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To: rrc.comments
Subject: [External] Comments on Changes to 10 NCAC 13 J

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This is to summarize the comments of SembraCare, Inc. concerning the proposed changes to 10A NCAC 13J.

SembraCare, Inc. is a North Carolina provider of web based billing, data management, compliance and support services to community based health care businesses, including many home care agencies licensed by DHSR and subject to the provisions of the Home Care regulations. *Substantive, vague and ambiguous and very expensive changes* in the proposed rules raise concerns which should be addressed before final adoption.

We contend that the changes :

- 1) Are beyond the scope of the authority delegated by the General Assembly;
- 2) Are unclear and ambiguous;
- 3) Substantially impact the economics of the PCS program from the point of view of increased State spending;
- 4) Substantially impact the economics of the PCS program from the point of view of the providers who supply services under the PCS program to the State; and
- 5) Are not accompanied by a fiscal note, and we request the Regulation Review Commission to make a determination of whether the rule changes have a substantial economic impact.

Here are the changes and some specifics:

- I. The definition of the term “extensive” has been changed substantially: The definition of “Extensive Assistance” has changed as follows: 1) the removal of the word “totally” before “dependent”, 2) the replacement of the phrase “weight bearing support” with the phrase “hands on assistance”, and 3) the removal of the example, “such as guiding or maneuvering of limbs” The effect of these changes is that more clients would qualify as having “extensive” needs with regard to an activity of daily living (ADL). This is because “dependent” includes many more situations than “totally dependent”, and “hands on assistance” includes many more situations than “weight bearing support.” The revised definition taken as a whole therefore substantially broadens the circumstances under which any particular client would be deemed to have extensive needs, and thus require an aide listed on the Registry, i.e. a CNA, rather than an unlisted aide, under 10A NCAC 13J .1107 (b). This will require the state to spend millions of extra dollars on care for these recipients, and will require home care agencies to hire, train and supply many more CNA’s for their clients, greatly increasing costs by millions of dollars, as CNA’s are in very short supply, and home care agencies face very stiff competition for such personnel from all areas of the community care spectrum, including hospitals, which can afford to pay higher wages and benefits. Strikingly, however, the Fiscal Impact Analysis accompanying the Rules change fails to even discuss this change or address these added costs. The proposed change will have a substantial adverse economic impact and should not be adopted.

- II. The Requirement for a Care Plan to be Signed by a Client “or Designee” is Imprecise and Unclear. The proposed language in 10A NCAC 13J.1107 (a) states: ... “The plan of care shall be signed and dated by the registered nurse and the client or designee.” The Plan of Care is perhaps the most important care-related document in the client’s possession, and the client’s agreement with and consent to the plan of care is the key element in providing person centered services. Yet, the term designee is not a defined term anywhere in the home care agency regulations, nor are the circumstances under which a client’s signature is unneeded made clear. We submit the proposed change should not be adopted unless a precise legal term is used to describe who can sign a plan of care, and unless limits are added on having a designee sign, such as situations where a client is unable to sign or not competent legally so sign.
- III. The Proposed Regulations are vague and unclear and ambiguous in perhaps Improperly Weakening the Requirements for RN Supervision The proposed language in 10A NCAC 13J.1110 (g) reads as follows: “(g) The health care practitioner shall be available for supervision during the hours that in-home care services are provided” This existing provision reads: “The appropriate professional shall be continuously available for supervision, on site where services are provided when necessary, during the hours that in home services are provided.” (Emphasis added).
- By removing the requirement that the RN be available “continuously”, and by removing the reference to “on-site” supervision where it is necessary, the proposed regulation becomes vague and ambiguous - it appears to possibly allow a posture which substantially weakens the supervision rule. We believe that are already far too many agencies who fail to have RNs who are truly available for supervision or who are free to go on-site to a client’s home if needed. This proposed change will enable such agencies to claim that an RN who is working another job is able to comply with the proposed rule by receiving a text, email or beeper message and responding during a break or after a shift, rather than being truly available. This change will lessen the standard and quality of care and supervision and this proposed rule change should not be adopted. We appreciate the diligent work which has gone into reviewing these rules and the opportunity to provide comments. The result will be a substantial lowering of care costing the state millions in improper payments to providers.
- IV. The proposed regulation changes are beyond the scope of the power granted by the General Assembly to review regulations and determine their being necessary or not. These are substantive new regulatory terms, not technical changes.

Sincerely,

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