

NEW JERSEY REGISTER  
VOLUME 40, ISSUE 1  
ISSUE DATE: JANUARY 7, 2008  
RULE ADOPTIONS  
LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
OFFICE OF THE DIRECTOR

Adopted Amendments: N.J.A.C. 13:45B-15.1 and 15.4 Adopted New Rule: N.J.A.C. 13:45B-15.7

Personnel Services

Placement of Health Care Practitioners

Definitions; Duty to Refer Only Licensed Individuals; Homemaker-Home Health Aides and Agencies

Proposed: May 21, 2007 at 39 N.J.R. 1999(a).

Adopted: October 30, 2007 by Lawrence DeMarzo, Acting Director, Division of Consumer Affairs.

Filed: December 4, 2007 as R.2008 d.5, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3) and the proposed amendments to N.J.A.C. 13:45B-15.1 and 15.3 not adopted.

Authority: N.J.S.A. 34:8-54.

Effective Date: January 7, 2008.

Expiration Date: March 4, 2008.

**Summary of Public Comments and Agency Responses:**

The official comment period ended July 20, 2007. The Director received 16 comments from the following individuals:

1. John A. Calabria, Director, Office of Certificate of Need and Healthcare Facility Licensure, New Jersey Department of Health and Senior Services
  2. Peggy A. Suydam, President, Home Care Council of New Jersey, Executive Director, Visiting Homemaker Service of Warren Count, Inc.
  3. Saul M. Spivack, PhD, Executive director, Sage Eldercare
  4. Sherl Brand, RN, BSN, CCM, President and CEO, NJ Home Care Association
  5. Barbara Cording, Executive Director, Commission on Accreditation for Home Care
  6. JoAnn C. Dixon, CEO, Home Health Services Association
  7. Myrna Hildebrant, B.S., M.A.
  8. Lisa Dickerson, RNC, BSN, Director of Nursing, Access Nursing Services
  9. Kris Luebke, RN, Regional Director of Clinical Operations, Access Nursing Services
  10. Samantha Yuro-Altieri, RN, Field Nurse Supervisor, Access Nursing Services
  11. Judith A. Gamarello, RN, Director, Home Health Aide Dept., Emerald Health Care Services, Inc.
  12. Anne Macioci, RN, Supervisor-HHA Division, Emerald Health Care Services, Inc.
  13. Judith Earley, RN, President, Emerald Health Care Services, Inc.
  14. Letitia Lengares, RN, Director of Nursing, Emerald Health Care
  15. Thomas B. Weadock, Senior Vice President, Access Nursing Services
  16. Nancy Hmieski Reeves, RN, C, BS, Director of Nursing, Active Nursing Care, Inc.
1. COMMENT: One commenter agrees that it is appropriate to require a health care practitioner supervisor to have two years of experience as a registered professional nurse with one year in community health or home care.  
RESPONSE: The Director thanks the commenter for her support, but the Director is not adopting the proposed

