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April 4, 2025

VIA MAIL AND E-MAIL

Kevin D. Walsh
Acting State Comptroller
State of New Jersey
Office of the State Comptroller
Medicaid Fraud Division
PO Box 205
Trenton, NJ 08625-0025

**Re: Response to Draft Audit Report: Greater New Jersey Creative
Counseling, Inc.**

Dear Acting Comptroller Walsh:

We represent Greater New Jersey Creative Counselling (“GNJCC”) with respect to this matter. Please accept the following in response to the Draft Audit Report (“DAR”) dated March 13, 2025.

INTRODUCTION

We have reviewed the New Jersey Office of the State Comptroller’s (“OSC”) Draft Audit Report detailing the results of an audit of Medicaid claims submitted by and paid to GNJCC for the period from August 1, 2017 through April 30, 2022.

As an initial matter, we submit the following additional background information regarding improvements in GNJCC’s compliance policies. GNJCC is an Intensive In-Community provider, offering counseling services to children and youth in their homes. GNJCC has always strived for excellence, and in keeping with that commitment, has implemented additional compliance-driven policies over the past two-and-a-half years. In September of 2022, GNJCC implemented a formal written corporate compliance plan. The plan focuses on ensuring adherence to all pertinent Medicaid regulations, training staff, improving billing policies, and eliminating any risk of fraud,

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waste and abuse. More specifically, and pursuant to the compliance plan, GNJCC has improved its compliance by implementing the following improvements:

- Hiring a clinically licensed Compliance Director with years of experience with compliance-related issues, who conducts monthly audits of internal GNJCC paperwork and documents to ensure things are filed and completed correctly;
- Creating an electronic filing and backup system so that files and documents are easier to retrieve, reducing filing/retrieval errors;
- Requiring that a second employee audit and confirm dates, units, and/or level of service for all sessions billed before submission to Medicaid;
- Implementing a monthly internal audit to ensure that GNJCC has proper documentation for all sessions billed to Medicaid resulting in a zero error rate for the months September 2024 through January 2025;
- Revamping the driver's license policy to reflect the changes that Medicaid has implemented effective January 1, 2024 by requiring staff to submit updated drivers licenses, internally maintaining electronic backup of all staff licenses, and, for those staff members who do not have a driver's license, requiring them to sign an attestation indicating that they will not drive or transport children, youth, young adults, or their family or caregiver;
- Revamping the background check policy to reflect the changes that Medicaid has implemented effective March 1, 2025 requiring all staff to submit a request for State Bureau of Identification fingerprint-based background checks to CSOC, and internally requiring electronic backup of all staff background checks;
- In addition to hiring a Compliance Director, hiring an additional compliance officer to double-check all staff files to ensure that all required documentation is included and to audit the billings to make sure the correct dates and times are being billed and that all required documentation is included, including by making a quality call check to the claim recipient's parent or guardian prior to submitting the first billing; and
- Conducting an updated, annual compliance training with all staff to assist staff in understanding Medicaid regulations and rules, to help ensure proper and accurate documentation, to reinforce staff's understanding of GNJCC employee compliance expectations, and to educate staff about what constitutes fraud.¹

Moreover, GNJCC has changed the way it submits billing and other documentation, requiring that they be double checked to ensure correct dates and other information prior to filing. GNJCC's paper filing system at times made it difficult to retrieve previously filed paper records. As a result, in July 2024, GNJCC implemented back-up electronic filing systems to ensure all

¹ GNJCC's most recent compliance training in October 2024 featured 100 percent staff participation, with attested certificates of attendance placed in all employee files.

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records are appropriately filed and easy to retrieve.

Against this additional background, we now turn to the specific deficiencies stated in the DAR. As stated initially in our August 20, 2024 response letter (the “August 2024 Letter”) to OSC’s Summary of Findings (“SOF”) dated July 31, 2024, and as set forth more fully below, we submit that most of the claimed deficiencies in the DAR are erroneous. Each individual finding from the DAR will be addressed in turn.

