

STATE OF NEW JERSEY  
OFFICE OF THE MEDICAID INSPECTOR GENERAL

INVESTIGATIVE FINDINGS OF

**GARDEN  
ADULT MEDICAL  
DAY CARE**



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## **I. EXECUTIVE SUMMARY**

The investigation conducted by the Office of the Medicaid Inspector General revealed the following: lack of documentation supporting the services for which Garden Adult Medical Day Care billed, internal control weaknesses at the facility, and a breakdown in communication between the participants' physicians and the facility, which endangered the lives of participants. The OMIG further found weaknesses in the existing regulations through which the Department of Health administers this program and recommends changes to the regulations.

## **II. BACKGROUND**

### **A. Adult Medical Day Care Program**

New Jersey's Adult Medical Day Care (AMDC) is a program that provides medically necessary services in an ambulatory care setting to clinically eligible individuals. Due to physical and/or mental impairment, these individuals require intensive health maintenance, rehabilitation, and restorative services to allow them to continue to live in the community. The program, administered by the New Jersey Department of Health and Senior Services (DHSS), is offered to adults over the age of eighteen who do not require 24 hour inpatient institutional care.

Approximately 140 AMDC facilities serve approximately 12,000 New Jersey residents. In order to operate a facility in New Jersey, an AMDC must be licensed and approved by DHSS in accordance with the Standards for Licensure of Adult and Pediatric Day Health Services Facilities as set forth at N.J.A.C. 8:43F. In order to participate in the Medicaid program, an AMDC must additionally complete the New Jersey Medicaid Provider Application and Participation Agreement and be approved as a Medicaid provider by the Division of Medical Assistance and Health Services, a division within the Department of Human Services. Effective July 1, 2009, AMDCs are reimbursed for their services \$78.50 per day per Medicaid participant. A day consists of a minimum

of five hours of services, excluding transportation time to and from home, and is not to exceed five days per week.

Individuals enrolled in an AMDC must meet the clinical eligibility requirements described in N.J.A.C. 8:86-1.5 f(1).<sup>1</sup> Specifically, the individual must need either limited assistance in activities of daily living, skilled services,<sup>2</sup> or require supervision of daily living activities.

To demonstrate the need for assistance in activities of daily living, the individual must need limited assistance in at least two of the following activities of daily living (ADLs): bathing/dressing, toilet use, transfer (e.g. moving from a sitting position to a standing position), ability to move between locations, bed mobility, and eating. The facility must be able to provide all of the assistance for the claimed ADL on-site in the facility. “Limited Assistance” means physical help in maneuvering of limbs or other non-weight-bearing assistance at least three times during the previous three day time period.

Skilled services is another clinical eligibility criterion. N.J.A.C. 8:86-1.2 defines skilled services as oxygen need, ostomy care,<sup>3</sup> daily nurse monitoring for needs such as medication administration, pacemaker checks, urinary output, unstable blood glucose, unstable blood pressure with physician/advanced practice nurse intervention, treatment of wounds, treatment of stasis<sup>4</sup> ulcers, intravenous or intramuscular injections and nasogastric or gastrostomy tube feedings and medical nutrition therapy. Skilled services must be provided on-site at the facility by a Registered Professional Nurse (RN) or Licensed Practical Nurse (LPN).

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<sup>1</sup> The clinical eligibility requirements apply regardless of whether the individual is a Medicaid recipient.

<sup>2</sup> Effective August 1, 2009, rehabilitative services, which include physical therapy, occupational therapy, and speech pathology services, is no longer part of the clinical eligibility criteria.

<sup>3</sup> Ostomy care is addressing an opening through the skin of the abdomen into the intestine.

<sup>4</sup> A stasis ulcer is an ulcer that develops in an area in which the circulation is sluggish and the return of venous blood is poor.

Finally, an individual meets clinical eligibility for adult day care services if he or she requires supervision in performing ADLs. Specifically, the individual must need either supervision/cueing<sup>5</sup> in at least three of the ADLs described above, and exhibits problems with short term memory and difficulty with daily decision making.

Clinical eligibility for adult day health services is contingent upon prior authorization from DHSS, which approves the clinical eligibility of the individual using assessment procedures prescribed by DHSS. These assessment procedures measure standardized information relevant to caring for an individual attending an AMDC, including: cognition; communication/hearing; vision; mood and behavior; social functioning; informal support services; physical functioning; continence; disease diagnosis; health conditions; preventive health measures; nutrition/hydration; dental care; skin condition; environment/home safety; service utilization; medications; and socio-demographic/background information. Additionally, DHSS considers information received from the facility RN, the individual and/or the individual's legally authorized representative, personal physician or other healthcare professional who has current and relevant knowledge of the individual, the individual's medical and psychosocial needs as well as the individual's ADL or cognitive deficits.

The combined results of the assessment along with the eligibility requirements outlined in N.J.A.C. 8:86-1.5f(1) above determine whether the individual will be prior authorized to participate in the AMDC program. DHSS performs these eligibility assessments annually, or if a change in the individual's status occurs. DHSS may authorize the facility's staff to perform the eligibility assessment on DHSS's behalf. If DHSS makes this authorization, the assessment is performed by the AMDC's RN utilizing the assessment protocol prescribed by DHSS.

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<sup>5</sup> Cueing means having to remind the individual to perform an activity.

In a Public Notice dated November 3, 2008, DHSS found it necessary to revoke 41 AMDCs' ability to conduct eligibility assessments on DHSS' behalf because the facilities failed to reassess participants' conditions as required by N.J.A.C. 8:43F-5.4(c), and to discharge participants who were no longer in need of these services in accordance with N.J.A.C. 8:43-5.4(d)1. In the same Notice, a moratorium was put into place prohibiting the licensing of new facilities and freezing enrollment at the AMDC at the current level effective immediately and for 12 months thereafter. The moratorium was renewed for an additional year on November 3, 2009.

