome environment.

The Alzheimer's program at Parker, for example, provides relief and support for families, and sensitivity and stimulation for participants. It is a service that is built upon Parker's recognized and longstanding depth of expertise in managing and treating the full range of clinical and behavioral problems for people at all stages of dementia.

Parker's Alzheimer's program is the only social model day care program in Queens that accepts people at all stages of dementia and is open 7 days a week. We proudly offer a thoroughly experienced professional staff; a beautiful, safe, homelike environment; programs that address memory loss and daily living skills; and a broad range of activities. We also offer bathing, grooming and personal care, an excellent hot meal, and assistance with eating disorders that are common to Alzheimer's patients. We make referrals

to specialists for medical, dental and medication management, as needed. The Alzheimer's day care program at Parker provides family guidance and support groups, critically needed by family caregivers. In 2013 alone, there were 8551 visits (visits translate to number of days participants attended) to Parker's Alzheimer's Center and 52,251 hours of service to participants and their caregivers.

Without funding help from the City, many Alzheimer's participants and their family caregivers do not have access to the services that we and other community programs provide. They fall through the cracks of a system whose maintenance is one of the core responsibilities of government, that is, to be a key protector of people who cannot protect themselves. If this support continues to be absent, the people served by many social day care programs will fall into the much more expensive net of institutionalization, at a time when the City and State can least afford it. During a time of serious recession, when government must tighten its belt, services that help seniors avoid institutionalization and minimize hospitalizations represent a substantial savings. The annual cost of care in a nursing home in this area is approximately \$150,000, compared with approximately \$24,000 per year in a social day care program. Community based services, especially social adult day care, must be encouraged from City Hall to the White House! Caregivers of persons with dementia, in fact, save New York's health care system tens of billions of dollars a year. New York City's most vulnerable citizens deserve and must have services in place now. This is an epidemic of major proportions, one that will affect 1 in every 4 New York families.

We urge the New York City Council to explore a strategic plan to address this great need and to make absolutely sure that profiteers who knowingly offer bogus social adult day programs are identified and made to cease operations. Oversight is a critical issue and we thank the New York City Council for its concern and efforts in addressing this critical need. As it was recommended at the September 2012 and June 2013 City Council Hearings that addressed this same concern, it is felt that New York City should take an active role in proposing a plan of action that ensures that an oversight/monitoring system be put into place to make sure that our most vulnerable citizens are receiving the quality of care that they and their families require and deserve. We also propose that a New York City registry be developed and disseminated so that consumers are aware of approved SADS centers, i.e. those that adhere to the NYSOFA Standards. The Alzheimer Center at Parker and similar longstanding SADS programs that

adhere to the NYSOFA Standards, have proven their ability to care for an important segment of our most vulnerable population in the most cost-effective, appropriate, and compassionate manner.

Thank you.

Please direct any response to:

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Testimony for Chapter 17 Social Adult Day Care
September 4, 2014

Good (Morning/Afternoon)

My name is Erin Brennan. I am the director of the Selfhelp Community Services Alzheimer's Resource Program. This social adult day care program, which we call SHARP, has been serving the community since 1989.

Selfhelp was founded in 1936 to help those fleeing Nazi Germany maintain their independence and dignity as they struggled to forge new lives in America. Today, Selfhelp has grown into one of the largest and most respected not for profit human service agencies in the New York metropolitan area, with 26 sites throughout Manhattan, Brooklyn, Queens, the Bronx, and Nassau County. Selfhelp provides a broad set of important services to more than 20 thousand elderly, frail, and vulnerable New Yorkers each year, while remaining the largest provider of comprehensive services to Holocaust survivors in North America. Selfhelp offers a complete network of community-based home care, social service, and senior housing programs with the overarching goal of helping clients to live with dignity and avoid institutionalization.

Thank you for allowing us the opportunity to present this testimony regarding Intro 358.

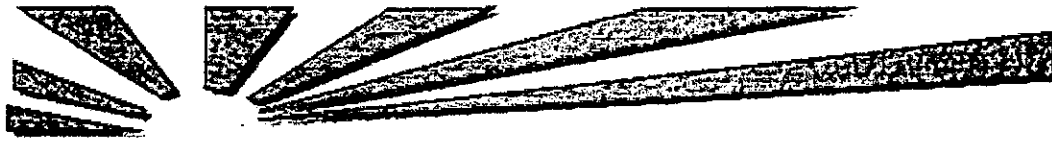
Selfhelp wholeheartedly supports the New York City Council's efforts to regulate social adult day programming in our community. Social adult day care programs provide individuals and their caregivers the opportunity to continue to remain living in the community and to receive the care and services they need. Our social adult day care program serves a population that is recently diagnosed with Alzheimer's disease. The program has received public funding for most of its history. We have also received highly rated programmatic assessments. As all of us know, Alzheimer's disease is devastating to the entire family. Programs that offer respite, socialization and caregiver support are critical and will become even more so.

