IOWA DEPARTMENT OF
INSPECTIONS & APPEALS

CHESTER J. CULVER
GOVERNOR

PATTY JUDGE
LT. GOVERNOR

DEAN A. LERNER, DIRECTOR

**DEMAND LETTER**

**CERTIFIED**

December 18, 2009

**Intake #'s: #25194-C**
**#25164-I**

Ms. Linda Judkins, Residence Director
Eiler House
920 West Garfield
Clarinda, IA 51632

**RE: I. Final Complaint, Incident & Revisit Investigation Report – #25194-C, #25164-I**
**II. Sanctions - Conditional Operation**
**III. Appeals/Hearings**
**IV. Civil Penalty**
**V. Conclusion**

Dear Ms. Judkins:

Enclosed is the **Final Complaint, Incident and Revisit Investigation Report** completed by the Department of Inspections and Appeals (DIA) in accordance with Iowa Code chapter 231C, 321 Iowa Administrative Code chapter 69 (pertaining to assisted living programs), and 321 Iowa Administrative Code chapter 67(pertaining to monitoring, civil penalties, and complaints). The report notes Regulatory Insufficiencies in the areas of: Service Plans, Medications, Nurse Review, Food Service, Staffing, Record Checks and Other (Lack of Notification and not following previous Plan of Correction. Eiler House Assisted Living ("Program") is being assessed a $5,000.00 civil penalty.

**II. Sanctions – Conditional Operation**

As reflected in the Final Report, the Program failed to comprehensively follow the regulations in 321 Iowa Administrative Code chapter 69. Due to the Program's noncompliance, current Regulatory Insufficiencies, and the findings of the on-site monitoring visit of September 8, 9 and 10, 2009, the Conditional Certificate, effective October 20, 2009, remains in effect.

The previous sanctions associated with the Conditional Certificate that remain in effect include: Timely completion and submission of background checks on all new employees and 30-day nurse reviews to DIA.

The program may appeal these sanctions by filing an appeal within 30 days of issuance of this final letter and report.

**III. Appeals/Hearings**

The Program may appeal the DIA decision in accordance with 321 Iowa Administrative Code rule 67.13, within 30 days of this notice, by submitting a request for appeal to DIA. A contested case hearing will be held pursuant to 481 Iowa Administrative Code chapter 10. If the Program appeals, the civil penalty will be suspended, pending the appeal process.

**IV. Civil Penalty**

If, within thirty (30) days of the receipt of this demand letter, you (1) do not request a formal hearing or withdraw your request for formal hearing, and (2) pay the penalty, the assessed penalty will be reduced by thirty-five percent (35%) pursuant to Iowa Code section 231C.14. If you do not wish to request a formal hearing or wish to withdraw your request for formal hearing, please send written notice to the Certification Coordinator and remit the penalty assessed by check or money order in the amount of three thousand two hundred and fifty dollars ($3,250.00) within 30 business days after the receipt of this demand letter.

**V. Conclusion**

The Program is being assessed a $5,000.00 civil penalty. The revised Plan of Correction (POC) submitted on December 17, 2009, has been reviewed and will constitute the final POC related to the on-site visit of September 8, 9, & 10, 2009.

DIA may revisit the program to confirm compliance in fulfilling the POC's corrective measures. If the Program wishes to appeal or request a hearing on the final findings, the program may do so within 30 days of this letter.

If you have any questions in regard to this letter and report, please contact your Certification Coordinator, Tamara Halvorson, at 515-281-5721.

Sincerely,

Ann Martin.

Ann Martin, Bureau Chief
Adult Services Bureau

Enclosure

# Iowa Department of Inspections and Appeals
## Assisted Living Program
## Final Complaint, Incident & Revisit Investigation Report

**Assisted Living Program:**

**Complaint #: 25194-C**
**Incident #: 25164-I**

Linda Judkins, Residence Director
Eiler House
920 West Garfield
Clarinda, IA 51632

**Date of Investigation:**

September 8, 9 & 10, 2009

**Monitor(s):**

Michael Streepy, RN

**Definitions:**

The following definitions are relevant:

**Regulatory Insufficiency** - A violation of a statutory or rule provision within the Iowa Code or Iowa Administrative Code (IAC) governing assisted living programs. A regulatory insufficiency requires a plan of correction to be presented to, and approved by, the Department of Inspections and Appeals (DIA).

