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Submitted electronically

Mark Payne, Director
Division of Health Service Regulation
2701 Mail Service Center
Raleigh, NC 27603
RE: Formal Comments 10A NCAC 13J: Licensing of Home Care Agencies

Dear Mr. Payne:

Please find attached BAYADA Home Health Care's formal comments to the proposed changes to the 10A NCAC 13J: Licensing of Home Care Agencies. Thank you for the opportunity to review and submit formal comments.

BAYADA is celebrating its 42nd year and has a 28-year history of providing quality in-home services across North Carolina. With 53 offices, employing more 8,277 staff -including registered nurses, licensed practical nurses, certified nursing assistants, nurse aides, habilitation technicians, social workers, therapists, and office personnel- we have a track record of providing quality home care/home health services to help inform these recommendations.

- 10A NCAC 13J.1110(c) Supervision and Competency of In-home Care Providers: While one might think that adding "every quarter" offers more clarity, this change offers unintended flexibility that does not align with best practices. Specifically, quarterly could be interpreted as a supervisory visit must be done in Q1, Q2, Q3, and Q4, and as long as a review is done anytime within those quarters, the rule is met. By way of example, a supervisory visit could be accomplished on January 1 (Q1) and again on June 30 (Q2) and remain compliant with this rule. However, we don't believe that is the intent of the regulation, nor does it offer timely quality supervisory oversight. **Recommendation**: Replace quarterly to every 90-day or revert back to every three months.

Additional comments are provided below.

Home care services delivered in the home are cost effective and patient-preferred. While coping with serious illness, disability, or chronic disease, helping people have a safe home life with comfort, independence, and dignity is part of *The BAYADA Way, our company philosophy and mission*.

We appreciate the opportunity to comment on this licensure rule. Should you have any questions my direct line is 919-523-2992.

Sincerely,

Lee Dobson, M.PA, CPHQ
Area Director, Government Affairs

ATCH: BAYADA Comments – 10A NCAC 13J: Licensing of Home Care Agencies

10A NCAC 13J: Licensing of Home Care Agencies		
Section Rev.	**Change**	**BAYADA Comments and Recommendations**
10A NCAC 13J.0901 Definitions .0901 (7)(c)	Removed specific definitions and replaced with citation to statutes throughout. Reworded the definition of "Extensive Assistance" and changed reference from Item (19) to (20).	The definition of "Extensive Assistance" was reworded to offer clarity. The change aligns with language that is commonly used within home care. We support the language change. However, please note that the re-numbering reference is incorrect in the new section (7)(c). The reference should remain item (19) as it refers to "Medical and Cognitive Impairment", not the new (20), which refers to "Nurse Registries". **Recommendation**: Maintain the reference in section (7)(c) as (19) "Medical and Cognitive Impairment" instead of the new (20), which refers to "Nurse Registries".
.0901 (11)	Added definition of "health care practitioners"	This new section (11) identifies health care practitioners as individuals who may deliver care in the home to mean "individual who is licensed, certified, or registered to engage in the practice of medicine, dentistry, pharmacy, or any related occupation involved in direct provision of health care". Question: If this definition is all encompassing, why does the rule also include specific definitions with related status reference? It appears that this addition may be unnecessary. **Recommendation**: Review whether this definition adds value to the rule, if not, eliminate.
.0901 (15)	Added definition for "Instrumental Activities of Daily Living (IADLs)	We appreciate the addition of the definition of IADLs in this rule. However, we are concerned that with providing a definitive list, it excludes all other IADL activities that fall outside the named tasks, such as laundry. **Recommendation**: Add "for example" and/or "etc." to indicate that there could be other IADLs that could apply, for example home management tasks or computer use.
.0901 (14)	No change in the definition, renumbered section.	While there is no change in the definition of "In-home care provider", we ask for clarifying language. Specifically, within home care the term "provider" often refers to the

		organization/agency that holds the license rather than the individual delivering the care. If this section refers to the person, i.e., Nurse Aide I (NAI) or Nurse Aide II (NAII), or a Personal Care Aide (PCA), then the term "In-home Caregiver" would be an appropriate substitution. This clarifying language would leave the term "provider" to mean the agency and organization coordinating the care as outline under licensure rules. **Recommendation**: Change "In-home care provider" to "In-home caregiver".
10A NCAC 13J.1004 (a)-(e) Evaluation	Minor changes in language of the "Evaluation" section to offer clarity.	While there were only minor changes in this section, we believe there is an opportunity to make significant and meaningful changes in care delivery by completely modifying this section. Currently, this section is merely a tallying of records and policies, and is a by-product of the Medicare Conditions of Participation (COPs). As you know Medicare is eliminating their "evaluation" section effective January 2018 and requiring that home health providers have a robust "Quality Assessment Performance Improvement (QAPI) program. The national accrediting bodies are following suite. Medicare and the accrediting bodies recognize it is far more important to focus on evaluating a system that directs continuous analysis and improvement on system and processes of care delivery that result in and impacts health outcomes and quality, rather than a tally of records and policies. The Centers for Medicare and Medicaid Services recently eliminated the requirement for Annual Evaluation and Professional Advisory Committee for Medicare certified Home Health Agencies. This was done, in part, to align home health agencies with their counterparts in hospitals and skilled nursing facilities. Since this information can be captured as part of a QAPI Program we feel it can be eliminated. It would also bring these regulations in line with the Federal Conditions of Participation which many state