*B. Garden Adult Medical Day Care*

***1. Background***

Garden Adult Medical Day Care (GAMDC), located at 717-727 Broadway, Newark, New Jersey, 07104, became an adult medical day care provider for the New Jersey Medicaid Program effective June 5, 2003. The provider application lists the following owners:

*Marat Zeydelis, 156 Stonegate Drive, Staten Island, NY 10304*  
*Zoya Halal, 131 Finucane Place, Woodmere, NY 11598*  
*Larisa Melnik, 2506 East 66<sup>th</sup> St., Brooklyn, NY 11234*

Zoya Halal is listed as president of GAMDC and signed the application. Dmitry Kupriyanov, a registered professional nurse licensed in New Jersey (26NR09783800), is the Director of Nursing. Richard Zedower, a certified social worker, is the Administrator of the facility. Since GAMDC's approval to be a Medicaid provider of AMDC services, the Medicaid program has paid the following to GAMDC:

<u>Year</u>	<u>Amount</u>
2003	\$416,604.62
2004	\$1,650,553.20
2005	\$2,564,551.66
2006	\$3,216,489.69
2007	\$3,235,942.26
2008	\$3,508,300.21
2009	\$2,994,144.17
2010	\$1,152,264.40 <sup>6</sup>
<b>TOTAL</b>	<b>\$18,738,850.21</b>

## ***2. Deficiencies***

In order to ensure the integrity of the AMDC program, DHSS performs compliance checks on the licensed providers. As part of its compliance duties, DHSS conducted several monitoring surveys of GAMDC over the past seven years. As noted below, DHSS found multiple, repetitive deficiencies.

a. October 2, 2003. GAMDC violated N.J.A.C. 8:43F-7.4 for failing to maintain the standards of nursing practice including, but not limited to: monitoring identified medical conditions; administration and supervision of prescribed treatments; communicating participant’s findings to the attending physician; evaluating the participant’s progress in reaching established goals; defining the effectiveness of the nursing component of the individualized plan of care; and alerting others in the participant’s care about changes in status and the need to change the individualized interdisciplinary plan of care. GAMDC failed to meet this requirement for nine out of ten records reviewed. Additionally, GAMDC failed to follow physicians’ orders for physical therapy and blood sugar monitoring on these clients.

On October 28, 2003, GAMDC filed a Plan of Correction (POC) with DHSS to correct the deficiencies. On March 11, and 12, 2004, DHSS surveyors found these deficiencies “not corrected” when they revisited GAMDC. Specifically, GAMDC failed to show documentation of policies and

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<sup>6</sup> Through May 31, 2010

procedures in place on parameters for blood sugar readings and physician notification. In conducting the revisit survey, DHSS surveyors also found GAMDC violated N.J.A.C. 8:43F-7.1 for failure to have a registered professional nurse designated in writing as the Director of Nursing Services and on duty at all times when services were being provided. There were two registered nurses on duty but no Director of Nursing (DON). According to GAMDC's Administrator, a new DON was hired but he was only able to provide the surveyor with a copy of the license and had no other information such as a resume, employee physical, or in service training. GAMDC also violated N.J.A.C. 8:43F-5.4(d) for failure to include a discharge plan for a participant's change in status. There was no discharge planning documented on the medical record for a participant who was not compliant with treatment and none for a participant who appeared alert and able to take care of his health and medical needs.

b. March 21, 2006. GAMDC was cited for violating N.J.A.C. 8:43F-7.4 (b) (2) (i-ix) (3-4) for failure to monitor participants' identified medical conditions, supervise medications, monitor clinical behaviors, and communicate findings to the attending physician. There was no documentation regarding a participant's care provided by a mental health program as required by the participant's care plan. The medication profile for another participant was not consistent with the list of medications on the Medical Plan of Care and with the list that the participant carried in her wallet. There was no evidence that a better insulin delivery system had been investigated for a participant who self-administered insulin but used her teeth to pull up the plunger because she had a problem with her hands. GAMDC failed to: document a participant's recent hospitalization including condition, length of stay, change in medications and follow-up visits; document another participant's refusal to attend appointments with the psychiatrist; and for a third participant failed to document a change in medical condition when she relocated from one shelter to another due to a

physical problem she experienced. On May 12, 2006, GAMDC filed a POC with DHSS to correct these deficiencies.

c. August 22, 2006. GAMDC was cited for the nursing service's failure to meet the provisions of N.J.A.C. 8:43F-7.4(b)(2)(i-ix)(3-4) which requires the facility to monitor the participants' health status on a continuing basis. For example, a diabetic participant's medical record lacked documentation regarding administration of insulin, injection sites, evaluation of blood sugar results, and diet compliance. The medical record of a participant with renal failure lacked documentation regarding dialysis, shunt site examination, diet compliance and fluid restriction. Additionally, GAMDC failed to document orders from the attending physician for medications, diet and rehabilitative services for participants in violation of N.J.A.C. 8:43F-8.1(a)(6). The medical plan of care for five of eight participants lacked a list of medications taken by the participant. GAMDC also failed to document completed medical histories and physical examinations for six out of six participants reviewed, in violation of N.J.A.C. 8:43F-8.4(b)(1-4). On October 16, 2006, GAMDC filed a POC with DHSS to correct these deficiencies.