**Plan of Correction** - A written response to one or more regulatory insufficiencies that are rule violations [321 IAC 26.2(5)(a)]. The plan should identify how, and by a specific date, an insufficiency will be corrected. The plan is due to DIA within ten (10) working days of the program's receipt of a Complaint Investigation Report. Depending on the circumstances, DIA may revisit the assisted living program to confirm progress in fulfilling a plan's corrective measures.

**Dementia-specific assisted living program** - An assisted living program certified under 321 IAC - chapter 25 that either serves five or more tenants with dementia or cognitive disorder staged between 4 and 7 on the Global Deterioration Scale or holds itself out as providing special care for persons with cognitive disorder or dementia, such as Alzheimer's disease, in a dedicated setting.

**Overview:**

A complaint investigation on-site visit was conducted at Eiler House on September 8, 9 & 10, 2009. In preparing this report, the following information was considered:

**Current Program Census:**

***General Population Program (GPP)**** – A program that is not a Dementia Specific program, but may have tenants with cognitive disorder.

| | |
|---|---|
| Current number of tenants without cognitive disorder: | 18 |
| Current number of tenants with cognitive disorder: | 2 |
| Total Population: | 20 |

***Dementia Specific Program (DSP)**** – Not applicable.

***These are the census numbers represented by the program to be applicable at the time of the on-site.**

**Accreditation Status** – Not applicable.

**Program History** – The January 6 & 7, 2009 recertification visit resulted in a fine of $1,000 with Regulatory Insufficiencies found in the areas of: Evaluation of Tenant, Service Plans, Nurse Review, Food Service, Staffing, Managed Risk and Record Checks.

**Complaint Investigation** – The complaint investigator(s) made the observations detailed in the following areas.

**A. Evaluation of Tenant** - The program evaluates each tenant's functional and cognitive abilities and health status and the determination of needed services as required. [321 IAC 25.23(1) and/or (2)]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received regulatory insufficiencies related to failure to complete functional, health and cognitive evaluations for each tenant prior to the tenant signing the occupancy agreement and within 30 days of taking occupancy for tenants #1, #2, #3, #4 and #5.

At the time of the revisit, Tenants #3, #4 and #5 were no longer at the program.

- Monitoring Observation: Review of evaluations for Tenants #1 and #2 revealed the evaluations had been completed as stated in the plan of correction and were current for the tenants.

- Regulatory Insufficiency: None noted.

**B. Service Plan** – Program has an individualized service plan developed and updated for each tenant as required. [321 IAC 25.28]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received Regulatory Insufficiencies related to failure to ensure service plans would be: based on evaluations, developed by the health care professional in consultation with the tenant and be individualized to indicate at a minimum: the tenant's identified needs and requests for assistance and expected outcomes for tenants #1, #2, #3, #4 and #5.

At the time of the revisit tenants #3, #4 and #5 were no longer at the program.

- Monitoring Observation: Tenant #1, an 87 year old, was admitted to the program on 10-13-07 with diagnoses including: Alzheimer's Dementia and Severe Bilateral Hearing Loss. The tenant had a score of 4 on the Global Deterioration Scale (GDS) of 06-04-09 indicating Moderate Cognitive Decline. Review of the tenant's service plan of 06-23-09 revealed the plan was not signed by two additional staff.