RESPONSE

I. The DAR Fails to Address GNJCC’s Objections to the Extrapolation of Alleged Overpayment Amounts.

GNJCC objects to the sampling method and proposed extrapolation stated in the DAR. The DAR states that OSC reviewed 188 claims from the total population of 107,365 claims between August 1, 2017 and April 30, 2022 and identified overpayments on 44 of these claims totaling \$5,567. The DAR further states that OSC then extrapolated this overpayment to the total population of claims to arrive at an extrapolated overpayment totaling at least \$2,709,266.

In its August 2024 Letter, GNJCC previously objected to a similar extrapolation methodology stated in the SOF. In particular, GNJCC objected that the SOF failed to adequately describe the sampling methodology and that the extrapolated amount was based upon erroneous overpayment amounts. Here, the DAR’s extrapolation methodology suffers these same infirmities and entirely fails to address GNJCC’s objections.

First, the DAR, like the SOF, does not explain the process used to determine the appropriate sample size, how the sample claims were selected, nor the steps taken to ensure that the sample was representative of the population as a whole. Without an explanation of those steps, it is impossible to determine the validity of the sample and whether it is appropriate for extrapolation. According to the DAR, the audit period covered a massive population of claims, totaling 107,365 individual claims, yet the audit sample was a miniscule 0.1751% (188 claims) of the population. Even in perfect circumstances, extrapolation based on these figures would be inappropriate.²

Second, the DAR does not account for GNJCC’s identification of claims which were erroneously flagged as deficient. Where there are erroneous claims included in the overpayment amounts, the extrapolation is unfounded. Indeed, as set forth below, many of the claims included in the DAR were erroneously flagged and do not represent any errors or violations of any regulation by GNJCC. At a minimum, the OSC must revise the extrapolation to reflect the proper

² For large populations (populations over 10,000) the sample size should be a minimum of 10% of the population, “to ensure representativeness of the sample.” See [Sample Size – Institutional Effectiveness and Assessment](https://wp.stolaf.edu/iea/sample-size/), <https://wp.stolaf.edu/iea/sample-size/>, last accessed March 25, 2025.

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number of claims and to exclude those claims which were erroneously identified.

Third, even with respect to the remaining claims, the extrapolation is unnecessarily punitive given the nature of the findings. Excluding the claims which were improperly identified, the remaining flagged claims in the DAR do not present a uniform trend of errors, but rather isolated and disparate instances of filing and other human error. As detailed above, both prior to and following the audit, GNJCC implemented more robust compliance programs and procedures, including, among other things, onboarding a Director of Compliance and establishing a protocol to maintain back-up files in an electronic format. Accordingly, all the claims here result from isolated instances of human error or lost paperwork and cannot form the basis for any extrapolated repayment amount.

II. Each of the DAR's Findings Includes Claims Which Were Erroneously Identified.

A. DAR Claim—Greater New Jersey Failed to Maintain Criminal Background Checks for Behavioral Assistants Prior to Rendering Services.

The DAR states that GNJCC failed to maintain required proof of background checks for 5 of the 29 Behavioral Assistants (“BAs”) that OSC sampled, resulting in an overpayment on 11 of the claims sampled. However, as GNJCC stated in its August 2024 Letter, all of GNJCC’s BAs (including the five identified in the DAR) have completed background checks, in keeping with the applicable state regulations.

The DAR wholly ignores the evidence GNJCC submitted to establish that the five BAs flagged in the DAR have all had background checks conducted. GNCJJ submitted documentation from [REDACTED], the company that conducted the background checks on behalf of GNJCC, establishing that the five BAs at issue completed background checks on the following dates:

- [REDACTED] – September 1, 2021
- [REDACTED] – June 16, 2021
- [REDACTED] – September 21, 2021
- [REDACTED] – September 25, 2019
- [REDACTED] – January 3, 2018

