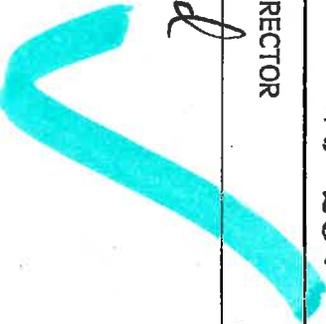


**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
OFFICE OF DIRECTOR**

**ACTION REFERRAL**

TO <i>Singletary/FOIA</i>	DATE <i>12-21-11</i>
------------------------------	-------------------------

<b>DIRECTOR'S USE ONLY</b>	<b>ACTION REQUESTED</b>
1. LOG NUMBER <i>101237</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Stendland</i>	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input type="checkbox"/> Necessary Action DATE DUE <i>1-16-12</i>

APPROVALS <small>(Only when prepared for director's signature)</small>	APPROVE	* DISAPPROVE <small>(Note reason for disapproval and return to preparer.)</small>	COMMENT
1.			
2.			
3.			
4.			

**MCNAIR**  
ATTORNEYS

**FAX COVER LETTER  
CONFIDENTIAL & PRIVILEGED**

**RECEIVED**

DEC 21 2011

McAirt/Law Firm, P. A.  
1221 Main Street  
Suite 1600  
Columbia, SC 29201  
T (803) 799-9800  
F (803) 753-3278

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Mailing Address  
Post Office Box 11980  
Columbia, SC 29211

mcnair@aol

Date & Time: December 21, 2011  
Transmitted By: Deborah Harris  
Number to Call with Problems: 803-753-3404

PLEASE DELIVER AS SOON AS POSSIBLE TO:

Recipient  
Richard G. Hepfer, Esquire  
SC DHHS

Fax No.  
(803) 255-8210

Phone No.  
(803) 898-2791

Total number of pages including cover: 7

From: Artail Burnside Kirk, Esquire

Client-Matter: 053992.00003

Comments:

**CIRCULAR 230 DISCLOSURE**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. Federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the internal revenue code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded (other than within the taxpayer to which it has been sent) without our express written consent. To read more about this disclosure, please see <http://www.mcnair.net/230.pdf>

The information contained in this facsimile message is confidential, protected by the attorney client privilege and intended for the use of only the individual or entity named above. If the reader of the message or information is not the intended recipient of the message or information transmitted herewith, you are hereby notified that any dissemination, distribution or copying of the message or information is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

COLUMBIA 1063670v1

**MCGNAIR**  
ATTORNEYS

December 21, 2011

**RECEIVED**

Ariaji Burdick Kirk

akirk@mcnair.net  
T (803) 739-8600  
F (803) 763-3278

DEC 21 2011

Via Fax: (803) 255-8210

Department of Health & Human Services  
OFFICE OF THE DIRECTOR

Richard G. Hefner, Esquire  
Deputy General Counsel  
SC DHHS  
P.O. Box 8206  
Columbia, SC 29202

Re: Freedom of Information Request

Dear Rick:

I am writing pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, et seq. (1976), to request copies of the following documents:

1. All documents supporting the proposed termination of Provider # ZA9562;
2. A complete current survey report for Provider # ZA9562 as referenced in Attachment A;
3. All documents supporting any explanatory remarks for items "not met" for Provider # ZA9562 as referenced in Attachment A;
4. Any letter notifying Provider # ZA9562 of "the deficiencies found on the surgery and advising that failure to correct will result in a recommendation for termination" as referenced in Attachment A;
5. Any documents evidencing "sufficient advance notice" of proposed termination of at least 15 calendar days made to Provider # ZA9562 as referenced in Attachment A;
6. Any documents evidencing public notice regarding the proposed termination of Provider # ZA9562 as referenced in Attachment A;
7. The Statement of Deficiencies for Provider # ZA9562 written as required by the Principles of Documentation as referenced in Attachment A; and
8. Any documents related to an analysis of retroactive application of 42 C.F.R. 455.416.