d. February 15, 2007. GAMDC violated N.J.A.C. 8:43F-10.5, Dietary Services. A review of the facility's menus revealed that GAMDC failed to attend to the nutritional needs of participants who required therapeutic diets. Menus planned for the main meal and afternoon snack did not indicate interventions for two participants who required a renal diet. Additionally, GAMDC's diet menu was described as no added salt and low fat; however, the afternoon snack menu consisted of foods with a high fat content such as hot dogs, french fries, and pepperoni pizza. A review of the menus indicated repetitive serving of the same vegetables more than twice in a week. GAMDC also violated N.J.A.C. 8:43F-16.7(a)(2b) for failing to maintain an adequate room temperature in all program areas during hours of operation. The facility was substantially below



room temperature and there was no evidence that GAMDC programmed its thermostats to maintain an appropriate temperature for the hours of operation. On March 27, 2007, GAMDC filed a POC with DHSS to correct these deficiencies.

e. August 28, 2007. GAMDC violated N.J.A.C. 8:43F-5.4(d) for failing to develop discharge plans for 16 of 16 participants reviewed. The discharge plans for 14 of the participants failed to identify the day-to-day living arrangements that the participants would encounter upon discharge, and there were no discharge plans for two of the participants. GAMDC violated N.J.A.C. 8:43 F-8.1(a)(6) for failure to obtain diet orders for six of 15 participants reviewed. The diet section of the history and physical forms were left blank and there was no indication that primary care physicians were notified to obtain a diet order for these participants. GAMDC also violated N.J.A.C. 8:43F-10.5 (c) (1-6) for failure to provide planned therapeutic diet menus or a system to provide for recipients' special therapeutic nutritional needs. GAMDC failed to provide planned menus addressing the needs of two participants requiring a renal diet. DHSS surveyors noted that GAMDC continued to serve items not consistent with a lower fat, lower sodium diet including hot dogs, potato chips, chicken nuggets and cheeseburgers. On October 2, 2007, GAMDC filed a POC with DHSS to correct these deficiencies.

f. July 15, 2008. GAMDC violated N.J.A.C. 8:43F-7.4 (b)(2)(i-ix) (3-4) for failing to consistently monitor, follow-up, report changes to physicians, carry out physicians' orders, and document identified medical conditions for three out of 11 sampled participants. Additionally, GAMDC failed to develop a medical care plan that included goals and interventions to address identified medical conditions as well as review the effectiveness of the nursing components of the plan. For one participant, GAMDC failed to consistently document follow-up communication with the primary care physician to report abnormal results based on the parameters ordered by the

physician, despite the participant's frequent hospitalizations and unstable blood pressure (BP) and blood sugar (BS). The facility's nursing service omitted a change in pain medication on another participant's Medication Administration Record (MAR). For this same participant, the nursing service failed to document in the medical record any follow-up of mental health issues which were identified upon admission to GAMDC. When interviewed by the surveyor, the nurse stated that the participant was only attending the facility for blood pressure monitoring. On August 29, 2008, GAMDC filed a POC with DHSS to correct these deficiencies.

g. June 18, 2009. GAMDC violated N.J.A.C. 8:43F-7.3(b)(c)(1-6) Nursing Services, for failing to ensure that the Director of Nursing (DON) developed and implemented nursing policies and procedures regarding documentation, assessment and monitoring of medical conditions based on the standards of nursing practice, as well as, reporting to physicians and the Administrator of significant changes in a participant's condition. GAMDC had no policy in place detailing the medication administration schedules of participants, and the DON failed to address the issue with the Pharmacy Consultant. The medical records contained copies of BP readings faxed to the offices of the participants' physicians but no proof of receipt from the physicians. There were no follow-ups documented to ensure that the physicians were aware of the BP readings. Further, GAMDC had no system to track and/or ensure the physicians were aware and received the information. There were no nursing policies provided by the DON for the monitoring of participants' blood pressures. Additionally, the facility had no system to ensure nursing staff were aware of participants receiving physical therapy, including a scheduled updated list for nurses to monitor and evaluate participants' progress and response. The monitoring tool "Self Management of Medications" was not consistently utilized and updated by nursing staff to assess/evaluate a participant's ability to self-administer their medications. Participants were placed and kept on the

GAMDC's medication administration program even without this assessment tool. The DON was not aware that the tool was not consistently used by the nursing staff.

GAMDC violated N.J.A.C. 8:43F-7.4(b) (2) (i-ix) (3-4) for failure to consistently monitor identified medical conditions, communicate findings to the attending physician, and/or ensure the development of the nursing component of the individualized plan of care. For example, there was no documentation of whether seizure monitoring was conducted for a participant admitted with a prior authorization request for skilled nursing needs, including "seizure monitoring." Another participant returned to the facility after a hospitalization for a heart attack, and there was no documentation in the medical record to acknowledge a reassessment or change of status of the participant by the nursing staff, nor was there medical clearance from the physician for the participant to return to the GAMDC. GAMDC also failed to ensure the safety of a female participant who self-propelled in a wheelchair but required assistance with activities of daily living such as bathing, toileting and transferring. GAMDC did not have a wheelchair accessible bus in order to safely transport her. DHSS surveyors noted that another participant helped in lifting her, thereby jeopardizing that participant's own safety while at the facility.

GAMDC also violated N.J.A.C. 8:43F(9), Pharmaceutical Services, for failure of the pharmacy consultant to develop a comprehensive policy and procedure that ensured the safe administration of the participants' medications, including the maintenance of medication integrity, labeling, storage, control, accountability, and the appropriate times that each medication was administered. The DON was unable to provide documented evidence of a policy on the facility's medication administration times. In reviewing each participant's MAR, DHSS surveyors confirmed that there were

inconsistent medication administration hours. Further, GAMDC's medications policy failed to address the appropriate filling of medi-minders.<sup>7</sup>

The survey also found that GAMDC violated N.J.A.C. 8:43F-11.1(a) because many of the care plans of the participants receiving physical therapy (PT) services failed to document the specific services to be provided. GAMDC also failed to obtain orders for physical therapy from the participants' physicians. In one instance, a participant received PT services from January 7, 2009 through May 27, 2009 after a hospitalization in December 2008 for a heart attack; yet, there are no orders and/or medical clearance from the attending physician to initiate PT for this participant. GAMDC violated N.J.A.C. 8:43F-11.1(c) due to the facilities' failure to document the services provided on the participant's medical records.