  Tenant #2, an 85 year old, was admitted to the program on 06-29-07 with diagnoses including: Dementia, Osteoarthritis, Incontinence, Orthostatic Hypotension and Edema. The tenant had a score of 3 on the GDS dated 06-04-09 indicating mild cognitive impairment. The functional evaluation of 06-04-09 indicated the tenant as requiring assistance with bathing, grooming and dependent for medication administration. Review of the tenant's service notes of 07-06-09 revealed the tenant to have a urinary tract infection and physician's order for Macrodantin 100 milligrams twice daily for 4 days. Review of the medication administration record and physician's orders revealed the tenant was to receive Peridex rinse daily for 30 seconds for three months then switch to Tooth and Gum Tonic for three months and then switch to Listerine for three months and then start the process over. Review of the service plan update of 06-04-09 revealed the tenant's need for the oral rinse

procedure was not reflected in the plan. Review of the service plan for Tenant #2, dated 06-18-09 revealed the plan was not signed by two additional staff.

Tenant #6, an 85 year old, was admitted to the program on 04-30-08 with diagnoses including: Hypertension and Dementia. The tenant had a score of 3 on the GDS dated 08-04-09 indicating Mild Cognitive Decline. Review of the tenant's service plan dated 08-04-09 revealed the plan was not signed by two additional staff.

Tenant #7, a 92 year old, was admitted to the program on 03-01-08 with diagnoses including: Dementia, Hypertension, Depression, Renal Failure, Degenerative Joint Disease and Hypothyroidism. Review of the tenant's record revealed the tenant's service plan of 06-24-09 was not signed by two additional staff.

Tenant #8, an 80 year old, had been admitted to the program on 12-15-08 with diagnoses including: a History of Nerves, Arthritis, Diabetes and Hypertension. Review of the tenant's record revealed the tenant's service plan dated 06-17-09 had not been signed by two additional staff.

Tenant #9, a 78 year old, was admitted to the program on 04-01-09 with diagnoses including: Dementia, Hypertension, Hypothyroidism, Diabetes and Hyperlipidemia. The tenant had a score of 4 on the GDS dated 08-20-09 indicating Moderate Cognitive Decline. Review of the tenant's record revealed the 30 day service plan update had not been completed until 05-18-09, 17 days after the 30 day review was required. Review of the record for Tenant #9, revealed the tenant and or tenant's legal representative had not signed the preliminary service plan dated 04-01-09 and the 30 day service plan had not been signed by anyone. Review of the current service plan dated 08-20-09 revealed the plan had not been signed by two additional staff.

- Regulatory Insufficiency: The program did not consistently ensure that prior to the tenant signing the occupancy agreement, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request with other individuals identified by the tenant and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or tenant's legal representative shall sign the plan. (25.28(2))

- Regulatory Insufficiency: The program did not consistently ensure that when a tenant needs personal care or health related care, the service plan shall be updated within 30 days of occupancy and as needed, but not less than annually, by a multidisciplinary team that consists of no fewer than three individuals, including a health care professional and other staff appropriate to meet the needs of the tenant, in consultation with the tenant and, if applicable, with the tenant's legal representative. (25.28(3))

- Regulatory Insufficiency: The program did not consistently ensure that the service plan shall be individualized and shall indicate at a minimum: the tenant's identified needs and the tenant's requests for assistance and expected outcomes. (25.28(4)a))

**C. Medications** – Program has a comprehensive written medication policy that allows tenant self-administration, but accommodates the need for tenant medication assistance via nurse delegation. The medication assistance is appropriately supervised and administered. Medications are appropriately stored. [231C.16A]

Complaint Allegation: Complaint 25164-I alleges tenants are not receiving medications as ordered related to Tenants #2, #6, #7, #8 and #9.

- Monitoring Observation: Review of medication administration records for Tenant #2 revealed the July 2009 record to indicate an order for Alamag 200-225 oral suspension was not given as ordered on 07-12-09 at the 5:00 p.m. scheduled dose and 07-13-09 at the 8:00 a.m. and 12:00 p.m. scheduled doses as the medication was not available.

  Review of the medication administration record for Tenant #6 revealed the July 2009 record to indicate an order for Flagyl 250 milligrams three times a day for two weeks had not been given at the noon dose on 07-07, 07-08 and 07-09-09 as the medication manager did not realize the tenant had the medication ordered for noon.

  Review of the medication record for Tenant #7 revealed the August 2009 record to indicate an order for a warm salt water rinse had not been given on 07-30 and 7-31-09.

