IOWA DEPARTMENT OF
INSPECTIONS & APPEALS

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DEMAND LETTER
CERTIFIED
Complaint Intake #: 43359-M

June 19, 2013

Mr. Robert Brown, AL Director
Senior Star at Elmore Place Assisted Living
4500 Elmore Avenue
Davenport, IA 52807

RE: I. NOTICE OF IMPOSITION OF CIVIL PENALTY – FINAL COMPLAINT/INCIDENT INVESTIGATION REPORT - SENIOR STAR AT ELMORE PLACE ASSISTED LIVING
II. Reduction of Civil Penalty
III. Appeals/Hearings
IV. Conclusion

Dear Mr. Brown:

I. Final Complaint/Incident Investigation Report – Senior Star at Elmore Place Assisted Living, Davenport, IA

Enclosed is the **Final Complaint/Incident Investigation Report ("Report")** issued by the Department of Inspections and Appeals (DIA) in accordance with Iowa Code chapter 231C and Iowa Administrative Code (IAC) chapters 481—67 and 481—69, following an investigation by DIA on **April 22 - 29, 2013.** The Report notes a Regulatory Insufficiency in the area(s) of: Medications.

Senior Star at Elmore Place Assisted Living ("Program") is being assessed a **$500 civil penalty** pursuant to Iowa Code section 231C.14(1)(b) and 481 IAC 67.12(3)(a)(2).

Pursuant to Iowa Code section 231C.14(1)(b) and 481 IAC rule 67.12(3)(a)(2), the continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of tenants may result in a civil penalty of up to $5,000.

The factors to be considered in determining the amount of a civil penalty are contained within rule 481 IAC 67.12(3)(b) and include:

(1) the frequency and length of time the regulatory insufficiency occurred;
(2) the past history of the program as it relates to the nature of the regulatory insufficiency;
(3) the culpability of the program as it relates to the reasons the regulatory insufficiency occurred;
(4) the extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;
(5) the relationship of the regulatory insufficiency to any other types of regulatory insufficiencies;
(6) the actions of the programs after the occurrence of the regulatory insufficiency;
(7) the accuracy and extent of records kept by the program which relate to the regulatory insufficiency and the availability of such records to DIA;
(8) the rights of tenants to make informed decisions; and
(9) whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

The Report reflects that the Program failed to comply with regulatory requirements which have been cited previously by the Department. The Program failed to follow appropriate medication administration and documentation protocol.

The determination of a **$500 civil penalty** is based upon repeated Regulatory Insufficiency in the area(s) of: Medications. As the enclosed Report details, the Program received a regulatory insufficiency in the area of Medications during the survey conducted in July 2011.

II. Reduction of Civil Penalty

If, within 30 days of the notice or service of this demand letter, you (1) do not request a formal hearing or withdraw your request for formal hearing, and (2) pay the civil penalty, the assessed penalty will be reduced by thirty-five percent (35%) pursuant to IAC rule 481–67.12(3)d. If you do not wish to request a formal hearing or wish to withdraw your request for formal hearing, please send a cover letter to the attention of **Jim Berkley** and remit the civil penalty assessed by check or money order to the State of Iowa in the amount of **three hundred twenty five dollars ($325)** within 30 days after the notice or service of this demand letter.

III. Appeals/Hearings

The Program may appeal the DIA decision within thirty (30) days of the notice or service of this demand letter by submitting a written request for appeal to DIA. A contested case hearing will be held pursuant to Iowa Code chapter 17A and IAC chapter 481—10. If the Program appeals the DIA decision, the civil penalty will be suspended pending the appeal process. If the Program does not appeal, the civil penalty is due within 30 days of the notice or service of this demand letter.

IV. Conclusion

The Program is being assessed a **$500 civil penalty** pursuant to Iowa Code section 231C.14(1)(b) and 481 IAC 67.12(3)(a)(2). The Plan of Correction (POC) submitted on June 4, 2013, has been reviewed and will constitute the final POC related to the on-site visit of April 22 - 29, 2013.