Finally, DHSS surveyors found GAMDC violated the provisions of the State Sanitary Code, N.J.A.C. 8:24, and N.J.A.C. 8:43F(10) for their meal service. There were no systems in place to monitor the temperature of the meals served, there was no evidence of any current diet manual available for the surveyor to review, and there were no supplies for a diabetic diet. Pantry items, which included, regular cream cheese, mayonnaise, and regular salad dressing were not consistent with the facility's house diet of no added salt and low fat, as indicated on the physician History and Physical/Medical Care Plans, or with the description on the menu which indicated "all regular meals are low in sodium, fat and cholesterol." The foods observed by DHSS surveyors were fried and greasy. There was no system in place to record changes in the menu when participants went on excursions with a bag lunch. On September 16, 2009, GAMDC filed a POC with DHSS to correct these deficiencies.

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<sup>7</sup> Medi-minders are medication reminder boxes. It is a receptacle used by participants in which to place medications. Participants take the medi-minders home for use outside the facility's program hours, i.e. evenings or weekends.

### **III. INVESTIGATION**

On June 11, 2009, the Office of the Medicaid Inspector General, in collaboration with DHSS, launched an on-site investigation of GAMDC. At the on-site visit, DHSS registered nurses performed assessments on some of the GAMDC participants and discharged or recertified participants based on their determination of whether the participants had medical conditions justifying their attendance in the program. Additionally, OMIG investigators conducted interviews of all on-site GAMDC employees at the facility.

After the on-site visit, OMIG conducted additional interviews of key GAMDC senior management, including, but not limited to: one of GAMDC's owners, Zoya Halal; Administrator, Richard Zedower; Director of Nursing, Dmitry Kupriyanov; and Medical Consultant, Juan de Dios Delacruz. Additionally, OMIG conducted a post-payment (post-pay) review of fifty Medicaid participants' medical records which consisted of verifying that services paid for by Medicaid were medically necessary and substantiated by the appropriate documentation. The purpose of this review was to determine, on a daily basis, if the services provided by GAMDC met the medical needs of the selected participants pursuant to their individual medical care plan, thereby entitling GAMDC to receive Medicaid reimbursement for these participants. The medical records were chosen randomly from a report generated from the claims data for service dates from January 1, 2009 through June 30, 2009.<sup>8</sup>

#### *A. Post-Pay Review Findings*

The post-pay review identified numerous errors, the largest number of which related to blood pressure monitoring, missing Medication Administration Records (MAR), medication management,

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<sup>8</sup> The participants chosen may have entered the facility prior to January 1, 2009, but, received some level of service from GAMDC during the six-month sample period. For ease of review and to protect patient privacy, we assigned each of the fifty participants a participant number.

signature errors, and the care plan process. There were significant amounts of the participants' files missing and notes were found in their medical records stating that documents had been removed. A majority of the medical records were missing prior authorization requests. In conducting the post-pay review, OMIG applied the applicable eligibility criteria and reimbursement rates in place during the time the fifty participants purportedly received care at GAMDC. Below is a summary of the findings noted during the post-pay review.

### **1. Medication Administration Records (MAR), Signature Errors, MAR Inconsistent**

71% of the medical records reviewed were missing the Medication Administration Records and 71% of those records had signature errors on the MAR or were inconsistent in how it stated treatment was to be given. In many instances there were initials on the MAR with no corresponding signature to identify the nurse who administered the medication, and, as a result, determining whether a nurse actually administered the medication was impossible. 40% of the MARs reviewed lacked clarity to enable another RN or LPN to follow-up on treatment. For example, the initials DON or other abbreviations such as "planner" and "BE" and "TH" were noted on the MAR with no reference on the MAR to what the initials meant.

These errors violate N.J.A.C. 8:43F-7.4 (b) 2 (i-ii), Provision of Nursing Services, which reads in pertinent part:

- (b) The registered professional nurse shall be responsible for, but not limited to, the following:
  - 2. Maintaining the standards of nursing practice including, but not limited to:
    - i. Monitoring of identified medical conditions;
    - ii. Administration and supervision of prescribed medications and treatments.

For example, **Participant #45 DC** was prior authorized for medication administration from December 28, 2006 through June 30, 2009, but there were no MARs found in the medical records.

Further, a nurse's note on April 15, 2009 states that "client is monitored at the center for medication administration but at this time participant able to take his meds with the assistance of his family at home." A nurse's note on April 16, 2009 states "he is non[-]compliant with his meds and directed to bring his meds to the center and he is unable to tell the dose and frequency of the meds." A prescription dated May 30, 2008 and signed by a physician states medication to be administered at the center. Another example includes **Participant #26 HF**, who was prior authorized for medication management beginning on March 17, 2008. There were no MARs in the medical record except for March 2009 and April 2009, and these MARs were missing signatures by the nurses.

Additionally, GAMDC's failures violated N.J.A.C. 8:43F-15.3(a)8, 10, and 11, Contents of Medical Records, which reads in pertinent part:

(a) The participant's complete medical record shall include, but not be limited to, the following:

8. Clinical notes, which shall be entered on the day of service rendered; . . .
10. A record of medications administered, including the name and strength of the medication, date and time of administration, dosage administered, method of administration, and signature of the person who administered the medication;
11. A record of self-administered medications, if the participant self-administers medications.

On **Participant #19 JL's** October 2008 MAR, there were no signatures to identify two different sets of initials. Additionally, it was noted on **Participant #19's** February 2008 MAR that DON signed for the monthly Haldol injection on February 15, 2008 but there was no signature for these initials, and the participant did not receive his injection until August 15, 2008 with no explanation as to why there was a delay. The delay exposed the participant to significant health risk.

