



**DIVISION OF SURVEY AND CERTIFICATION, REGION VI**

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May 16, 2014

Regional Survey and Certification Letter (RS&C) - 14-02

To: All State Survey Agencies

Subject: Guidance for processing non-compliance with State licensure requirements

The purpose of this letter is to clarify what documentation our State Agencies (SA) must include in the packet that is submitted to the CMS Regional Office (RO) for certification actions involving State Licensure requirement issues for both Long Term Care and Non-long Term Care facilities.

In order for the RO to clearly identify the appropriate Medicare certification action, the SA must first establish if the provider continues to be operational (whether or not the provider continues to actively treat patients). The State Agency can establish this by attempting to contact the provider by going onsite in person, email, regular mail, phone or fax. A brief report of contact about the attempts to verify operational status should be included within the remarks section of the certification and transmittal form CMS-1539 in ACO, which should be part of the SA's documentation supporting their recommendation of non-compliance.

CMS understands the licensure process varies by State as does the process for a provider/supplier to request review or reinstatement of a license. If the provider/supplier's license is no longer in place, the State should, after exhausting the regular courses of action (e.g., pending revocations or grace periods for license renewals) inform CMS of the recommendation of non-compliance based on unmet requirements with the Medicare agreement.

Described below are the documents and actions the SA must follow, when it has confirmed a provider's operational status and needs to recommend non-compliance with licensure requirements to the RO.

a) In the case of an expired license

The SA submits a recommendation of non-compliance to the RO when a facility's licensure has expired. The documents needed for this recommendation are:

- A copy of the expired State license
- Any letters to the provider requesting the renewal of the license
- In ACO, within the latest recertification kit an updated CMS-1539 and under the remarks section a statement establishing that the provider remains operational but in non-compliance because of an expired license.

-Since this action falls under the category of enforcement, please email the appropriate RO certification specialist contact (Refer to the most current Dallas DSC contact and assignment list) with the documentation as attachments. You may also attach those documents within the latest recertification kit in ACO.

Upon the State Agency submitting this recommendation with the appropriate documentation, the RO will follow the enforcement process delineated under the State Operations Manual (SOM) section 3012 and send a letter to the provider citing their Medicare non-compliance with the Licensure requirement. This process affords an opportunity for the provider to submit a corrective action plan. If the provider submits evidence that they have renewed their license or have received a new license, the RO will send a compliance letter without any further action or changes in ACO.

However, if the provider is unable to provide evidence of their license renewal within 30 days of the RO letter, the RO will create the final termination letter in ACO which will cite non-compliance with the Licensure requirement and the Medicare agreement and will send it to the provider. The RO will then specify the termination code (L30) "06" – Fail to meet agreement" within the 1539 of the certification kit, to upload the termination effective date in ACO. Lastly, the RO will send a tie-out notice to the respective Medicare Administrative Contractor (MAC). No further action from the State Agency will be necessary at this point.

b) In the case of a revoked license

The SA submits a recommendation of non-compliance to the RO when a facility's licensure has been revoked. The documents needed for this recommendation are:

- A copy of the revoked State license
- The last letter to the provider which revokes their license.
- In ACO, within the latest recertification kit an updated CMS-1539 with a recommendation for termination because of a revoked license.
- Since this action is considered a "certification recommendation" please email the appropriate RO certification specialist contact (Refer to the most current Dallas DSC contact and assignment list) with the documentation as attachments and or attach those documents within the latest recertification kit in ACO.

Upon the State Agency submitting this recommendation and the documentation listed above, the RO will create the final termination letter in ACO which will cite non-compliance with the Licensure requirement and the Medicare agreement and will send it to the provider. The RO will specify the termination code (L30) "06" – Fail to meet agreement" within the 1539 of the certification kit, to upload the termination effective date in ACO. Lastly, the RO will send a tie-out notice to the respective Medicare Administrative Contractor (MAC). No further action from the State Agency will be necessary at this point.

However, if the facility has ceased operations because of their revoked licensed, then the State Agency should submit their recommendation following the cessation of business instructions below.

c) Cessation of Business/Non-operational/Voluntary Termination

In this instance, the facility is found to be non-operational by the SA. This may be discovered when an onsite survey is attempted or when the State Agency receives a notification of undeliverable mail or their main listed phone number is disconnected. The State Agency ultimately concludes that the facility is no longer open for business and has stopped providing services to the community but no notice has been given to CMS or SA.

The SA provides to the RO the supporting documentation/evidence and recommendation for a voluntary cessation of business. Supporting documentation/evidence must include a written report of contact of the attempts to verify operational status. Since this action is considered a "certification recommendation" please email the appropriate RO certification specialist contact (Refer to the most current Dallas DSC contact and assignment list) with the documentation as attachments and or attach those documents within the latest recertification kit in ACO.

A facility may be operational and not have patients/clients/residents at the time the SA conducts a survey or at any point in time. However, care should be taken to ensure a facility has indeed ceased business prior to recommending termination. (42 CFR 489.52 and SOM 3046).

If you have any questions, please contact Sergio Mora at 214-767-5499 or by email at [sergio.mora@cms.hhs.gov](mailto:sergio.mora@cms.hhs.gov).

Sincerely,

  
Gerardo Ortiz  
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Dallas Division of Survey and Certification