The DAR contends that the [REDACTED] documentation is insufficient because it establishes only that GNJCC ordered the background checks for these BAs, but not that they had passed the checks. However, this response ignores that OSC itself has conceded that the background check regulation at issue is ambiguous as to what documentation providers must maintain to ensure compliance. In connection with the August 2024 Letter, GNJCC submitted a letter from OSC dated November 16, 2021 stating that “[t]he criminal background check requirements for BAs are not

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clear and thus difficult to apply.” *See* Exhibit 1. The OSC’s letter further recommends that the background check requirements be revamped to alleviate confusion regarding how to comply—a recommendation which the State has since adopted effective March 1, 2025 in a comprehensive overhaul of the background check system. The OSC’s letter and the subsequent overhaul establish that the prior system was unworkably vague and difficult to apply; thus, GNJCC was under no clear requirement to maintain the actual completed checks on the state system.

Accordingly, the DAR erroneously identified 5 BAs and the 11 claims they accounted for as deficient, and thus none represent any overpayment amount. GNJCC should face no repayment obligation with respect to any alleged violation of this regulation.

B. DAR Claim—Greater New Jersey Failed to Maintain a Current and Valid Driver’s License for Servicing Providers.

The DAR states that GNJCC failed to maintain a copy of a current and valid driver’s license for 14 of the 97 servicing providers that OSC sampled, resulting in an overpayment on 17 of the claims sampled. However, as the DAR concedes, the applicable regulation only applies to servicing providers “whose job functions include operating a vehicle used to transport children, youth or young adults or their family or caregiver.” *See* DAR at 4 (emphasis added); (citing N.J.A.C. 10:77-4.9(f), 4.14(d)(1), 5.9(f), and 5.14(d)(1)). The DAR completely ignores that GNJCC has never required any of its servicing providers to drive clients, and no GNJCC employee’s job function can be said to include such activity.

Furthermore, the DAR likewise ignores that this regulation, like the regulation surrounding background checks, has been met with uniform confusion. Per the attached Medicaid Newsletter, it is unclear whether the requirement must be satisfied prior to a provider providing services and whether the provider must update the checks on an annual basis. *See* Exhibit 1, at 2. Here, GNJCC maintained valid driver’s licenses upon hiring, but did not regularly update its records when licenses expired. No regulation required this for employees who did not drive or transport children.

Accordingly, the DAR erroneously identified 14 servicing providers and the 17 claims they accounted for as deficient, and thus none represent any overpayment amount. GNJCC should face no repayment obligation with respect to this regulation.

C. DAR Claim—Greater New Jersey Failed to Maintain Behavioral Assistance Training Certifications for Behavioral Assistants.

The DAR states that 4 of the 29 BAs that OSC sampled were out of compliance with this requirement, resulting in an overpayment on 7 of the claims sampled. Here, as in the August 2024 Letter, GNJCC concedes that 2 BAs—[REDACTED] and [REDACTED]—were out of compliance with the certification requirements, resulting in an overpayment on 5 of the claims sampled. However, with respect to the remaining 2 BAs identified in the DAR [REDACTED] and [REDACTED] GNJCC disputes the DAR findings.

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First, with respect to BA [REDACTED], GNJCC submitted documentation sufficient to show that [REDACTED] was within the six-month grace period during which to obtain the certification on the date of the claim at issue.³ [REDACTED] first approached GNJCC about returning to work as a BA for GNJCC on October 9, 2019. *See* Exhibit 2. Thus, the earliest possible date by which [REDACTED] six-month grace period would expire was April 9, 2020. The claim at issue corresponds to a service date of February 8, 2020, well within the earliest possible grace period.

Second, [REDACTED] is not a BA, but a fully licensed therapist. Per the applicable regulations, she maintains an appropriate LAC license, which became active on June 26, 2020. Thus, the DAR erroneously identified [REDACTED] as being out of compliance with this requirement for BAs.