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

If you have any questions in regard to this letter and enclosed Report, please contact your Program Coordinator, Jim Berkley, at 515/281-4116.

Sincerely,

Jim Friberg

Jim Friberg, Acting Bureau Chief
Adult Services Bureau

Enclosure

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Assisted Living Program
Final Complaint/Incident Investigation Report

Assisted Living Program: **Complaint/Incident Intake #:** 43359-M

Robert Brown, Assisted Living (AL) Director
Senior Star at Elmore Place Assisted Living
4500 Elmore Avenue
Davenport, IA 52807

Date of Complaint/Incident Investigation:

April 22, 2013 to April 29, 2013

Monitor(s):

Stephanie Cummins, MA
Margaret Kaltefleiter, RN MS

Definitions: ***The following definitions are relevant:***

Assisted Living Program – A program certified under 481 IAC 69 that provides housing with contracted services to three or more tenants in a physical structure that provides a homelike environment. Services may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living. A General Population Program is an Assisted Living Program that is not dementia-specific but may have tenants with cognitive disorder.

Dementia-Specific Assisted Living Program - An assisted living program certified under 481 IAC 69 that serves fewer than fifty-five (55) tenants and has five (5) or more tenants who have dementia between Stages 4 and 7 on the Global Deterioration Scale (GDS), or serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the GDS, or holds itself out as providing specialized care for persons with dementia, such as Alzheimer's disease, in a dedicated setting.

Regulatory Insufficiency - A violation of a statutory or rule provision within the Code of Iowa (2011) or the 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 statutory or rule violations. The plan should identify how and by what date each regulatory insufficiency will be corrected, and what measures will be taken to ensure the problem does not recur. The plan is due to DIA within ten (10) working days of the program's receipt of a Complaint/Incident Investigation Report. Depending on the circumstances, DIA may revisit the assisted living program to confirm progress in fulfilling a plan's corrective measures.

Overview: ***In preparing this report, the following information was considered:***

Current Program Census

Assisted Living Programs are defined by the type of population served. The census numbers below were provided by the Program at the time of the on-site visit.

General Population Program	
Number of tenants without cognitive disorder:	75
Number of tenants with cognitive disorder:	1
Total Population of Program at time of on-site	76
TOTAL census of Assisted Living Program	76

Program History – The program received regulatory insufficiencies in the areas of Service Plan, Medications, Policy and Procedures, Staffing and Nurse Review during this certification period.

Complaint/Incident Investigation – The Complaint/Incident investigator(s) made the observations detailed in the following areas:

A. Medications

Complaint/Incident Allegation: The Program reported allegedly medications had been diverted.

- Monitoring Observation: Nine tenant files (Tenants #1, #2, #3, #4, #5, #6, #7, #8 and #9) were reviewed. The Program completed an investigation regarding missing medications. Incident reports were completed, tenants were interviewed and staff statements were collected. The Program reported it to the Department and notified the tenants' physicians.

- Regulatory Insufficiency: None noted.

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

- Monitoring Observation: Nine tenant files (Tenants #1, #2, #3, #4, #5, #6, #7, #8 and #9) were reviewed.

Tenant #1, a 74 year old, was admitted on 1-22-13 and diagnoses included: Rheumatoid Arthritis and Hypertension (HTN). Tenant #1 had an order for Hydrocodone/APAP 5-325 milligram (mg), one tablet, by mouth, every four hours as needed for pain. A fax was sent to the physician dated 3-24-13 and indicated Tenant #1 was currently taking Hydrocodone 5-325 mg as needed, one tablet by mouth every four hours for pain and it was not controlling Tenant #1's pain. The physician ordered increase to two by mouth four times daily. Nurse's Notes dated 3-26-13

indicated a call was made to the physician's nurse to clarify the new order as Hydrocodone was not previously scheduled. The order/fax was noted but would not be processed awaiting clarification. Nurse's Notes indicated a new order was received to discontinue previous as needed Hydrocodone order and start Hydrocodone 5-325 mg, two tablets by mouth twice daily as needed for pain. A Physician's Telephone Order indicated Hydrocodone 5-325 mg two tablets by mouth twice daily as needed for pain was ordered. The previous Hydrocodone as needed order was discontinued. The date ordered was 3-26-13.