- amendments to N.J.A.C. 13:45B-15.1.
2. COMMENT: Several commenters contend that it is inappropriate to require a health care practitioner supervisor to hold a bachelor's degree. The commenters contend that a nurse's experience is more relevant than the degree he or she holds. RESPONSE: In proposing amendments to the definition of "health care practitioner supervisor" in N.J.A.C. 13:45B-15.1, the Director did not intend to amend the rule to require that every health care practitioner supervisor hold a bachelor's degree and did not intend to prevent existing health care practitioner supervisors from continuing to act as supervisors. The Director is not adopting the proposed amendments to N.J.A.C. 13:45B-15.1 so that existing health care practitioner supervisors who do not hold a bachelor's degree or have one year of experience in community health or home care may continue acting as supervisors. The Director is making a technical grammatical change to clarify the existing definition.
  3. COMMENT: Several commenters are concerned that it will be difficult to replace existing health care practitioner supervisors who do not hold bachelor's degrees with registered professional nurses who hold bachelor's degrees as the amendments to N.J.A.C. 13:45B-15.1 would require. One of the commenters suggests that the Director amend N.J.A.C. 13:45B-15.1 to permit existing health care practitioner supervisors who do not hold bachelor's degrees to continue in this position. The commenter also suggests that any newly hired health care practitioner supervisor have two to three years of experience. RESPONSE: As explained above, the Director is not adopting the amendments to N.J.A.C. 13:45B-15.1.
  4. COMMENT: Several commenters contend that requiring supervision from a registered professional nurse with a bachelor's degree imposes a burden on providers in light of the ongoing nursing shortage. The commenters suggest that any registered professional nurse with two years of experience, one of which is in community health or home care, should be permitted to provide supervision. RESPONSE: The Director is not adopting the proposed amendments to N.J.A.C. 13:45B-15.1 and is not requiring that health care practitioner supervisors hold bachelor's degrees or that supervisors have at least one year of experience in community health or home care.
  5. COMMENT: One commenter points out that, in other licensed health care settings such as home health agencies, hospices, assisted living facilities, skilled nursing facilities and hospitals, there is no requirement that a nursing supervisor hold a bachelor's degree. RESPONSE: The Director is not adopting amendments to N.J.A.C. 13:45B-15.1 and will not require health care practitioner supervisors to hold bachelor's degrees.
  6. COMMENT: One commenter is concerned that, due to the nursing shortage, it will be difficult for agencies to hire a nurse with one year of experience in community health or home care. The commenter recognizes that it is appropriate for the Division's requirements to mirror Board of Nursing requirements for homemaker-home health aide training program coordinators and homemaker-home health aide instructors. The commenter suggests that the Director adopt a waiver option for agencies that can document an effort to find a nurse with the required experience. Such agencies should be permitted to apply for a waiver that would allow them to employ a registered professional nurse who: has two years of experience as a nurse; has supervisory management experience in another health care sector; and can demonstrate the ability to meet job requirements. RESPONSE: It is not necessary to create the waiver provision the commenter suggests as the Director is not adopting proposed amendments to N.J.A.C. 13:45B-15.1.
  7. COMMENT: Two commenters request that the Director amend N.J.A.C. 13:45B-15.1 to permit nurses who are currently working as health care practitioner supervisors to continue this practice even if they do not hold bachelor's degrees. RESPONSE: It is not necessary to amend N.J.A.C. 13:45B-15.1 as the commenters request as the Director is not adopting the proposed amendments to this rule.
  8. COMMENT: One commenter recognizes that amendments to N.J.A.C. 13:45B-15.1 were proposed to conform to requirements for homemaker-home health aide instructors. The commenter contends that this is inappropriate since all registered professional nurses have the same scope of practice, regardless of whether they hold a bachelor's degree or not. RESPONSE: The Director is not adopting the proposed amendments to N.J.A.C. 13:45B-15.1.
  9. COMMENT: Three commenters believe that N.J.A.C. 13:45B-15.3 imposes an undue burden and requests that the Director delete the requirement that an agency employ at least one supervisor who is licensed as an employment agent. RESPONSE: The Director agrees that it may be unnecessary to require that an agency have at least one health care practitioner supervisor who is licensed as an employment agent. The Director is not adopting the technical amendments to N.J.A.C. 13:45B-15.3 at this time and will propose deleting the long-standing requirement that an agency employ a health care practitioner supervisor who is licensed as an employment agent at a later date.
  10. COMMENT: One commenter is unclear as to the meaning of the term "employment agent" in N.J.A.C. 13:45B-