Accordingly, the DAR improperly identifies 2 of the 7 claims as non-compliant and which therefore should not be included in the overpayment calculation. For the remaining 5 claims, it is GNJCC's practice to maintain records for each BA's certification, but in these instances GNJCC was unable to locate them due to filing errors. Thus, only 5 claims included an actual instance of overpayment, as detailed below:

Behavioral Assistant Name	Claimant Recipient Name	Claim Service Date	Overpayment Amount
[REDACTED]	[REDACTED]	6/17/2020	\$78.00
[REDACTED]	[REDACTED]	10/15/2020	\$39.00
[REDACTED]	[REDACTED]	10/17/2020	\$78.00
[REDACTED]	[REDACTED]	10/18/2020	\$117.00
[REDACTED]	[REDACTED]	6/27/2021	\$218.28
		Total	\$530.28

D. DAR Claim—Greater New Jersey Billed Unsubstantiated Services and/or Maintained Inaccurate and Incomplete Records.

The DAR states that GNJCC failed to possess adequate documentation to support 14 of the 188 claims sampled, resulting in an overpayment on each of these 14 claims. Consistent with its August 2024 Letter, GNJCC again concedes that 12 of the SDED forms identified in the audit were filled out incorrectly or were not provided. These 12 deficiencies appear to be the result of

³ *See* DAR at 5 (“BAs are required to obtain the certification within six months of the BA's hire date . . .”).

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human error causing paperwork to be misfiled in an incorrect location. GNJCC never bills for any services without proper documentation; instead, GNJCC's process is to enter sessions into its billing spreadsheet only after reviewing the appropriate forms, and with a second set of eyes (formerly a biller, and now, a compliance employee) reviewing the entries for accuracy. Here, then, the proper documentation for these claims exists and was available at the time of billing, but GNJCC now cannot retrieve them due as a result of human filing errors in its previous system. In recognition of these shortcomings, and as explained above, GNJCC has taken steps to improve its audit protocols and to avoid and minimize human error.

With respect to the remaining 2 claims identified in the DAR, for which the service delivery date on page two differs from the prior authorization date on page one of the SDED form, GNJCC notes that the DAR ignores GNJCC's position that its clinician providers wrote the previous authorization number on page one of the encounter form, but that GNJCC always billed under the correct authorization number as a matter of practice. It is common for up-to-date authorization numbers to be unavailable at the time of the encounter, but to become available by the time GNJCC submits the claim. Indeed, the Medicaid billing system does not even allow GNJCC to enter a bill with an expired authorization number. Thus, these discrepancies on the SDED form are not material to payment, and GNCJJ should not be penalized for its staff using an expired number on an SDED form where no active authorization number is yet available, particularly since the claims were actually billed with the correct authorization numbers.

Accordingly, of the 14 claims identified in the DAR, only 12 were properly identified as erroneous and resulting in overpayments, as summarized below:

Claim Recipient	Claim Service Date	Overpayment
██████████	10/26/2017	\$170.00
██████████	3/29/2018	\$170.00
██████████████	8/17/2017	\$536.75
██████████	4/2/2022	\$218.28
██████████	10/18/2017	\$282.50
██████████████	10/11/2018	\$39.00
██████████████	12/5/2018	\$(42.50)
██████████	6/23/2020	\$212.50
██████████████	3/8/2022	\$287.40

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██████████	11/30/2021	\$308.30
██████████	2/13/2018	\$113.00
██████████	10/1/2021	\$114.96
		\$2,410.19

E. DAR Claim—Greater New Jersey Upcoded Services Provided.

The DAR states that for 3 of the 188 claims sampled GNJCC billed for services using a higher reimbursed procedure code and/or modifier than appropriate, resulting in overpayments. As in the August 2024 Letter, GNJCC concedes that of these 3 claims, two were the result of a mistakes and are legitimate instances of inaccurately coded services. Specifically, for BA ██████████ ██████████, the biller made a mistake and billed ██████████ as a therapist rather than a BA.

