



Oklahoma State Department of Health

James M. Crutcher, MD, MPH  
Commissioner of Health

June 12, 2006

To: Nursing Facilities and Intermediate Care Facilities for the Mentally Retarded

Re: **Provider Letter 06-04**  
**Requirements for Voluntary Closure of a Nursing Home**

Dear Administrator:

Regrettably, several nursing homes have recently made the decision to close. In some cases the law regarding voluntary closure was not followed resulting in the assessment of financial penalties. Oklahoma law requires a number of steps be taken when a facility operator makes this choice. The following outlines the state and federal provisions for voluntary closure of a Nursing Home.

Nursing Home Care Act:

1. Any owner of a facility licensed under the Nursing Home Care Act must give ninety (90) days notice prior to voluntarily closing a facility.
2. The notice of closing must be given to the Department, the resident, the resident's representative, and to a member of their family, where possible.
3. The notice given must state the planned date of closing and the reason for closing.
4. The facility must offer assistance to residents in finding another home and advise them on available choices.
5. Where residents are unable to choose another home and are not under guardianship, the Department must be notified of the need for relocation assistance.
6. The facility must comply with all appropriate laws and regulations until the date of closing, including those related to transfer or discharge of residents.

The full text of this section of law follows:

**§63-1-1930. Voluntary closing of facility - Notice - Alternative placement of residents - Relocation assistance.**

Any owner of a facility licensed under this act shall give ninety (90) days' notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility if needed. Also, the Department may promulgate rules and regulations that establish criteria for the acceleration of the notice requirement if extraordinary circumstances warrant it.

Laws 1980, c. 241, § 30, eff. Oct. 1, 1980.

In addition, the Nursing and Specialized Care Facilities rules specify the following:

**310:675-7-10.1. Resident's clinical record**

(g) If a facility ceases operation, the Department shall be notified immediately of the arrangements for preserving the resident's record. The record shall be preserved for the required time and the information in the records shall be available to the health professionals or facilities assuming care of the resident so that continuity of care is available.

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## **Requirements for Voluntary Closure of a Nursing Home**

June 12, 2006

Page 2

The Centers for Medicare and Medicaid Services' State Operations Manual provides the following guidance for Medicaid and Medicare certified facilities wishing to voluntarily terminate their agreement:

### **3046 - Voluntary Terminations**

#### **3046A - General**

Under the provisions of §1866(b)(1) of the Act, a provider of services may terminate its agreement by filing a written notice of its intention. If a Medicare provider/supplier notifies the SA of its desire to terminate its Medicare participation or if it ceases operations which is considered as voluntarily terminating its agreement, the SA notifies the RO immediately. The RO accepts the proposed termination date or set a different date. However, the termination date must not be more than 6 months from the date the notice is filed.

The RO determines the provider's or supplier's reason(s) for deciding to terminate participation. Identifying the reasons for voluntary termination aids in evaluating policies and procedures and focuses on problems not previously recognized.

#### **1 - Provider or Supplier Is Unable or Unwilling to Correct Deficiencies to Continue to Meet CoPs, Conditions for Coverage, or Participation Requirements for SNFs**

In many cases, the facilities have cited as a reason for seeking termination an inability to continue to meet the Conditions of Participation or Coverage or Requirements for participation for SNFs.

#### **2 - Provider Dissatisfied With Reimbursement**

If a provider is withdrawing because of disagreement with the reimbursement formula, the RO indicates this on Form CMS-1539.

#### **3 - CHOW**

If, after a CHOW, the successor does not wish to participate, the date of termination is usually the date the previous owner ceased doing business. However, coverage of beneficiary services extends until it is learned that the successor will not continue operations under a provider agreement. Payment can continue for up to 30 calendar days after a provider is terminated for hospitals, SNFs, HHAs and hospice beneficiaries who were admitted before the effective date of termination (42 CFR 489.55). (See §3008.)

#### **4 - Close of Business**

The provider may temporarily or permanently cease all business (Medicare and non-Medicare operations). No further RO action is necessary.

#### **3046B - Decision by Provider or Supplier to Remain in the Medicare Program**

If a provider or supplier changes its mind after requesting termination, the RO secures a written statement to document the provider/supplier file to prevent any future misunderstanding. If the voluntary termination has not already taken place, the RO sends a letter to the provider rescinding its voluntary termination. Copies are sent to the SA, SMA, the intermediary, and the carrier. If the provider's request is received after the effective date of the voluntary termination, the RO treats the request as an initial request to participate in the Medicare program.

#### **3046C - Notice to Public**

In voluntary termination cases, the provider or supplier is obligated to notify the public of the effective termination date. An exception to the requirement for public notice is made when the RO receives retroactive notice of the close of a business. If the RO learns that the provider does not intend to comply with the requirement for a public notice, where required, the RO should assume the responsibility. The required public notice should be published in the local newspaper with the widest circulation as soon as possible after the provider receives the RO's letter, and, if time permits, not less than 15 calendar days before the effective termination date. When a **supplier** of services is voluntarily terminating program

## Requirements for Voluntary Closure of a Nursing Home

June 12, 2006

Page 3

participation, public notice by either the supplier or the RO's office is optional. However, such a notice is to be published for RHCs, ASCs, and FQHCs.

### 3046D - Effective Date of Voluntary Termination

The effective date of termination is the date business ceased (if there is closure) and should allow sufficient lead-time to notify CMS components and to give the public notice of the termination. If the provider's request does not specify an acceptable termination date, the RO sets the date (42 CFR 489.52(b)). This date cannot be more than 6 months after the provider's request is dated. If a retroactive termination date is requested, the RO honors it, provided there were no Medicare beneficiaries receiving services from the facility on or after the requested termination date.

In setting an effective termination date that is less than 6 months in the future, the RO must be assured that it would not unduly disrupt the services to the community or otherwise interfere with the effective and efficient administration of the health insurance program. In making this determination, the RO considers the availability of other facilities in the area. In the case of a closure, the effective date is the actual date of closing.

### Summary

It is imperative that residents, and the resident's representative, are provided freedom of choice in their selection of new living arrangements. A facility may not prohibit any facility, duly authorized by the resident or their representative, from visiting with the resident and/or reviewing their medical record.


If your facility is considering voluntary closure the Department is willing to confidentially discuss your situation and the steps required.

In summary, if a facility decides to voluntarily close their operation:

- Provide the Department a copy of the ninety day (90) notice provided to residents
- After all residents are given proper notice of the closure and are relocated, please provide the Department the following:
  - Written notice of the effective date of closure;
  - A list of residents and the location to where they relocated, whether another facility or alternative placement; and,
  - A description of the arrangements for preserving the resident's record.

If you have any questions please contact James Joslin, Assistant Chief, Long Term Care, at 405-271-6868.

Sincerely,



Dorya Huser  
Chief, Long Term Care  
Protective Health Services

C: DHS Aging Services Division, State LTC Ombudsman  
Oklahoma Association of Health Care Providers  
Oklahoma Association of Homes and Services for the Aging  
Oklahoma Health Care Authority  
Oklahoma State Board of Examiners of Nursing Home Administrators  
OSDH/Legal Division/Mary Womack