  Review of the medication administration record for Tenant #8 revealed no instances of medications not being given as ordered. Interview with the tenant on 09-10-09 revealed no problems with receiving physician ordered medications on time as ordered.

  Review of the medication record for Tenant #9 revealed no instances of medications not being given as ordered.

- Regulatory Insufficiency: The program did not consistently provide for the administration of medications by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655-subrule 6.2(5) and 655-subrule 6.3(1) and Iowa Code chapter 155A and in executing the medication regimen as prescribed by the physician, the registered nurse shall exercise professional judgment in accordance with minimum standards of nursing practice as defined in these rules. (25.29(2)(a))

**D. Nurse Review** - Program provides a registered nurse to ensure the appropriate administration and documentation of medications, ensure that physician orders are current, and assess and document the tenants' health related activities. [321 IAC 25.30]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received a Regulatory Insufficiency related to failure to ensure the program would provide a registered nurse to monitor at least every 90 days, or after a change in condition, each tenant receiving program administered prescription medications, and to

assess and document the health status of each tenant at least every 90 days or if there are changes in health status for Tenants #1, #2, and #4.

At the time of the monitoring revisit Tenant #4 was no longer in the program.

- Monitoring Observation: Review of tenant records revealed Tenant #1 had 90 day nurse reviews done in accordance with the plan of correction.

  Tenant #2, had resident service notes dated 07-06-09 documenting an episode of illness with transport to the emergency room and laboratory results indicating a urinary tract infection and physician's orders for Macrodantin 100 milligrams for 7 days. The record contained no documentation of nurse review with the change in health status.

- Regulatory Insufficiency: The program did not consistently ensure a registered nurse would be provided to assess and document the health status of each tenant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status. (25.30(3))

**E. Food Service** – Program shall provide or coordinate with other community providers to provide hot or other appropriate meal(s) at least once a day or make arrangements for the availability of meals. Menus shall be appropriately planned. If applicable, therapeutic diets shall meet all requirements. Food preparation personnel shall meet all requirements. [321 IAC 25.32]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received a Regulatory Insufficiency related to failure to ensure that Staff #1, #2, #3, #5 and#7, who are responsible for preparing or serving food, have an annual in-service training on food protection.

At the time of the monitoring visit, Staff #2, #3 #4 and #6 were no longer with the program.

- Monitoring Observation: Review of personnel files for Staff #1 and #5 revealed annual in-service training on food protection.

Review of the personnel file for Staff #7, the Dietary Supervisor, revealed the staff person did not have documentation of current certification in a state approved food protection program with the certification having expired 04-14-08.

- Regulatory Insufficiency: The program did not consistently ensure that at a minimum one person directly responsible for food preparation shall have successfully completed a state approved food protection program. (25.32(5))

**F. Staffing** - The provisions of this section address the program's staffing and training practices and associated documentation in responding to the identified needs of the tenant. [321 IAC 25.33]

It is alleged Tenant #1 wandered from the program without staff awareness after displaying exit seeking behavior and in spite of staff monitoring on a 30 minute time frame.

- Monitoring Observation: Interviews with staff working on the day of the incident, 08-30-09, and review of program documentation revealed Tenant #1 had exited the program probably through the front door at approximately 10:30 a.m. Staff stated the tenant was located about a half hour later on the street in front of the neighbor's driveway near the mailbox. Observation and measurement revealed the distance to be approximately 160 yards from the front of the program. The staff were able to redirect the tenant back into the program without resistance by the tenant. The tenant was not injured and was appropriately dressed for the weather conditions.

- Regulatory Insufficiency: None noted.

During the course of the recertification monitoring visit on January 6th and 7th, 2009, the program received a Regulatory Insufficiency related to failure to ensure that the owner or management of the program would ensure that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population, for staff #1, #2, #3, and #5.

At the time of the revisit Staff #2 and #3 were no longer with the program.

- Monitoring Observation: Review of personnel files and interview with Staff #5, the program nurse, revealed the nurse had received additional training on the process for completing evaluations and service plans.

