

Periodic Rules Review and Expiration of Existing Rules  
 Subchapter 13J – The Licensing of Home Care Agencies  
 Public Comments and Agency Response to Comments

**Exhibit E/1**  
**1/19/2016**

Rule Citation & Title	Commenter	Comment	Agency Response
1) 10A NCAC 13J .0901 - Definitions	a) Erin Glendenning	This is a test of the system.	The Agency determined this rule was necessary with substantive public interest. This comment has no merit. It is a test of the comment reporting system.
	b) ,	dsdsdsdsds	The Agency determined this rule was necessary with substantive public interest. Indecipherable submission. This comment lacks merit.
	c) ,	dsdsdsdsds	The Agency determined this rule was necessary with substantive public interest. Indecipherable submission. This comment lacks merit.
	d) Alfreda Stout, Craven County Social Services	The posted rule areas do not indicate what the proposed changes are - how is it fair for agencies to provide appropriate feedback? It is our understanding that the definition of 'appropriate professional' is being amended to exclude the social worker in the development of limited assistance care plans. Craven County opposes this proposed change. If the proposed changes were clearly presented- it is felt that other DSS would also provide input.	The Agency determined this rule was necessary with substantive public interest. There were no proposed rule changes to these rules. It was felt that the general public would have opinions about the definition of "appropriate professional," but internally there was no action to change this definition. The intent of the periodic review process is only to get input on the existing rules.

	e) Mary Troutman, Stanly Co. Senior Services Dept	definition #5 'Appropriate Professional' is clearly defined in this section, but when the term is used elsewhere in the rules the interpretation is that it does not mean what this definition says (i.e. a social worker is not an 'appropriate professional' for any hands on in-home aide case). Suggest changing the definition to meet the current interpretation of the rules or following the rules as written.	The Agency determined this rule was necessary with substantive public interest. We have been following the current rule and there has been incorrect interpretation of "appropriate professional" in the provider community based on differing interpretation by outside entities, not by the regulatory agency.
	f) Richard Rutherford, SembraCare	Definitions (9) and (19) should be revised to 1) eliminate the confusing definition of the term 'extensive' which is intended to coordinate with that term as used in various settings, but as defined is inconsistent with those other settings - e.g. MDS, Independent Assessment under the Medicaid PCS Program. 2) make clear whether the judgment of the agency assessing 'appropriate professional' is the Independent Assessment entity.	The Agency determined this rule was necessary with substantive public interest. We disagree with this suggestion. We do not regulate based on the Independent Assessment entities definitions. Our rules do not speak to the Independent Assessment that is done by an outside contractor.
2) 10A NCAC 13J .1001 - Agency Management and Supervision	a) Mary Troutman, Stanly Co. Senior Services Dept	Agency director requirements are fine for free-standing home care agencies but do not seem necessarily appropriate for larger organizations such as DSS or Human Services Departments or for agencies doing a variety of aging services including HCCBG services and senior center. The In-Home Aide programs that would be licensed under these rules may be only a fraction of what is done by these departments so to require the agency director to have experience in home care supervision is rather limited to the total scope of work of these departments. Certainly having the person responsible for the program with such	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. The mentioned rule already allows for this very contingency as listed under 10A NCAC 13J .1001: (B). The director of the DSS or larger organizations can be designated as the Director of the Home Care Agency. We see no need for a change in this rule.

		experience is within reason but not the agency director.	
	b) Richard Rutherford, SembraCare	Insert [management, supervision and related activities] as indicated. (f) The agency shall have the ultimate responsibility for the services, [management, supervision and related activities] provided under its license; however, it may make arrangements with contractors and others to provide services, [management, supervision and related activities] in accordance with Rule .1111 of this Subchapter.	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. We feel this change is unnecessary as it is already implied in (b) that the director has the authority and responsibility for the administrative direction of the agency. This includes management, supervision and related activities.
3) 10A NCAC 13J .1003 – Personnel	Richard Rutherford, SembraCare	Rule should assure that TB requirement must be satisfied annually, no exceptions	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. The home care agency makes the determination through their policy and procedures how to address the TB test annually. We see no need to change this rule.
4) 10A NCAC 13J .1004 – Evaluation	Kathie Smith, Association for Home and Hospice Care of NC	Suggest adding to this section on Evaluation the following requirement: (f) The agency shall establish and maintain an effective, agency wide quality assessment and performance improvement program that evaluates and monitors the quality, safety and appropriateness of services provided by the agency, and shall include at a minimum a method to identify, analyze and correct problems of compliance with the home care licensure rules and problems identified with	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will we will change the categorization to necessary with substantive public interest. The agency supports and agrees with this suggestion. The comment will be taken into consideration when the rule is revised.