Intro 358 will help bring much needed, consistent regulation to all social adult day programs. This oversight is especially critical at a time when we have seen so many "pop up" programs which have been randomly appearing throughout the city.

- These unregulated programs have been recruiting elders whose needs would best be met at their local senior centers. Marketing to recruit individuals takes precedence over the needs of those individuals.
- Often, the facilities where these “pop ups” are located are not appropriate to care for frail individuals.
- The individuals who operate these programs are usually uncredentialed, not known to anyone in the aging community and, often, completely inexperienced in working with elders. The individuals participating in these programs are cheated out of the opportunity to attend a qualified program that could appropriately assess and meet their needs.
- The opportunity for defrauding Medicaid is especially high in programs that are so unregulated.

Thank you for the opportunity to present this testimony.

We would especially like to thank and acknowledge Council Members Chin, Vallone, Johnson, Arroyo, Vacca, Dickens, Koo, Levine, Rose, Wills, Rodriguez, Mendez, Koslowitz and Rosenthal for their initiative in presenting this bill. We recommend and hope that you consider passing it to ensure the quality and integrity of all social adult day programs.



NEW YORK STATE ADULT DAY SERVICES ASSOCIATION, INC.

TESTIMONY

New York City Council

Hearing on Social Model Adult Day Service

September 4, 2014

Martha S. Wolf, President, NYS Adult Day Services Association (NYSADSA)

I begin with a word of thanks. On behalf of The New York State Adult Day Services Association (NYSADSA) and the great majority of older New Yorkers who clearly indicate that their preference is to live in their own homes for as long as possible, we are grateful for the opportunity to focus on the ways that high quality Social Adult Day Services can help achieve that goal. Social Adult Day Services (often referred to by the acronym “SADS”) are community based services that enable frail adults with multiple and diverse disabilities and those with Alzheimer’s or related dementia to be safe, socially connected and therapeutically supported in order to maintain functional capacities in all domains: physical, cognitive, social and emotional. SADS programs provide a dual benefit. Even as they focus on the person needing direct assistance, care and supervision, they also provide services to family caregivers, with respite from the daily burden of assisting and supervising their frail loved one being a key benefit. Other services may include support groups, educational seminars, information and referral.

Since 1978, NYSADSA’s mission has been to develop, promote and enhance Adult Day Services as an integral part of the services continuum through providing training, information, and public education for the Adult Day Services industry. Beginning in December 2012, in collaboration with the New York State Office for the Aging and the New York City Department for the Aging, NYSADSA has sponsored 12 full day trainings in the New York City metropolitan area, 9 of which were in NYC, so that those who wanted to understand the New York State Minimal Standards and Regulations for SADS programs would have access to learning and discussion with experienced professionals in the field. In 2013, NYSADSA received a grant from NYSOFA to conduct these trainings statewide. So far, we have trained over 500 individuals including current providers, new providers, representatives from MMLTC’s, representatives from home care agencies, providers of medical model day care programs, social workers, nurses, etc. In addition, workshops were offered on specific topics such as assessment, developing and writing a care plan, and incorporating therapeutic recreational activities into a social adult day model. As a result of funding in the New York State budget, NYSADSA plans to launch even broader training and technical assistance efforts in order to help ensure that existing SADS programs, SADS programs in development and other entities contracting with those programs –including Medicaid Managed Care Organizations— have access to accurate information about the implementation standards and regulatory requirements for SADS programs operating in NYS. In addition, NYSADSA has met with MMLTC associations and has had numerous meetings with NYSOFA and DOH as we collaboratively work towards a plan for state-wide oversight through a certification process.

NYSADSA is very grateful to the Chairs and the members of the New York City Council Aging and Health Committees for their focus on developing legislation that clarifies the expectations of those who market their programs as Social Adult Day Services and proposing a mechanism to ensure that these expectations are met. The importance of right sizing care and ensuring that public and private dollars are spent appropriately cannot be exaggerated. SADS is not intended to serve the generally healthy senior population; senior centers are established for that purpose. According to NYS statistics, historically more than 1/3 of those who attend SADS programs need hands-on assistance with toileting, mobility, or eating and 67% need constant supervision and monitoring because of a cognitive deficit.