- 15.3. The commenter asks if this refers to the direct employment of such individuals by an entity authorized to employ homemaker-home health aides. If this is the case, the commenter supports this language if it is clarified. If this is not the case, the commenter requests that the rule be amended to require that a health care supervisor practitioner be a direct employee of an entity. The commenter suggests that the Director prohibit an entity from subcontracting this role unless there is a documented emergency situation. RESPONSE: The Director believes that N.J.A.C. 13:45B-15.3 clearly indicates that an agency is required to employ at least one health care practitioner supervisor who is licensed as an employment agent. As discussed above, the Director will propose deleting this requirement at a later date.
11. COMMENT: Two commenters request that the Director amend N.J.A.C. 13:45B-15.4 to require that the current biennial registration or license be an original. RESPONSE: The amendments to N.J.A.C. 13:45B-15.4 were made in part so that verification of registration or licensure could be made by looking at a copy of a registration or license. The Director believes that inspecting a copy of the registration or license, in conjunction with obtaining verification from the Board or Committee which registers or licenses the individual, provides sufficient evidence that the individual is licensed or registered.
12. COMMENT: A commenter suggests that N.J.A.C. 13:45B-15.4 be amended to require health care practitioner supervisors to sign and date the copy of the license or certificate after he or she has viewed the original. RESPONSE: As discussed above, the amendments to N.J.A.C. 13:45B-15.4 were proposed so that health care practitioner supervisors would not have to physically review the original license or registration. The Director will not amend this rule to impose such a requirement. It is not clear what benefit signing and dating the copy retained as part of agency records would impart and the Director will not amend the rule as the commenter suggests.
13. COMMENT: One commenter asks the Director to amend N.J.A.C. 13:45B-15.4(c) to require that the copy of the current biennial registration or license be official. The commenter is concerned that the use of photocopied registrations or licenses will result in possible fraudulent documents. RESPONSE: It is not clear what the commenter means by an official copy. If the commenter means that the copy of the registration or license must be issued by the Committee or Board that licenses or registers the individual, the Director does not believe that it would be necessary to amend the rule as the commenter suggests. Reviewing a photocopy of a license or registration, in conjunction with obtaining verification of licensure or registration from the Board or Committee that licenses or registers the individual, provides sufficient evidence that the individual is actually licensed or registered.
14. COMMENT: One commenter is pleased with N.J.A.C. 13:45B-15.7 as the rule clarifies which entities may employ and refer certified homemaker-home health aides and clearly identifies procedures for delegating to certified homemaker-home health aides. The commenter knows that there are unlicensed entities that employ certified homemaker-home health aides. The commenter hopes that this rule will deter this activity. The commenter requests that the Director impose fines on businesses that do not comply with this rule. RESPONSE: The Director thanks the commenter for his support of the new rule. The Director reviews all complaints received regarding unlicensed practice and takes appropriate action when any such complaint is deemed accurate.
15. COMMENT: Several commenters point out that N.J.A.C. 13:45B-15.7 does not refer to home health agencies licensed by the Department of Health and Senior Services under N.J.A.C. 8:42. The commenters suggest that this rule be amended to recognize that licensed home health agencies may place certified homemaker-home health aides. RESPONSE: In proposing N.J.A.C. 13:45B-15.7, the Director intended to require that, out of the agencies regulated by the Division of Consumer Affairs, only those agencies that are licensed as health care service firms could place certified homemaker-home health aides. The Director does not have the authority to dictate whether agencies regulated by other authorities are able to employ certified homemaker-home health aides. The Director has amended N.J.A.C. 13:45B-15.7 upon adoption to clarify that this rule applies solely to agencies regulated by the Division of Consumer Affairs. As licensed home health agencies are licensed by the Department of Health and Senior Services, N.J.A.C. 13:45B-15.7 will not apply to them.
16. COMMENT: Two commenters point out that Medicare certified agencies can place homemaker-home health aides. RESPONSE: As discussed above, N.J.A.C. 13:45B-15.7 is being amended upon adoption to clarify that this rule applies solely to agencies regulated by the Division of Consumer Affairs.
17. COMMENT: One commenter notes that N.J.A.C. 13:45B-15.7 does not mention licensed hospices or licensed assisted living residences. The commenter believes that these entities may employ and refer homemaker-home health aides and recommends that these entities be added to subsections (a) and (b). RESPONSE: As discussed above, N.J.A.C. 13:45B-15.7 is being amended upon adoption to clarify that it applies solely to agencies

regulated by the Division of Consumer Affairs.

