

(1) If the National Coordinator identifies an area in an application that requires the applicant to clarify a statement or correct an error or omission, the National Coordinator may contact the applicant to make such clarification or correction without issuing a deficiency notice. If the National Coordinator has not received the requested information after five days, the applicant may be issued a deficiency notice specifying the error, omission, or deficient statement.

(2) If the National Coordinator determines that deficiencies in either part of the application exist, the National Coordinator will issue a deficiency notice to the applicant and return the application. The deficiency notice will identify the areas of the application that require additional information or correction.

(c) *Revised application.*

(1) An applicant is permitted to submit a revised application in response to a deficiency notice. An applicant may request an extension for good cause from the National Coordinator of the 15-day period provided in paragraph (c)(2) of this section to submit a revised application.

(2) In order to continue to be considered for ONC-ATCB status, an applicant's revised application must address the specified deficiencies and be received by the National Coordinator within 15 days of the applicant's receipt of the deficiency notice unless the National Coordinator grants an applicant's request for an extension of the 15-day period based on a finding of good cause. If a good cause extension is granted, then the revised application must be received by the end of the extension period.

(3) The National Coordinator is permitted up to 15 days to review a revised application once it has been received and may request clarification of statements and the correction of errors or omissions in a revised application during this time period.

(4) If the National Coordinator determines that a revised application still contains deficiencies, the applicant will be issued a denial notice indicating that the applicant will no longer be considered for authorization under the temporary certification program.

An applicant may request reconsideration of a denial in accordance with § 170.435.

(d) *Satisfactory application.* (1) An application will be deemed satisfactory if it meets all application requirements, including a passing score on the proficiency examination.

(2) The National Coordinator will notify the applicant's authorized representative of its satisfactory application and its successful achievement of ONC-ATCB status.

(3) Once notified by the National Coordinator of its successful achievement of ONC-ATCB status, the applicant may represent itself as an ONC-ATCB and begin testing and certifying Complete EHRs and/or EHR Modules consistent with its authorization.

**§ 170.435 ONC-ATCB application reconsideration.**

(a) An applicant may request that the National Coordinator reconsider a denial notice issued for each part of an application only if the applicant can demonstrate that clear, factual errors were made in the review of the applicable part of the application and that the errors' correction could lead to the applicant obtaining ONC-ATCB status.

(b) *Submission requirement.* An applicant is required to submit, within 15 days of receipt of a denial notice, a written statement to the National Coordinator contesting the decision to deny its application and explaining with sufficient documentation what factual errors it believes can account for the denial. If the National Coordinator does not receive the applicant's submission within the specified timeframe, its reconsideration request may be rejected.

(c) *Reconsideration request review.* If the National Coordinator receives a timely reconsideration request, the National Coordinator is permitted up to 15 days from the date of receipt to review the information submitted by the applicant and issue a decision.

(d) *Decision.* (1) If the National Coordinator determines that clear, factual errors were made during the review of the application and that correction of the errors would remove all identified deficiencies, the applicant's authorized representative will be notified of the

## § 170.440

National Coordinator's decision to reverse the previous decision(s) not to approve part of the applicant's application or the entire application.

(i) If the National Coordinator's decision to reverse the previous decision(s) affected part 1 of an application, the National Coordinator will subsequently review part 2 of the application.

(ii) If the National Coordinator's decision to reverse the previous decision(s) affected part 2 of an application, the applicant's authorized representative will be notified of the National Coordinator's decision as well as the applicant's successful achievement of ONC-ATCB status.

(2) If, after reviewing an applicant's reconsideration request, the National Coordinator determines that the applicant did not identify any factual errors or that correction of those factual errors would not remove all identified deficiencies in the application, the National Coordinator may reject the applicant's reconsideration request.

(3) *Final decision.* A reconsideration decision issued by the National Coordinator is final and not subject to further review.

### § 170.440 ONC-ATCB status.

(a) *Acknowledgement and publication.* The National Coordinator will acknowledge and make publicly available the names of ONC-ATCBs, including the date each was authorized and the type(s) of testing and certification each has been authorized to perform.

(b) *Representation.* Each ONC-ATCB must prominently and unambiguously identify the scope of its authorization on its Web site, and in all marketing and communications statements (written and oral) pertaining to its activities under the temporary certification program.

(c) *Renewal.* ONC-ATCB status does not need to be renewed during the temporary certification program.

(d) *Expiration.* The status of all ONC-ATCBs will expire upon the sunset of the temporary certification program in accordance with § 170.490.

### § 170.445 Complete EHR testing and certification.

(a) An ONC-ATCB must test and certify Complete EHRs to all applicable

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certification criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ATCB must provide the option for a Complete EHR to be tested and certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Inherited certified status.* An ONC-ATCB must accept requests for a newer version of a previously certified Complete EHR to inherit the previously certified Complete EHR's certified status without requiring the newer version to be retested and recertified.

(1) Before granting certified status to a newer version of a previously certified Complete EHR, an ONC-ATCB must review an attestation submitted by the developer of the Complete EHR to determine whether the newer version has adversely affected any previously certified capabilities.

(2) An ONC-ATCB may grant certified status to a newer version of a previously certified Complete EHR if it determines that previously certified capabilities have not been adversely affected.

(d) An ONC-ATCB that has been authorized to test and certify Complete EHRs is also authorized to test and certify all EHR Modules under the temporary certification program.

### § 170.450 EHR module testing and certification.

(a) When testing and certifying EHR Modules, an ONC-ATCB must test and certify in accordance with the applicable certification criterion or certification criteria adopted by the Secretary at subpart C of this part.

(b) An ONC-ATCB must provide the option for an EHR Module or a bundle of EHR Modules to be tested and certified solely to the applicable certification criteria adopted by the Secretary at subpart C of this part.

(c) *Privacy and security testing and certification.* EHR Modules shall be tested and certified to all privacy and security certification criteria adopted by the Secretary unless the EHR Module(s) is/are presented for testing and certification in one of the following manners:

(1) The EHR Module(s) is/are presented for testing and certification as a pre-coordinated, integrated bundle of