That said, in New York City, many neighborhoods have been underserved. Culturally sensitive SADS programs will enable those who attend them to remain at home in the community, while their family caregivers continue to work or manage other family concerns. In some ways, the increased interest in developing new SADS programs is a testimony to community needs. For more than 35 years, SADS programs have emerged in response to community needs. Examples include the development of ARC XVI Fort Washington in the late 70's as a program for the physically frail; Riverstone ADS in Washington Heights developed a program for Spanish speaking residents with Alzheimer's Disease; SelfHelp, an agency with a special focus on Holocaust survivors developed an Alzheimer's program; Village Care developed a program for those with HIV/AIDS, Parker Jewish Institute's Granat Alzheimer Center, which is open 7 days a week, 12 hours a day, serves individuals in the moderate to later stages of the disease... and the list goes on.

This is because the Elder Law, Title 9, Section 6654.20 Minimal Standards and Regulations for SADS enable programs to have flexibility of design in order to meet specific community needs. Therefore, NYSADSA is especially supportive of the proposed Intro 358's mandate that all SADS programs operate according to these New York State regulations. In the current environment and with the rapid expansion of SADS programs, we also support the Registry that the Intro 1052 legislation establishes. We believe it will not only be a necessary first step in a broader oversight plan but will also facilitate referrals to well run programs throughout the city. The Registry will ensure that no program will operate beneath the radar and at the same time will support the flexibility of current regulations. NYSADSA also thinks that this will work well in tandem with the Savino-Millman bill that has passed the State Assembly but not the Senate but may be re-introduced in January 2015. This bill Senate Bill 5397-A (Savino)/Assembly bill 7736 (Millman) prohibits the use of the terms "social adult day services" and "social adult day care" if programs do not meet the definitions in statute.

NYSADSA respectfully recommends to the City Council that, in the end, oversight of all programs operating in New York State should be directed by the State Office for the Aging. The Savino-Millman bill will establish that requirement as we want to ensure that oversight follows the NYSOFA Standards and does not medicalize social adult day programs by creating a layer of burdensome requirements that are not consistent with the intentions of the New York State social model regulations. In 2012 when the Governor's SAGE Commission issued their final report they noted that, as a result of the overarching medical model of DOH and related federal law and guidance, programs administered by the Department of Health are generally far more expensive, and in many cases less attractive to the older New Yorkers who need services than comparable programs offered under the authority of the Office for the Aging. It should be noted that during 2013-2014, NYS DOH contracted with IPRO to audit the social adult day programs in NYC that have contracts with MMLTC's. The results of those surveys have been sent to DOH where the

data will be reviewed and appropriate action taken with the social day program and the MMLTC providers contracting with the program if the program has been found not to meet the NYSOFA regulations.

We support the core concept of penalties for non-compliance because we think that stiff penalties will eliminate programs that do not meet the regulations but caution the levying of fees. We do support efforts directed at technical assistance and corrective action so that those programs that do not meet the standards will have the opportunity to come into compliance. At the same time, we caution that program audits must be consistent with the New York State Regulations and not overstep those requirements and jeopardize long standing, community based programs that may be unfamiliar with formalized program audits and may or may not have Medicaid or government funding of any kind. It will be a disservice to everyone, if the result is a very burdensome, bureaucratic process. Finally, in the same way, we agree that the New York City Department for the Aging would be the appropriate place for an Ombudsman who would be the point-person for any complaints/concerns associated with a social model program.

In closing, I want to state again NYSADSA's core principals related to the operation of social model adult day services programs:

- 1) All SADS programs, regardless of funding source, should operate according to Elderlaw, Title 9, Section 6654.20 Minimal Standards and Regulations
- 2) A mechanism for consistent, statewide oversight must be established and Intro 1052 may take us closer to that goal
- 3) Programs that inappropriately determine participant eligibility or do not deliver all SADS core services or meet the administrative standards of NYS regulations, should feel the effects of enforcement oversight and action up to, and including, forced closure.

NYSADSA stands ready to assist the New York City Council and all other government bodies in their role of ensuring that both public and private funds are utilized to the best advantage of our aging population.

Thank you for seizing the moment and working to ensure that only high quality SADS programs operate in New York City and beyond.