18. COMMENT: One commenter does not understand what N.J.A.C. 13:45B-15.7(b) means. RESPONSE: N.J.A.C. 13:45B-15.7(b) requires a health care service firm to refer or place only certified homemaker-home health aides who are employed by the agency and who are actively certified.
19. COMMENT: A commenter requests that the Director amend N.J.A.C. 13:45B-15.7(c) to clarify that this rule applies only to certified homemaker-home health aides employed by health care service firms. RESPONSE: The Director has amended N.J.A.C. 13:45B-15.7(c) upon adoption to clarify that it only applies to certified homemaker-home health aides who are employed by health care service firms.
20. COMMENT: One commenter agrees with the requirements of N.J.A.C. 13:45B-15.7(c), (d) and (e). RESPONSE: The Director thanks the commenter for her support of the new rule.

### **Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted amendments and new rule.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks *\*thus\**; deletions from proposal indicated in brackets with asterisks *\*[thus]\**):

## **SUBCHAPTER 15. PLACEMENT OF HEALTH CARE PRACTITIONERS**

**13:45B-15.1 Definitions** As used in this subchapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Health care practitioner supervisor" means *\*[either]\** a New Jersey licensed physician<sup>\*</sup>,<sup>\*</sup> or a *\*[New Jersey licensed]\** registered *\*[professional]\** nurse in good standing *\*[who holds]\** **\*holding\*** a Bachelor of Science degree in nursing and *\*[at least two years of experience as a registered professional nurse, one year of which shall have been in community health or home care]\** **\*two years combined public health nursing and progressive professional responsibilities in public health nursing; or a registered nurse in good standing having three years combined public health nursing and progressive professional responsibilities in public health nursing\***.

### **13:45B-15.4 Duty to refer only licensed individuals**

(a)-(b) (No change.)

(c) The agency shall, through its health care practitioner supervisor or other designated individual, verify the license status of each individual to be placed or referred prior to the referral or placement. Licensure shall be verified by obtaining a document, which verifies licensure from the Board or Committee that registers or licenses the individual and, within 45 days of obtaining the verification, by personally inspecting the current biennial registration or license or a copy of the current biennial registration or license.

(d) The agency shall maintain a copy of the verification document that it has secured from the Board or Committee that registers or licenses the individual and a copy of the license or registration with the following notation conspicuously written across the entire face of the license: "COPY OF ORIGINAL NOT VALID FOR VERIFYING CURRENT LICENSURE STATUS."

(e)-(f) (No change.) **13:45B-15.7 Homemaker-home health aides and agencies**

(a) *\*[Only]\** **\*In order to place certified homeowner-home health aides, an agency regulated by the Division of Consumer Affairs shall be licensed as\*** a health care service firm<sup>\*</sup>.<sup>\*</sup> *\*[may place certified homemaker-home health aides. No other agency shall]\** **\*If an agency regulated by the Division of Consumer Affairs is not licensed as a health care service firm, it shall not\*** place certified homemaker-home health aides.

(b) A health care service firm shall only refer or place actively certified homemaker-home health aides that are employed by the agency.

(c) A homemaker-home health aide **\*employed by a health care service firm\*** shall only perform tasks that have either been delegated to him or her by the health care practitioner supervisor or which the health care practitioner supervisor has directed the homemaker-home health aide to perform.

(d) The health care practitioner supervisor shall ensure that the homemaker-home health aide demonstrates that he or she is competent to perform the client care the health care practitioner supervisor delegates.

(e) The health care practitioner supervisor shall document in the patient's record every task that has been delegated to a homemaker-home health aide.

**13:45B-15.8 (Reserved)**