McNair Law Firm, P.A.  
1221 Main Street  
Suite 1500  
Columbia, SC 29201

Mailing Address  
Post Office Box 11580  
Columbia, SC 29211

mcnair.net

Richard G. Hepfer, Esquire  
December 21, 2011  
Page 2

**MENNAIR**  
ATTORNEYS

---

Sincerely,

MENNAIR LAW FIRM, P.A.

  
Ariail Burnside Kirk

ABK:dh  
Attachment

cc: Bruce D. Carter  
John E. Reese, III, DMD

**Termination Procedures--**

**State Agency Documentation Requirements**

All documents to support a proposed termination must be complete, accurate, and logical in sequence. Each document must be dated and signed by the preparer or indicate the date of receipt in the State Agency (SA). The documentation must be supported by a complete current survey report or, in the case of an HHA, required CMS forms.

The SA reviews the current survey report or required forms to ensure that all items are properly completed. If there are any changes or erasures, the SA initials the item and explains the basis for the modification in the explanatory remarks column.

The SA includes the following information in the explanatory remarks column for each item "not met":

- A description of the deficiency;
- Whether the deficiency existed during the previous survey and whether compliance was achieved, and then not sustained; and
- Current Plans of Correction (PoCs), if any.

In addition, the SA includes with the package an estimate of whether there is a prospect of compliance with all eligibility requirements within the time limits and the basis for this opinion.

**Previous Survey Reports**

The SA reviews previous survey reports for consistency. If a deficiency is reported on the current survey report that has obviously existed for some time, explain why it was not reported previously; e.g., serious structural defects, inadequate fire escapes.

The SA explains any conclusions that might be questioned, especially if certain requirements are being weighed heavily. For example:

- The majority of standards are "not met," yet the Condition is found in compliance; or
- A Condition is found not in compliance based upon the relationship of standards or other deficiencies not being met.

**Record of Contacts With Providers/Suppliers**

The SA includes in documentation copies of communications and written reports of oral communications with providers/suppliers including the date of contact, the person involved, the purpose, and the content of the communication. Also, the SA includes reports of investigations of complaints.

**ATTACHMENT A**

### **Notification to Provider/Supplier of Deficiencies and Recommendation of Termination**

The SA includes in the file a copy of the letter notifying the provider/supplier of the deficiencies found on the survey and advising that failure to correct will result in a recommendation for termination and includes copies of any other SA notices to the provider/supplier.

### **Additional SA Communications With Providers/Suppliers**

After the SA forwards the certification of noncompliance, it clears any further communications to the provider/supplier with the RO. Unrecorded visits, surveys, or correctional allegations that were not reported before final termination action could cause embarrassment or even result in failure to sustain the termination action. Even after final termination action, any additional contacts may be pertinent to proper handling of the case. The SA notifies the RO of any such contacts.

### **Notice of Termination (Medicare)**

The RO notifies the provider/supplier of its termination by letter at least 15 calendar days before the effective date of the termination. In the case of a hospital with an emergency department having deficiencies that pose an immediate jeopardy to the health or safety of individuals who present themselves to the hospital for emergency services, CMS gives the hospital a preliminary notice that its provider agreement will be terminated in 23 calendar days if it does not correct the identified deficiencies or refute the finding. CMS gives a final notice of termination, and concurrent notice to the public, at least 2, but not more than 4, calendar days before the effective date of termination of the provider agreement. For skilled nursing facilities (SNFs) and nursing facilities (NFs), CMS gives notice of termination, and concurrent notice to the public, at least 2 calendar days, one of which must be a working day, before the effective date of termination of the provider agreement, for a facility with immediate jeopardy circumstances, and at least 15 calendar days before the effective date of termination for a facility with nonimmediate jeopardy deficiencies. (42 CFR 488.456). The notice states the reasons for, and the effective date of, the termination and explains the extent to which services may continue after that date. The notice also contains information regarding the provider's/supplier's right to appeal the termination. (See 42 CFR 489.53) The only suppliers requiring public termination notices are RHCs (42 CFR 405.2404), ASCs (42 CFR 416.35), and FQHCs (42 CFR 405.2442). Public notices for other suppliers are optional at the discretion of the RO.