Further, with respect to the claim involving ██████████, GNJCC concedes that ██████████ LAC license did not become active until June 26, 2020 and thus was not licensed as an LAC on the date of service of June 12, 2020. However, ██████████ had completed a master’s degree, and thus GNJCC understood her to be a licensed LAC on the date of service.

With respect to the other remaining claim, involving services rendered by ██████████, GNJCC accurately billed for her services. ██████████ is independently licensed and has “U1” authorization. Accordingly, GNJCC appropriately billed her services using the “U1” code and the Medicaid billing system processed the claim, despite the authorization code in the system being a “U2”. Historically, the billing system has included checks and balances to reject claims using a “U1” authorization where the system code noted “U2” authorization. Unbeknownst to GNJCC, however, there was a change in the Medicaid system removing those checks and balances, allowing this particular claim submission to go through. Per the ordinary process, GNJCC expected the system to reject the billing submission if there was a discrepancy between the code billed and the code authorized, yet this did not occur in this instance. Further, GNJCC did not “upcode” ██████████ ██████████ services, but rather billed them accurately using the code “U1” reflective of her independent licensure status. The code billed thus accurately reflects the services rendered, and any error was on the part of Medicaid in accepting this claim, which was billed accurately.

Accordingly, only two of the claims identified in the DAR were properly identified as upcoded and was the result of an inadvertent human error. The overpayment associated with these two claims amount to a total of \$507.75.

F. DAR Claim—Greater New Jersey Failed to Document Services with a Progress Note.

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Finally, the DAR states that for 1 of the 188 claims sampled, GNJCC failed to document services in a progress note. However, the DAR wholly ignores the evidence presented in GNJCC's August 2024 Letter establishing that the State's online Cyber system is rife with errors and glitches, which frequently result in progress notes previously uploaded to the system disappearing or becoming inaccessible. GNJCC uploads and maintains all its progress notes on the State's cyber online system; however, for unknown reasons these progress notes frequently disappear in the system. By way of example, GNJCC has included screenshots indicating that progress notes GNJCC uploaded to the cyber site, and which were accessible on January 1, 2023 have since become inaccessible without explanation. *See* Exhibit 3. Despite possessing timestamped proof that these progress notes were in fact submitted on January 1, 2023, GNJCC has been unable to access these progress notes as recently March 17, 2025, with the cyber system giving the appearance that none were submitted. Accordingly, the mere fact that the progress note at issue is unavailable in the cyber system and that OSC was unable to locate it during the audit does not necessarily mean that GNJCC never submitted it. Thus, GNJCC should face no repayment obligation due to glitches in the States' own cyber system.

CONCLUSION

In sum, GNJCC disputes the DAR's findings and submits that the DAR erroneously identified 25 of the 188 claims sampled as deficient. After accounting for these erroneously identified claims, only 19 claims⁴ in the sample remain deficient, resulting in a total overpayment amount of only \$3,448.22.

What's more, given the miniscule sample size, relatively low rate of error when considering the appropriate number of deficient claims, and the inadvertent and disparate nature of the errors, GNJCC objects to the extrapolation of overpayment amounts to the entire population of claims submitted during the audit period. Contrary to the DAR's assertions, these inadvertent errors reveal neither "significant oversight failures" nor "systemic shortcomings" on the party of GNJCC, and there has been no showing that any of GNJCC's patients have been harmed or faced increased risk of harm as a result.

That being said, GNJCC does concede that the audit uncovered minor instances of human error. No organization is 100% compliant with applicable regulations, but, as set forth above, GNJCC has swiftly taken corrective actions and adopted compliance and audit procedures to minimize such errors in the future. GNJCC looks forward to your response and would like to continue discussions with the OSC to resolve any concerns and continue providing health care services to communities desperately in need of them.

Very truly yours,

⁴ As detailed above, the 19 claims are comprised of: 5 claims regarding BA Certifications; 12 claims regarding unsubstantiated services; and 2 claims regarding the upcoded services.

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s/ Nicholas C. Harbist

Nicholas C. Harbist, Esq.

NCH:
Attachments

cc: Kevin M. Moran

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]