Respectfully submitted,
Martha S. Wolf, President, NYSADSA

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Sept 4, 2014

Testimony

Joseph Tsang

Our Senior Center, AMICO, is located within the neighborhoods of Dyker Heights, bordered by Boro Park. Within the past year, there has been a tremendous increase in un-regulated new Social Adult Day Care Center “Popping Up” in our Community. The attendance at our Center was obviously affected as some of our members have frequented and joined these “pop ups”.

The members that returned to AMICO have explained that that they were enticed by the offering of free meals, gift shopping coupons and free transportation. Further, they have revealed that membership at these “pop ups” was limited only to participants that were holders of Medicaid Cards. Also, there appears to be limited qualified medical staffing or caregiver services if any at all available at these Social Adult Day Care Centers. Some of these returning members have emotionally expressed concerns that their Medicaid Accounts may have been compromised and misused without their knowledge. They have requested our help to closed their accounts and open new accounts. They have reported phone calls from the SDA requesting that they fill out a form stating that they are in need of Care Giver Services even though they are well and have no need for these services. There were also reports that some SAD

Centers were ordering wheel chairs for members that don't need them and then shipping these chairs to China where they are sold and the profits shared by the SAD Centers. Our members who have gone to SADs felt they were exploited because of their lack of English as new immigrants and chose to return to AMICO for the more structured organization that is dedicated to looking out for their general welfare.

Having worked over 30 years in private industry and having served over 30 years in the military and paying my share to the Federal Treasury, I find the practices of the SADs wrongfully misusing my tax dollars.

In light of this information, we fully support the proposed Amendment to the Administrative Code of the City of New York as pertains to **Chapter 15, Social Adult Day Care Programs.** Chapter 15 defines and prescribes the operational requirements as well as the necessary surveillance of these Social Adult Day Care Centers.

It is recommended that in the "Staffing" requirements of Chapter 15, there must be qualified staff personnel available with the cultural knowledge and language skills to communicate with each participant's unique culture and language to insure the participant fully understand the program conditions.

There should also be a requirement that these Social Adult Day Centers be opened to everyone and anyone that needs this help regardless if they have a Medicaid Card or not.

Introduction:

I am Dr. Joan Pastore and I am the director of the AMICO Senior Center, located on the border of the Borough Park and Dyker Heights communities in Southern Brooklyn. By way of full disclosure I also serve as a Clinical Assistant Professor at Stony Brook Graduate School of Social Welfare in Manhattan and am a Field Instructor for New York University School of Social Work. To my right is Colonel US Army Retired, Joe Tsang, who is President of the AMICO Advisory Board and will also be providing testimony for today's hearing.

In the community where the AMICO Senior Center is located at least 25-35 "Pop Up" Social Adult Day Care centers (SADs), have opened, since July 2013 when the new Managed Long Term Care polices went into effect. We do acknowledge that these polices were very well intentioned to help the frail elderly stay in their homes and communities, and we applaud the Governor for addressing the long-term needs of the elderly. Unfortunately, today we are seeing the results and damage that has taken place because of a new system that was set up with good intentions, but left unregulated. These SADs that were suppose to provide services to functionally impaired older adults have instead have chosen to aggressively recruit the well elderly primarily out of the NYC Department for the Aging (DFTA) Senior Centers, no doubt for a higher profit through Medicaid reimbursement. These centers are not providing support services for a frail population, but rather providing a non-supervised, recreational facility for the well elderly. Typical activities include, ping pong, dancing, computer instruction and Tai Chi. As a result, we now have the many frail older adults still being ignored and possibly neglected, while the well elderly, who easily could go to a DFTA center, are going to a SAD center at the cost of 3,800 per month of Medicaid dollars. These "Pop Up" SADs are commonly and openly, referred to as "cash cows" and/ or "Gold Mines" by local business owners.

This practice of unregulated SADs has also caused much damage to the DFTA Senior Center community. At the AMICO Center there has been almost a 20 percent reduction in overall daily attendance of older adults. Other senior center directors in Southern Brooklyn report even larger percentages of older members lost, due to the introduction of SADs in the community. This phenomenon of a lower participation rate of the well elderly can be seen in all NYC Department for the Aging Senior Centers city wide where there has been an influx of "Pop Up" SADs.

Newer, poorer immigrant groups who have Medicaid, which include Chinese, Latino and Russian, seem to be especially targeted through aggressive and exploitive marketing techniques that include cash incentives for joining, money for bringing in new members, and regular attendance at the SADs. This practice of recruiting newer, immigrant groups with Medicaid, has also set up a climate of resentment between newer immigrant groups and more long time citizens, who feel that new immigrants are taking precious resources away from them and wasting their tax dollars.