## **2. Transcribing Medications, Missing Orders**

46% or 22 out of 48 charts had orders for medications, but they were incorrectly transcribed onto the MAR, and 24% of the records reviewed were missing orders. These errors violate N.J.A.C. 8:43F-5.3(c) and (d), Assessment, which reads in pertinent part:

- (c ) A physician, advanced practice nurse or physician assistant shall provide orders for each participant's care beginning on the day of admission and
- (d) Each physician, advanced practice nurse or physician assistant order shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service, as appropriate in accordance with professional standards of practice.

An example of this violation is **Participant #42 DN** who was prior authorized for medication administration from July 30, 2008 through July 29, 2009. Review of the October 2008 MAR for this participant found that Tegretol 200mg by mouth was to be given three times per day; however, it was only given twice a day. There were no signatures authorizing this medication administration other than the statement on the MAR "TAKES HOME."

These errors also violated N.J.A.C. 8:43F-9.1(b)1, Provision of Pharmaceutical Services, which reads:

- (b) The designated pharmaceutical consultant shall be responsible, in accordance with N.J.A.C. 13:39, for the following:
  - 1. Establishing written policies and procedures to ensure the safe use, labeling, storage, integrity, administration, control and accountability of all medications stored or administered by the facility.

An example of this violation includes **Participant #15 TO** for whom five new orders for medications were received at GAMDC on January 16, 2009. These medications were Avelox 400mg, Elocon cream, Nasocort spray, Clarinex, and Phenergan. None of these medications were transcribed on the participant's MAR.

Finally, these errors violated N.J.A.C. 8:43F-15.3(a)10, Contents of Medical Records, which reads:

- (a) The participant's complete medical record shall include, but not be limited to, the following:



10. A record of medications administered, including the name and strength of the medication, date and time of administration, dosage administered method of administration, and signature of the person who administered the medication.

**Participant #36 AM**, for example, had a diagnosis of seizures and had a physician's order to receive two capsules of anti-seizure medication to be given three times daily. There were no times on the MAR to indicate when this medication was administered and only one signature indicating that it was administered one time during the hours he attended GAMDC. There are two other medications where the time of administration is omitted from the MAR and the MAR is not always signed. **Participant # 29 BC** was prior authorized for medication administration and received medications at GAMDC. She was ordered to receive Hydrazaline 25mg (used along with other medications to treat hypertension) by mouth every six hours and the MAR shows Hydrazaline 25 mg by mouth every six hours as needed. This medication is not to be given on an as needed basis.

### **3. Care Plan Review**

Care plans, which outline the participants' treatment course at the center, are required for all participants due to the medical nature of the program. Care Plan errors were noted on 32 out of the 50 or 64% of the charts reviewed. The most prevalent error was the facility's failure to document the correct parameters for blood pressure or blood glucose monitoring. These errors violate N.J.A.C. 8:43F 7.4(b) 4, 5 and 6, Provision of Nursing Services, which reads:

- (b) The registered professional nurse shall be responsible for, but not limited to, the following:
  - 4. Documenting the nursing services provided, including the initial assessment and evaluation of the participant's health care needs, development of the nursing component of the individualized plan of care, evaluation of the participant's progress in reaching established goals and defining the effectiveness of the nursing component of the individualized plan of care;
  - 5. Overseeing the development of the initial individualized interdisciplinary plan of care;
  - 6. Alerting others involved with the participant's care about changes in status and the need to change the individualized interdisciplinary plan of care.

**Participant #42 DN**, was prior authorized for blood pressure monitoring with parameters pursuant to an order from the participant's physician; however, the parameters pursuant to the order were never added to the nursing care plan. All of her care plans have the wrong BP parameters.

**Participant #15 TO** was prior authorized for blood pressure monitoring with parameters from the participant's physician. Both of these participants' nursing care plans reflected the wrong parameters even though three quarterly reviews were done with no update reflecting the correct parameters for the participant.

#### **4. Poor nursing documentation**

The nursing notes revealed that 14 out of the 50 charts or 28% reviewed had inadequate documentation, including the lack of communication with the attending physician and other disciplines, and inadequate documentation regarding nursing services and interventions in violation of N.J.A.C. 8:43F-7.4(b)4, Provision of Nursing Services.

For example, a letter was found in **Participant #10 RL's** medical record written by a physician attempting to contact **Participant #10 RL** regarding a dangerously high potassium level. Included in the letter was a list of foods for the participant to avoid due to the high potassium level. There is no documentation of this issue in the participant's care plan or in the nursing notes. A quarterly nurse's note written on June 23, 2009, stated that this participant had difficulty eating a piece of sausage and would be placed on choking precautions. On November 21, 2007, the same participant experienced a choking episode with a piece of yucca. Although there was documentation stating that the participant was to be referred to GAMDC's dietary services for evaluation of the participant's diet, there was no documentation indicating that GAMDC followed up on this issue. On November 11, 2008, there is a nurse's note regarding the participant's return from an eye doctor appointment

wherein it was determined that the participant was unable to take medications independently and therefore needed assistance with applying eye medications; however, there is no documentation on the MAR regarding application of eye medications.

### **5. Blood pressure monitoring and follow-up care**

48 out of 49 charts or 98% of the medical records reviewed of participants who were attending for blood pressure monitoring, had errors in blood pressure management, including the recording of the blood pressures and the failure to follow up on blood pressures found to be out of the parameters determined by the participant's physician or GAMDC's standard. There was no consistency in recording daily blood pressure monitoring as ordered by the participant's physician. There was little to no follow-up with regard to documentation to ensure the physician was aware of the BP readings. GAMDC had no system to track or ensure the physicians were aware and received the information faxed to them.