  Review of personnel files revealed Staff #10, a personal services assistant. with a hire date of 07-10-09, had no documentation of registered nurse delegation training of assigned tasks.

  Review of personnel files revealed Staff #11, a personal services assistant with a hire date of 07-02-09 had no documentation of registered nurse delegation training of assigned tasks.

- Regulatory Insufficiency: The program did not consistently ensure that the owner or management of the program would ensure that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population. (25.33(5))

**G. Managed Risk Statement** – Program has a managed risk statement which includes the tenant's or legal representative's signed acknowledgement of the shared responsibility for identifying and meeting needs and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others. [321 IAC 25.36]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received a Regulatory Insufficiency related to failure to ensure that a managed risk statement which includes the tenant's or tenant's legal representative's signed acknowledgement of shared responsibility for identifying and meeting needs and the process for managing risk by upholding tenant autonomy when tenant decision making may result in poor outcomes for tenants or others would be written for Tenant #1.

- Monitoring Observation: Review of the record for Tenant #1 revealed the progam had signed documentation of the managed risk agreement with the tenant related to the tenant's risk for elopement and exit seeking behaviors.

- Regulatory Insufficiency: None noted.

**H. Structural requirements** – The structure of the program shall be designed and operated to meet the needs of the tenants. The buildings and grounds shall be well-maintained, clean, safe and sanitary.

Complaint Allegation: It is alleged the program door alarm was not working at the time of the incident.

- Monitoring Observation: Chapter 25 regulations does not require door alarms for programs that are not dementia specific.

- Regulatory Insufficiency: None noted.

**I. Record Checks** – The program conducts applicable employee record checks. [Iowa Code section 135C.33(5)]

During the course of the recertification monitoring visit on January 6 and 7, 2009, the program received a Regulatory Insufficiency related to failure to complete Department of public safety, criminal history checks and a Department of Human Services, dependent adult abuse check of the potential employees, prior to hire, for Staff #1, #2, #3, #4, #5 and #6.

At the time of the monitoring visit Staff #2, #3, #4 and #6 were no longer with the program.

- Monitoring Observation: At the time of the revisit Staff #5 had documentation of the required checks.

  Review of the personnel files for Staff #1, a personal services assistant, with a hire date of 08-16-08 revealed no documentation of Department of Human Services, dependent adult abuse check of the potential employee prior to hire.

- Regulatory Insufficiency: The program did not consistently ensure completion of a Department of Human Services, dependent adult abuse check of the potential employee prior to hire. (135C.33(1))

**J. Other** – The provisions of this section address the program's noncompliance with other applicable statutory and administrative rule requirements.

Complaint Allegation: It is alleged the program nurse made staff who were present at the time of the elopement of Tenant #1 were made to change the written report, falsifying the record.

Monitoring Observation: Review of the program incident records revealed both reports to be present in the file. Interview with the program nurse revealed the report was rewritten to reflect the actions of the staff person as she had not given herself credit for establishing half hour checks and then following protocol during the incident. The program nurse stated she had directed the staff person not to use the word elope as the tenant sometimes sits outside and the tenant's intent was not known at the time.

- Regulatory Insufficiency: None noted.

During the course of the investigation the following information was obtained:

- Monitoring Observation: Record review for Tenant #3 revealed resident service notes dated 04-23-09 indicated a fall with fractured right hip. The tenant was subsequently transferred to the hospital for surgical repair and then to skilled care for rehabilitation and returned to the program 06-16-09. The program nurse stated there was no documentation of notification to the Department of Inspections and Appeals.

- Regulatory Insufficiency: The program did not consistently ensure the Department of Inspections and Appeals would be notified within twenty four hours, by the most expeditious means available, of any accident causing substantial injury or death. (231C.12))

- Monitoring Observation: Review of tenant service plans, nurse review documentation and personnel files revealed the program failed to follow the accepted Plan of Correction dated 02-02-09.

- Regulatory Insufficiency: The program did not follow corrective actions as stated in the Plan of Correction for Regulatory Insufficiencies identified at the recertification monitoring visit. (25.8(3))

Dated this 12th day of October, 2009.