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Re: Public Comments to the Proposed Readoption of the Licensing of Home Care Agency Rules 10A NCAC 13J.

The Association for Home & Hospice Care of North Carolina (AHC) is a nonprofit trade association established in 1972 representing providers of home health, hospice, palliative care, personal care, private duty nursing, and companion/sitter services.

We appreciate the opportunity to provide comments on the Proposed Readoption of The Licensing of Home Care Agencies Rules – 10A NCAC 13J.

As stated in the background text of the Fiscal Impact Analysis of Permanent Rule Readoption, there are 1505 licensed Home Care agencies. Of that number 1292 are non-certified Home Care agencies and 213 are Medicare Certified Home Health agencies that provide Home Health Services. The Medicare Certified Agencies must meet the requirements for licensure, but are regulated by federal regulations as well.

Proposed Changes by DHSR noted in In Rule .1107 – In-Home Aide Services Rule as noted in the fiscal impact analysis are:

Paragraph (c), Healthcare practitioner was deleted. The change clarifies that registered nurse writes the plan of care for hands on care. The change is reflective of current practice for in-home aide services.

Added Paragraph (d), to clarify for agencies providing in-home aide services where the initial assessment should be done and by whom. In addition, it clarifies the components of the initial assessment.

Added Paragraph (e), to clarify that the initial assessment must be signed, dated, and when it should be conducted. This will help ensure the plan of care addresses the clients' needs. This has been and continues to be a standard practice. Agencies are currently required to have a registered nurse available for the provision of In-Home Aide services for supervision and consultation. In-home aide services are hands-on service and nurses are required for the provision of hands-on care.

AHHC offers the following comments related to the proposed Readoption of the rule 10A NCAC 13J.1107 In-Home Aide Services:

The Proposed rules in section (d) and (e) in the paragraph above specifies that the initial assessment shall be conducted in the client's home by the registered nurse.

AHHC comments- The federal Home Health Conditions of Participation allow therapists (Physical, Speech and Occupational licensed therapists) in therapy only cases to conduct the initial assessment in the patient's home and complete the aide assignment/plan of care for home health aides. We suggest that the language in section (d) and (e) be changed to coincide with what is allowed under federal Home Health regulations. That is, that therapists listed above be allowed to provide the initial assessment visit and complete the aide plan of care and oversee the aide when only therapy services have been ordered by a physician.

As noted in the background text provided on the rules readoption "Medicare certified agencies must meet the requirement for licensure, but are regulated by federal regulations". We are concerned that for Medicare Certified Home Health agencies whom by federal law are allowed to have therapy develop the Home Health aide plan of care for therapy only cases that these agencies will be out of compliance with the DHSR Home Care Licensure rules, even though they would be compliant with federal COP language for Medicare Certified Home Health agencies.

To require that certified home health agencies send a Registered Nurse to complete the aide plan of care for such activities as bathing, dressing and range of motion exercises when nursing has not been ordered by a physician adds significant financial burden to home health agencies and creates a further workforce burden due to the growing shortage of Registered Nurses – especially in our rural areas. Because registered nursing services have not been ordered, there is no payment source for this visit when only therapy has been ordered. Since the financial implications of this proposed rule have not been included in the fiscal impact statement with this additional financial burden in mind we respectfully ask that the proposed rule be re-written to allow the therapists (as listed above) to perform this task when only therapy is ordered. This is certainly allowed under their scope of therapy practice and in the case of assigning range of motion exercises or assisting with acquiring independent skills in bathing and dressing, a therapist may be the most appropriate professional discipline to assign and oversee the tasks.

Proposed rules section- (f) Agencies providing in-home aide services shall provide availability of the registered nurse for supervision and consultation.

AHHC comments- In therapy only cases, and in accordance with the federal Home Health Conditions of Participation, as similar to the issue above, therapists are allowed to provide the oversight for the aides. Additionally requiring a nurse to provide this service when nursing has not been ordered would again financially burden the agencies and create a further crisis in the shortage of registered nurses that NC is experiencing and is well documented.

AHHC offers the following comments related to the proposed Readoption of the rule-10A NCAC 13J .1107 In-Home Aide Services

Proposed rules section (a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care. The plan of care shall be signed and dated by the registered nurse and the client or designee. A copy of the signed and dated plan of care shall be left in the home. Agencies participating in the Home and Community Care Block Grant or Social Services Block Grant through the Division of Aging and Adult Services shall comply, for those clients, with the in-home aide service level rules contained in 10A NCAC 06A and 10A

NCAC 06X which are hereby incorporated by reference with all subsequent amendments. All other agencies providing in-home aide services shall comply with the provisions in Paragraphs (b) and (c) of this Rule.

AHHC Comments- First we want to validate that this only references the aide plan of care for the client being left in the patient's home and not the physician's plan of care for skilled services. Physician's plans of care change often with verbal orders when changes in skilled care is needed. It would be cost prohibitive to drive to the patient's home to leave an updated copy of a physician's plan of care every time a physician has a need to change skilled orders. Under the federal Conditions of Participation for home health agencies, CMS requires that agencies only verbally notify the patient of changes in skilled services and obtain signatures on federal beneficiary notices when changes meet federal requirements rather than driving to the patient's home every time the physician's plan of care changes.

As regards the aide plan of care for the client, electronic health records are more widely utilized in home care and will continue to be a trend in home care agency record keeping; will a signed electronic Plan of Care, signed by the RN and client or designee, suffice to meet this requirement for leaving a copy of the aide plan of care in the home. Aide plans of care changes are infrequent and often coincide with a supervision visit by the RN unlike skilled plans of care.

AHHC offers the following comments related to the proposed Readoption of the rule -10A NCAC 13J .1202 Case Review and Plan of Care:

Proposed rules section- (a) If the client record is thinned, the original and updated authorization or orders for care as appropriate shall be maintained in the client's current record. All records shall be *readily* available to Department staff for review if requested. ~~*If physician orders are needed for the services, home care health professional*~~ The health care practitioner shall notify the physician of any changes in the client's condition that indicates the need for altering the plan of care or for terminating services. (The italics and underlined sections are removed from the proposed rule language).

AHHC comments- In many aide only cases physician orders are not necessary, as an example, for bathing a patient. We recommend that the sentence "If physician orders are needed for the services," be left intact as many private pay services are initiated by family caregivers and no physician has been involved in the agency aide services to the client.

We appreciate the consideration of these comments and are very happy to work with DHSR if anything further is needed. We appreciate the hard work of the DHSR staff.

Sincerely,



Kathie Smith

Kathie Smith, RN, Vice President of State Relations, Home & Community Based Care Association for Home & Hospice Care of NC