These errors violate N.J.A.C. 8:43F-7.4(b) 2.i., ix., and 7, Provision of Nursing Services which reads in pertinent part:

- (b) The registered professional nurse shall be responsible for, but not limited to, the following:
  - 2. Maintaining the standards of nursing practice including, but not limited to:
    - i. Monitoring of identified medical conditions...
    - ix. Communicating findings to the attending physician....
  - 7. Developing community medical referral resources and maintaining ongoing communication with those providers.

By way of example, **Participant #37 CW** had a physician order dated April 15, 2008, which gave blood pressure parameters; however, GAMDC failed to enter the parameters into the care plan. Additionally, **Participant #45 DC** had a prior authorization from April 26, 2007 to April 25, 2008 for blood pressure monitoring. Many of the BPs recorded were elevated; however, no documented intervention was found in the medical records. The next prior authorization was from April 28, 2008

to April 27, 2009 for daily BP monitoring. The medical records had an order dated May 30, 2008, for BP to be monitored at a 110/70 level, which was never entered in the participant's plan of care, and the care plan had a monitoring level of 140/90.

Finally, **Participant #28 IO** had a prior authorization from January 16, 2008 to January 15, 2009, for blood pressure monitoring, yet, there are no blood pressures documented until December 2008. Another prior authorization for BP monitoring dated from November 24, 2008 to November 23, 2009 was in the file. While some BPs were recorded, there were no parameters documented until a physician order dated December 18, 2008 was received by GAMDC for BP parameters. These new parameters were not transcribed to the care plan even though there were care plan reviews on January 7, 2009 and April 30, 2009.

## **6. Glucose monitoring**

23 out of 25 or 92% of the medical records reviewed for participants in the facility for glucose monitoring, had errors ranging from incomplete documentation to substantiate blood glucose monitoring to a lack of proper interventions associated with a low or high blood glucose reading. There was minimal documentation to support notification of abnormal blood sugars to the participants' physicians and, additionally, there was less documentation to support any follow-up from the participants' physicians when they were notified.

These errors violate N.J.A.C. 8:43F-7.4(b) 2.i. ii. and ix.; 3, 4 and 7, Provision of Nursing Services. For example, **Participant #46 CS** who was prior authorized for BS monitoring from January 22, 2008 to January 21, 2009, had elevated blood sugars noted with no nursing or physician follow up. Another example includes **Participant #8 LB** who was prior authorized for BS monitoring from April 24, 2007 to April 23, 2008. Approximately 64 blood sugars were taken during this entire year which averaged approximately five per month. There were no BS documented

for three months, July 2007, September 2007, and October 2007. When BS information was faxed to the physician, there was no follow-up by GAMDC personnel to obtain information back from the physician.

Finally, with respect to **Participant #27 EC**, there was a prior authorization for BS monitoring daily. On March 14, 2008, the nursing staff at GAMDC requested a sliding scale for the participant due to the extremely high BS readings at the center. A fax and list of the BS readings was faxed to the participant's physician and an order was received on March 23, 2008, nine days later. Given the participant's high BS readings, this delay, and the lack of follow-up by GAMDC with the participant's physician after the fax was sent on March 14, 2008, exposed the participant to a significant health risk.

#### **7. Activities of daily living (ADL)**

25 out of the 25 or 100% of the medical records reviewed for participants needing assistance with activities of daily living, lacked documentation demonstrating that activities of daily living (ADL) were provided as outlined on the prior authorization request. The ADL monitoring sheets consisted of a check off form with columns for the date, the ADL, and initials. The ADL monitoring sheets lacked signatures to correspond with the initials. On many of the ADL documentation forms, the documentation did not reflect the number of ADLs listed on the prior authorization request. There was a column for comments and the comments written by the staff were not indicative of assistance given. Examples of comments were "patient was happy," "patient had a pink dress," "patient was playing games" and "patient was reading a book." These errors violate N.J.A.C. 8:43-7.4(b) 2. i., iv., vi., Provision of Nursing Services.

**Participant #48 JS** had been prior authorized from June 26, 2008 to June 25, 2009 for supervision and cueing of bathing, toileting and transferring and locomotion. The participant had a

diagnosis of left-sided paralysis resulting from a stroke. On the ADL monitoring sheets, transferring is the only ADL monitored during 2009. **Participant #25 MN** who was prior authorized from April 6, 2007 to April 5, 2008 for ADL cueing with bathing, dressing, toileting, and transfers. There were no ADL forms found in the participant's medical records for this time period. Additionally, there was a prior authorization from March 29, 2008 to March 28, 2009 for ADL cueing with eating, transfers, and toileting. There were no ADL forms found in the medical records for this time period as well. Finally, **Participant #43 PR** was prior authorized from July 27, 2007 to July 26, 2008 for ADL cueing with eating, dressing and limited assistance with transfers and locomotion. No ADL forms could be found in the participant's medical record.

### **8. Pain Management**

28 out of the 29 or 98% of the medical records of participants where pain management was needed lacked documentation demonstrating that pain management was provided as outlined on the prior authorization request. There was a form titled "Pain Management Nursing Initial Assessment" included with the medical records that was inadequately filled in. There was lack of documentation of pain management on the care plan and on the nursing notes or quarterly reviews.

These errors violate N.J.A.C. 8:43F-18.1(a)(b) 3.,6. and 7., Quality Improvement Program, which reads in pertinent part:

- (a)The facility shall establish and implement a written plan for a quality improvement program for participant care. The plan shall specify a timetable and designate a coordinator(s) of the quality improvement program and shall provide for ongoing monitoring of staff and participant care services.
- (b)Quality improvement activities shall include, but not be limited to, the following:
  - 3. Evaluation of participant care services, staffing, infection prevention and control, housekeeping, sanitation, safety, maintenance of physical plant and equipment, participant care statistics, and discharge planning services...