### **RO Termination Processing Sequence - Noncompliance With CoPs or Conditions for Coverage (Excluding SNFs)**

Upon receipt of the SA's unfavorable certification, the RO:

- A. Establishes controls for processing the termination;
- B. Performs an initial documentary review to make certain that copies of all pertinent surveys, statements of deficiencies, plans of correction (if submitted by the provider), and other necessary documents are included and that all relevant issues are resolved. When

unable to determine the relationship of cited deficiencies to the quality of services or the health and safety of patients, the RO requests further SA development. If necessary, the RO retains the file and phones the SA for the additional documentation needed;

C. Does a substantive review, resolves all substantive discrepancies and disputes, assesses the severity of the provider's/supplier's noncompliance, and makes its determination. The RO consults with LSC specialists in the RO, if necessary.

D. Prepares the Termination Notice and any supplemental press releases, if planned. The RO forwards a copy of its notice to the SMA, if appropriate; and

E. Inserts the effective date of termination in the notice and makes the necessary arrangements for public notice. To give both the provider and the public sufficient advance notice of termination of a provider's agreement (at least 2 calendar days if there is immediate jeopardy or at least 15 calendar days if there is no immediate jeopardy), the RO determines the effective date of termination as follows:

- Allows sufficient time for delivery of the notice to the provider, depending on the provider's location and the method of notification, i.e., letter, overnight mail, or electronic means.
- Determines the time needed for actual public notice by contacting the local newspaper or radio and television stations to determine their deadlines. (See §3034);
- Allows for receipt of the notice by the provider prior to publication of the public notice and assures that the public receives at least 2 calendar days if immediate jeopardy exists, otherwise 15 calendar days notice prior to the date of termination;
- Mails the termination notice to the provider (return receipt requested); and
- Notifies the SMA of action taken against Medicaid ICFs/MR and the effective dates if termination action is taken. When the termination action is taken, the RO mails the informational copies to the following offices:
  - o Division of Medicare;
  - o Division of Medicaid;
  - o CO;
  - o Intermediary;
  - o SA;
  - o SMA;
  - o Regional Director, Department of Health and Human Services (DHHS); and
  - o State Ombudsman.

### **Significance of Documentary Evidence in Determining Noncompliance**

The RO uses the following documentation in determining compliance with the Medicare Federal CoPs or CFCs or Requirements of Participation.

#### **Statement of Deficiencies**

This statement constitutes evidence that the provider/supplier was notified of the specific deficiencies. These deficiencies are to be written as required by the Principles of Documentation. This assures that the statement provides accurate descriptions of the deficiencies and interpretations of Federal Medicare requirements that are not met. Otherwise, it might be alleged at a hearing that the termination action was based on error.



TO:

FROM:

SUBJECT: Cost of Processing FOIA Request #

The South Carolina Department of Health and Human Services has received and processed your FOIA request. The cost for processing this information is as follows:

Staff processing time at \$10.00 per hour	_____ Hours	\$ _____
Pages copied at \$.10 per page	_____ Pages	\$ _____
Pages faxed at \$.20 per page	_____ Pages	\$ _____
Shipping and Handling Costs		\$ _____
Other costs associated with the FOIA request:	_____	\$ _____
<b>Total Amount Due SCDHHS:</b>		<b>\$ _____</b>

Please remit the above amount to the following address:

**Bureau of Fiscal Affairs**  
South Carolina Department of Health and Human Services  
Post Office Box 8297  
Columbia, South Carolina 29202-8297

Please contact \_\_\_\_\_ should you have any questions.

Signature \_\_\_\_\_

Date: \_\_\_\_\_