		licensure regulations are based on. **Recommendation**: Delete the entire "Evaluation" section and incorporate a robust QAPI program in its place. If making changes as recommended, please allow for sufficient time for providers to effectively develop, transition, and implement a new program within their organization; as well as provide extensive education for providers and surveyors on the new requirement.
.1004 (d) Line 23	Deleted …"service is satisfactory and appropriate" and replaced with "service meets the client's needs".	Licensure rules address care delivery regardless of payor source. We are concerned that making a change that looks at "meeting the client's needs" may be beyond a provider's ability to determine and/or action-ize. Providers implement the care plan as ordered by the physician and approved by the payor. Providers may not have control whether the approved services will meet the client's needs. While providers do communicate and coordinate with payors and physicians, as applicable, to ensure services are appropriate, providers do not determine the state assessment (or payor's assessment) and cannot predict what a physician would deem appropriate for care. We can recommend, based on assessments, but we cannot control what is approved, and thus should not be held responsible for not meeting the client's overall needs. **Recommendation**: First, please see previous recommendation to replace this section with a QAPI program on systems and improvement processed focused on client outcomes rather than chart audits. If not, then retain original language as it is measurable – "satisfaction and implementing the care plan as written".
10A NCAC 13J.1007 Client Rights	Minor changes in "Client Rights and Responsibilities" and referenced related statute	While this section added two additional provisions: HC rights and policies, it did not materially change how providers operate and communicate client rights and responsibilities with clients.
10A NCAC 13J.1107 (a)	(a) Added an additional client signature requirement on the Plan of Care (POC)	Section (a) adds an additional client signature on the initial visit which adds administrative

In-Home Aide Services		burden to the provider and does not add any value to the client care. As it stands on the initial visit a client signs and provider signs various documents (see below) as well as the weekly service delivery timesheets notating rendered care. Signatures on the initial visit include: 1) Advanced Directives (when applicable), 2) Clients Rights and Responsibilities, 3) Non Discrimination Statement and Notice of Language Assistive Services, 4) Notice of Non-coverage, 5) DHSR Hotline and contact information and provider management contact information, 6) Admission Booklet, 7) Client Agreement Form, to name a few. Under Medicare a Physical Therapist or Speech Language Pathologist is allowed to open a case, making this licensure rule more stringent than the Medicare Conditions of Participation (COPs). Requiring a nurse to sign on a therapy only case, will add an extra visit and thus unreimbursed and unnecessary costs. **Recommendation**: Delete the additional client signature on the POC. And or revert back to the original language which allows HCP to sign.
.1107 Line 17,	(c) limits signature to a nurse, excluding other authorized health care practitioners.	Be consistent with the language across the rules and allow HCP to sign. This provision excludes the oversight of a licensed therapist. Section .1110 also mentions and allows HCP. **Recommendation**: Revert back to including HCP language as to who can sign the POC, or add clarifying language to allow signatures from other authorizing health care practitioners, for example physical therapists (PT).
.1107 Line 26	(c)(5) removed “appropriate health care practitioner” replaced with “registered nurse”	This change excludes other practitioners. Section .1110 also mentions and allows HCP **Recommendation**: Add “or Therapist”
10A NCAC 13J.1110 Supervision and	Change in title to “Supervision and Competency of In-home Care Providers” makes it confusing	This section has changed the title from “In-home Care Aides or Other in-home Care Providers”…to “In-home Care Providers”. The term “Provider” is typically used to refer to a

Competency of In-home Care Providers		licensed agency/organization, not an individual. Using it in this section is confusing. **Recommendation**: Replace "Provider" with "Caregiver" to refer to an individual, i.e., Nurse Aide I, Nurse Aide II, Personal Care Aide.
.1110 (c)	(c) changed the review from every three months to quarterly	While one might think that adding "every quarter" offers more clarity, this change offers unintended flexibility. Specifically, quarterly could be interpreted as a supervisory visit must be done in Q1, Q2, Q3, and Q4, and as long as a review is done anytime within those quarters, the rule is met. By way of example, a supervisory visit could be accomplished on January 1 (Q1) and again on June 30 (Q2) and remain compliant with this rule. However, we don't believe that is the intent of the regulation, nor does it offer timely quality supervisory oversight. **Recommendation**: Replace quarterly to every 90-day or revert back to every three months.

Thank you for the opportunity to comment on the proposed changes to Home Care Licensure Rules. We look forward to working with you on these changes. Should you have any questions, please feel free to contact me at 919-523-2992, or at LDobson@Bayada.com