6. Audit of participant medical records (including those of both active and discharged participants) on an ongoing basis to determine if care provided conforms to criteria established by each participant care service for the maintenance of quality of care; and

7. Establishment of objective criteria for evaluation of the participant care provided by each service.

**Participant #14 MR** was prior authorized to receive pain management on the prior authorization request for the time periods March 29, 2007 to March 28, 2008, and September 25, 2008 to September 24, 2009. A review of this participant's care plans dated November 6, 2007, May 15, 2008, August 15, 2008, and March 23, 2009 did not reflect any goals or interventions for pain management. The nursing quarterly notes dated August 15, 2008 to February 25, 2009, states "the client has no complaint of pain at this time." There is no mention of interventions for pain management, the response to the interventions, or if there is a change of status making pain management no longer necessary for this participant.

**Participant #48 JS** was prior authorized for pain management from June 26, 2008 to June 25, 2009; however, there was no mention of pain management on the care plan and there were no pain assessment forms in the medical record. Pain was mentioned on the nursing note dated June 22, 2009, which states "there are no signs and symptoms of pain."

### **9. Seizure monitoring**

Five out of the seven or 71% of the medical records reviewed for patients needing seizure monitoring lacked sufficient documentation to support that seizure monitoring was performed. These errors violate N.J.A.C. 8:43F-7.3(b), (c) 1,2 and 5, Responsibilities of the Director of Nursing Services, and N.J.A.C. 8:43F-7.4(b)1 and 2.i, ix., and 4, Provision of Nursing Services. The responsibilities of the Director of Nursing include "be[ing] responsible for the direction, provision, and quality of nursing services provided to participants. The director of nursing services shall be

responsible for developing and implementing written objectives, standards of practice, policies and procedures and an organizational plan for the nursing service.” Additionally, the Director shall establish “written policies and procedures” that include “[p]rocedures for the assessment of the health service needs of all participants; [p]rocedures for monitoring the conditions of the participants on a continuing basis; [and] procedures for maintaining records as required by the facility.”

**Participant #13 AM’s** medical records contain references to his history of grand mal seizures. A disability application found in the medical record for this participant signed by his physician on March 5, 2009, states that since suffering a brain aneurysm in 1996, the participant experiences dizziness, headaches and occasional grand mal seizures. The participant is on Keppra (anti-seizure medication) administered at GAMDC; however, there is no mention of this on the prior authorization request. There is also no seizure monitoring performed for this participant at GAMDC. In a letter dated October 23, 2008, the participant’s caretaker requests that his medications be administered at GAMDC due to his forgetfulness, but there are no MARs to indicate medications were administered at GAMDC until May 2009.

**Participant #48 JS** had a diagnosis of seizure disorder, which was listed on the care plan with adequate maintenance as a goal; however, there are no seizure monitoring logs found in **Participant #48’s** medical record. **Participant #37 CW** was prior authorized to receive seizure monitoring; however, there were no medical records to review from August 22, 2007 to December 31, 2007 and there was no seizure monitoring from January 1, 2008 through July 31, 2008 even though seizure monitoring was listed on the nursing care plan for this participant. **Participant #36 AM** had a diagnosis of seizure disorder and began attending GAMDC on August 22, 2005. There were no seizure monitoring logs noted on the medical record until August 2008 and he was prior authorized for monitoring of seizure disorder from March 19, 2007 to the present.



## **10. Weight monitoring**

Eight out of the eight or 100% of the medical records reviewed of participants needing weight monitoring lacked adequate documentation to confirm these participants received this treatment.

These errors violate N.J.A.C. 8:43F-7.3(b), (c)1., 2., and 5., Responsibilities of the Director of Nursing Services, and N.J.A.C. 8:43F-7.4(b)1. and 2.i, ii, v, vi, Provision of Nursing Services.

For example, **Participant #45 DC** was prior authorized for weight management from April 26, 2007 to April 25, 2008; yet the participant's weight was only recorded nine times since admission on October 25, 2006 and there is no weight management documented on the care plan.

**Participant #49 AF**, admitted to GAMDC in 2006, is morbidly obese, and was prior authorized from June 27, 2008 to June 26, 2009 for weight management and cueing for diet. From November 15, 2007 to January 8, 2008, the participant's weight was recorded nine times and there are no ADL monitoring sheets to reflect the cueing for diet. Obesity is only identified as a problem on one care plan dated May 8, 2008.

### **B. Office of the Medicaid Inspector General Additional Findings**

In addition to the above violations of New Jersey Administrative regulations, the OMIG found other weaknesses within GAMDC's program. These weaknesses provided OMIG with insight into the reasons for the multiple, and repetitive deficiencies found by DHSS in its surveys, its failure to follow through on its POC's, as well as the numerous violations found by OMIG in its post-pay review.

For example, none of the GAMDC's owners had prior health care experience; yet, one owner, Zoya Halal's daily duties at GAMDC included overseeing nursing, compliance, and facility policy/procedures. There is no indication that she had the requisite skillset to ensure that healthcare compliance issues would be adequately addressed. This owner worked with GAMDC's

Administrator on the Plans of Corrections the facility submitted to DHSS; yet GAMDC's Administrator never shared the Plans of Correction with GAMDC's Medical Consultant. The Medical Consultant's knowledge of the Plans of Correction would have helped ensure their implementation. Likewise, the Administrator never sought the input of the Director of Nursing before submitting its Plan of Correction to DHSS. The Director of Nursing would also be essential to ensuring that a Plan of Correction is fully and appropriately implemented.

GAMDC lacked policies and procedures to ensure participants' health and welfare. For example, the Administrator did not know that a number of participants at GAMDC required a special diet. Part of the Administrator's duties was to ensure that participants received appropriate care, such as ensuring that participants who had special needs had their needs met. In circumstances where GAMDC sought the advice of the participant's physician, the Director of Nursing failed to follow-up with the participant's physician before tending to the participant's medical needs.