Because of the countless, and endless, number of complaints, which AMICO received about the SADs, we started collecting information to report these Pop Up Centers to the local and State Agencies, which we thought would have oversight responsibility. We soon learned that no State or City agency had oversight responsibility for these Centers, nor were there any regulations in place to oversee the operation of these facilities. Many times these facilities seemed to have left no paper trail to even locate, except for their numerous advertisements in ethnic newspapers and flyers, which most times were written in languages other than English. Having exhausted all options we turned to the NYS Attorney General's Medicaid Fraud Division, who initially ran into similar obstacles.

Due to the corrupt actions of then Assemblyman Eric Stevenson, attention was now beginning to be given to the SADs in the news.

Last April, Nina Bernstein, the New York Times reporter, broke the story of the corrupt and fraudulent practices of these SADs on the front page of the Times. AMICO and all senior care providers breathed a sigh of relief. New York State was finally listening.

As you probably are aware, as a result of an investigation the Visiting Service of New York (VSNY), one of the bigger sponsors of these Pop up Centers, agreed to repay 33.6 million to New York State due to improper billing for SADs. In addition, some other SADs are under review.

Still many others still operate seemingly under the same practices—business as usual. Many SADs have now mandated clients to have at least 2 days of home health aid service, regardless of whether or not the client needs it. To date, there are still new SADs opening up. Much work still remains to be done if this concept of legitimate Managed Long Term Care is to succeed and serve those frail, elderly adults who it was meant to serve.

Today, we are grateful to the NYC Council and applaud your efforts to introduce and pass legislation that will begin the regulation process of these Pop Up SAD Centers. It is our hope that with the passage and implementation of this legislation, that these fraudulent centers, will be forced to either provide the right services to the right population, or cease to exist.

After reviewing the proposed legislation and guidelines I would like to make the following recommendations:

Recommendations:

First, that Department for the Aging work hand and hand with all state regulatory agencies and be given adequate resources to perform all necessary functions to monitor all aspects of SADs as prescribed by NYS Department of Health.

Second, all screenings of potential SAD candidates **be checked by a qualified, independent monitor to insure honesty in reporting necessity of need of the older adult** and accurate level of functioning.

Third, clear definitions and distinctions should be assigned to adult day care participants by **age**, (State regulations say adult, how is adult defined? age 21+ or age 65 & over), **level of impairment** (complete assistance with ADL & IADLs), **type of impairment** (physical, mental health issues and/or dementia). Older adults should be matched with the proper level of services needed and not grouped together with adults from other age groups or adults whose needs are significantly different.

Fourth, appropriate staffing patterns should be determined by level of need of individuals and number of participants, not just assigned a random number of two staff per center.

Fifth, the term "qualified person" as director should be specified i.e., an RN or LMSW etc.

Sixth, the amount of SADs that are allowed to operate in within a given community should be determined by the demographic needs of that community, and not the desire of businessmen or businesswomen to make a profit.

Finally, there should be a central registry and data base, so that all SADs are easily identifiable and located.

Submitted By:
Joan Pastore, DSW
Director

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 9/4/14

(PLEASE PRINT)

Name: Barb Diesem-Zimmions with Martha Wolf

Address: 1450 Western Ave Albany Ny

I represent: New York State Adult Day Services Assoc

Address: 1450 Western Ave Albany Ny

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Appearance Card

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in favor in opposition

Date: 9/4/14

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Name: Martha Wolf w/ Barbara Diesem-Zimmions

Address: 271-11 76th Ave. New York City

I represent: Parker Jewish Institute

Address: New York St. Adult Day Services Assoc.

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Date: 9/4/14

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Name: Elliott Marcus

Address: Assoc. Commissioner

I represent: Bureau of Child Care and Bureau of

Address: Food Service and Community Sanitation

Division of Environmental Health DOHMH

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Name: Matthew Lesieur

Address: 120 Broadway Suite 2840

I represent: Village Care

Address: _____

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Name: Erin Brennan

Address: _____

I represent: Selfhelp Community Services

Address: 208-11 26th Avenue Bayside

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Name: JOSEPH TSANG

Address: 2283 Ryder Street

I represent: A

Address: _____

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Name: Dr. John Pastore

Address: 5901 13th Ave

I represent: XILITEO

Address: same as above

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Name: Caryn Resnick

Address: Deputy Commissioner, External Affairs

I represent: DFTA

Address: _____

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Date: 9.4.14

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Name: Kileen Mullarkey

Address: Assistant Commissioner, Long-Term Care

I represent: DFTA

Address: _____

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