		<p>patient safety and quality of care. Quality improvement activities shall be conducted and documented at least quarterly. The agency administrator shall designate a staff member to direct the agency's quality improvement activities and the designated staff member shall have completed a course in home care quality improvement approved by the Division of Health Services Regulation</p>	
<p>5) 10A NCAC 13J .1107 - In-Home Aide Services</p>	<p>Mary Troutman, Stanly Co. Senior Services Dept</p>	<p>The disclaimer that agencies that operate under HCCBG or SSBG rules should comply with those standards and ALL OTHER AGENCIES shall comply with the following rules is confusing. The way it reads is that this section does not apply to HCCBG/SSBG agencies, but the interpretation is that it means those agencies follow this rule and ALSO their rules if more stringent than licensure rules. If this is what it means it needs to be reworded to say that.</p>	<p>The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. We don't see any need for changing this rule. The standard of practice is always that the home care agency would follow the more stringent of any rules that were contemplated.</p>
<p>6) 10A NCAC 13J .1110 - Supervision and Competency of In-Home Aides or Other In-Home Care Providers</p>	<p>a) Mary Troutman, Stanly Co. Senior Services Dept</p>	<p>Throughout this section the term 'appropriate professional' is used. According to the definitions section this person may be an RN or a social worker, but the interpretation of the rule says an RN is required for supervision of any in-home aide (with definition of IHA being aide who provides any hands on care). Suggest bringing the definition and the statements in this section together to say what the current interpretation requires or revising the current interpretation to allow for situations when a SW is the 'appropriate professional' as the rules currently are written.</p>	<p>The Agency determined this rule was necessary with substantive public interest. We are aware that there is disagreement over the term "appropriate professional." "Extensive Assistance" is defined adequately within the rule. This is a long standing determination that RN's have to do the assessment for this level. Other professionals are allowed to provide supervision in other "tasks" as appropriate.</p>

	b) ,,	Revise language as follows: In order to assure effective supervision of services provided by in-home aides, geographic service areas for these services shall be limited to the area which includes the county where the agency is located, counties that are contiguous with the county where the agency is located or counties which are in whole or in part within 90 minutes driving time from the site where the agency is located, whichever is greater. Arrangements for on-call supervision shall will satisfy this requirement by assuring the availability of appropriate supervisory personnel within 90 minutes. Agencies providing services to any client prior to January 1, 2006 who resides in a geographic service areas which prior to January 1, 2006 which are is beyond the counties that are contiguous with the county where the agency is located or greater than 90 minutes driving time from the site where the agency is located, may continue to provide services to the client these areas until the client is discharged from the agency.	The Agency determined this rule was necessary with substantive public interest. We disagree with this suggestion and believe that the state rule is clear.
	c) Richard Rutherford, SembraCare	(i) The appropriate professional shall be continuously available for supervision, on-site where services are provided when necessary, during the hours that in-home care services are provided. This requirement is satisfied if on-call appropriate supervision is available within 90 minutes.	The Agency determined this rule was necessary with substantive public interest. We disagree with this proposal as we believe the rule is clear.
7) 10A NCAC 13J .1202 - Case Review and Plan of Care	a) Alfreda Stout, Craven County Social Services	The changes to this rule are not listed- how are agencies to provide input and feedback to the changes??? Our Agency has been told that	The Agency determined this rule was necessary with substantive public interest. There is nothing in the rule

		<p>Licensure is attempting to change 10A NCAC 13J .1202 (c) -- so that... 'social worker or other appropriate professional..' is deleted-- only leaving registered nurse-- in this rule. We would oppose this change. Our Agency has been licensed over 20 years and has utilized social workers to develop limited assistance care plans. Changing the definition to exclude social worker and or other appropriate professional- if this change were to occur, it would dramatically change service provision and access to clients.</p>	<p>that does not allow a social worker to provide supervision and assist in developing care plans for clients that require limited assistance. There is no move to exclude social worker from the "appropriate professional" definition.</p>
	<p>b) Mary Troutman, Stanly Co. Senior Services Dept</p>	<p>This section spells out that 'so long as hands-on care is being provided to a client, a registered nurse, social worker, or appropriate professional shall visit the client's residence at least once a quarter...' The current interpretation of rules seems to be that a social worker is not an 'appropriate professional' as spelled out in the definitions. If this is to be followed then this section needs to be re-written to come into line with the current interpretation. Otherwise the interpretation needs to allow for times when a social worker IS appropriate to do these tasks. This section seems to delineate between the lower level of care where an 'appropriate professional' can do the visits and one where a physicians orders are needed and a 'home health care professional' is spelled out to do these visits, also supporting times when an RN is needed and when a social worker is 'appropriate.'</p>	<p>The Agency determined this rule was necessary with substantive public interest. The rule allows for the home care agency to make the determination about the appropriate health care professional in the appropriate capacity. An RN would be required to assess the client's functional Activities of Daily Living's hands on care needs to determine if extensive assistance was required. The current rule allows for times when a social worker could provide the appropriate level of assessment and visits.</p>

8) 10A NCAC 13J .1502 - Scope of Services	Mary Troutman, Stanly Co. Senior Services Dept	As with section .1107 there seems to be confusion over whether or not this section applies to HCCBG/SSBG agencies. Perhaps the wording needs to be changed to clarify this.	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. We are unclear about what the concern would be. We only regulate agencies that have Home Care Licenses.
9) 10A NCAC 13J .1503 - Agency Management and Supervision	Mary Troutman, Stanly Co. Senior Services Dept	As with section .1001, the requirements for agency director are appropriate for free-standing home care agencies whose sole business is home care-related. however for licensed agecies that operate a variety of services (such as DSS, Human Services Departments, and Departments of Aging), this is a very restrictive requirement for the overall director. For example, in a department of aging, the director may have experience in the nutrition program or senior center management rather than In-Home Aide program, but would be no less competent to be agency director. The person who is actually over the In-Home Aide portion of the work (IHA Supervisor or whatever it's called) should have these credentials instead.	The Agency determined this rule was necessary without substantive public interest. Based on the comment, we will not change the categorization. We don't see any need for changing this rule. GS 90- 640 a states: (a) For purposes of this section, "health care practitioner" means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.