GAMDC had no system in place to prevent one employee from electronically writing notes on a patient chart using another employee's user ID. This internal control weakness highlights GAMDC's lack of accountability to ensure appropriate participant care.

GAMDC did not have in place an orientation program for new nurses if the Director of Nursing was on a leave of absence. By failing to have an orientation program in such circumstances, GAMDC exposed both its nursing staff, and consequently, its participants to poor health administration.

The Medical Consultant did not have formal training on Medicaid program requirements. As a result, he did not know the eligibility criteria for Medicaid participants in Adult Medical Day Care. Additionally, the Medical Consultant did not know who actually conducted the physical therapy, although he was the prescribing physician. The Medical Consultant did not know who GAMDC's

Director of Nursing was. Both the facility's Medical Consultant and the Director of Nursing are key personnel in ensuring that the medication administration function, among other things, is performed appropriately at the facility. The Medical Consultant worked at GAMDC only once a week or 2-3 times a month, and spent only up to one hour at the facility when he was there. As a result, he was disengaged with the day-to-day medication administration of the participants who attended the facility.

GAMDC personnel altered the History & Physical information on participants' charts after they had been filled by the participants' physicians. No explanation was given for why this occurred. GAMDC failed to inform participants' physicians that their patients attended GAMDC. This breakdown in communication led to a lack of follow-up by both GAMDC and the physicians on appropriate patient care.

#### **IV. SUMMARY AND RECOMMENDATIONS**

Based on OMIG's post-pay review of the 50 Medicaid participants' charts from the date of admission through June 30, 2009, we conclude that GAMDC received reimbursement from the New Jersey Medicaid Program for services not rendered for each of the 50 participants OMIG reviewed. This amount was determined using the applicable daily reimbursement rate and eligibility criteria in place during the period of time the 50 participants purportedly received care at GAMDC. Accordingly, OMIG calculated the principal recovery amount to be \$1,870,247.50. OMIG asserts that GAMDC either intentionally submitted Medicaid claims for reimbursement for these 50 participants when it knew it did not render the services, or, it submitted these claims in reckless disregard of whether the services were rendered. As such, OMIG views the claims GAMDC

submitted for reimbursement as false, and therefore, OMIG will seek treble damages of three times the principal recovery amount or \$5,610,742.50, pursuant to N.J.S.A. § 2A:32C-3.<sup>9</sup>

Based on these findings, OMIG recommends that GAMDC be excluded from the Medicaid program pursuant to N.J.A.C. 10:49-11.1(d) 8, 15, and 17, which state in pertinent part:

(d) Any of the following, among other things, shall constitute a good cause for exclusion of a person by the Medicaid Agent or DMAHS [Division of Medical Assistance and Health Services].

8. Willful failure to perform in accordance with contract specifications or within contractual time limits . . .

15. Failure to provide and maintain quality services to Medicaid or NJ FamilyCare beneficiaries within accepted medical community standards as determined by a body of peers..

17. Breach of the term of the Medicaid or NJ FamilyCare provider agreement entered into with the Medicaid Agent or DMAHS for failure to comply with the terms of the provider certification on the Medicaid or NJ FamilyCare claim.<sup>10</sup>

Additionally, OMIG recommends that penalties be imposed pursuant to N.J.A.C. 8:43E-3.4(a) 8, 9, and 10 for GAMDC's failure to comply with their own Plans of Corrections (POCs).

With the issuance of this report, OMIG is referring this matter to the Medicaid Fraud Control Unit within the New Jersey Attorney General's office to determine whether GAMDC's conduct violates any criminal statute. Additionally, OMIG is referring GAMDC's Medical Consultant, Dr.

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<sup>9</sup> Under New Jersey's False Claims Act, the State is permitted to recover three times the principal amount of damages the State sustains.

<sup>10</sup> By failing to have documentation supporting the level of services GAMDC purported to provide, GAMDC breached their "Participation Agreement between New Jersey Department of Health and Senior Services and GAMDC," which is part of the provider application and is Appendix B of the New Jersey Medicaid Program Title XIX (Medicaid).

Juan deDios Delacruz, to the Board of Medical Examiners and its Pharmacy Consultant, Avery Rosenfeld, to the Board of Pharmacy to determine whether their conduct violates the rules of their respective Boards.

OMIG also recommends the following actions to DHSS regarding its administration of the Adult Medical Day Care program:

- Impose greater fines on Adult Medical Day Care facilities when they fail to comply with the Plan of Correction they submit. OMIG noted during the course of its investigation, and as demonstrated in this report, that GAMDC had multiple and repetitive violations based on the surveys conducted by DHSS. The fines imposed were minimal, and did nothing to discourage continued poor performance by GAMDC.
- When an Adult Medical Day Care has repeated, unresolved violations, DHSS should determine whether to suspend the facility's license, at least temporarily, until a full and complete evaluation by DHSS of the facility can be completed. This complete evaluation will result in a determination by DHSS about whether the facility's license should be permanently suspended.
- DHSS should require Adult Medical Day Care facilities to have a full-time Medical Director instead of a part-time Medical Consultant. OMIG's investigation revealed that the part-time status of GAMDC's Medical Consultant facilitated the inadequate and/or sloppy documentation of the medical records of the recipients. Accordingly, OMIG has submitted to DHSS proposed amendments to N.J.A.C. 8:43E 8.2, 8.3 and 8.4 to require the position and responsibilities of a Medical Director on a full-time basis.
- OMIG has also submitted to DHSS proposed amendments to N.J.A.C. 8:43F-9.1 to increase the responsibilities of the Pharmacy Consultant. OMIG's investigation revealed the breakdown in

communication between GAMDC and the participants' doctors regarding the drugs being prescribed for the participants.

OMIG will work with DHSS on implementing these recommendations.