The AL Director indicated Tenant #1 had an original order for 5-325 mg one tablet by mouth every four hours for pain as needed. The physician was informed the medication was not controlling the pain and the physician increased it to two tablets by mouth four times daily. A call was placed to clarify as Tenant #1 was not receiving it scheduled and the order was not processed pending clarification. A new order was received to discontinue the previous Hydrocodone as needed order and start Hydrocodone 5-325 mg two tablets by mouth twice daily as needed for pain.

March 2013 Medication Administration Records (MARs) indicated Hydrocodone/APAP tablet 5-325 mg, one tablet by mouth every four hours as needed for pain was changed and reflected a 3-26-13 date. A new order for Hydrocodone 5-325 mg two tablets by mouth twice daily as needed for pain was reflected on the March MAR. The April 2013 MAR reflected a typed order Hydrocodone/APAP 5-325 mg one tablet, by mouth every four hours as needed for moderate pain with an order date of 1-24-13. There were hand written changes made to existing typed order on the MAR and it was indicated as Hydrocodone/APAP 5-325 mg two tablets by mouth every four hours as needed for moderate pain four times daily with an order date of 3-26-13.

The Controlled Substance Shift Count and Usage Records from 2-25-13 to 4-23-13 reflected various iterations of the Hydrocodone/APAP 5-325 mg order despite only having the original order and one order change. The Controlled Substance Shift Count and Usage Records were to list the medication name, strength and directions. The Controlled Substance Shift Count and Usage Records reflected Hydrocodone 5-325 one tablet by mouth every four hours as needed, Lortab 5-325 mg one tablet by mouth every four hours, Hydrocodone 5-325 mg two tablets by mouth twice daily, and Hydrocodone 5-325 mg two tablets every 12 hours as needed.

Controlled Substance Shift Count and Usage Records (that reflected Hydrocodone 5-325 mg one tablet by mouth every four hours as needed) indicated from 3-27-13 to 4-9-13 two tablets were administered each time as needed, with the exception of 4-1-13 and 4-9-13 where one tablet was administered. The order at that time was Hydrocodone/APAP 5-325 mg two tablets by mouth twice daily as needed for pain. The April 2013 MAR did not reflect the prescribed order and the Controlled Substance Shift Count and Usage Records were not consistent with the MARs or the order.

The AL Director indicated Tenant #1 had Hydrocodone 5-325 mg on hand that was being counted and utilized the rest of those before ordering a new card. On 4-5-13 Tenant #1 had seven remaining and a new card was ordered. Hydrocodone (#30)

were checked in at that time on a new count/sign out sheet. At that time there were two cards of medications each with a count/sign out sheet.

The physician's order was not appropriately transcribed on the MAR and the Controlled Substance Shift Count and Usage Records reflected various iterations of the physician orders.

Tenant #3, an 82 year old, was admitted on 11-14-09 and diagnoses included: Renal Failure, HTN, Hyperkalemia, Chronic Obstructive Pulmonary Disease, Congestive Heart Failure, Osteoporosis, Hypothyroidism and Depression. Tenant #3 had an order for Hydrocodone/APAP tablet 3-325 mg, one tablet by mouth every four to six hours as needed max 4GM APAP/24 hours. Controlled Substance Shift Count and Usage Records from 2-5-13 to 4-23-13 reflected Hydrocodone 5-325 as needed, Hydrocodone 5-325 and Hydrocodone one tablet 5-325 mg. The Controlled Substance Shift Count and Usage Record sheets did not consistently reflect the number of tablets and frequency of the Hydrocodone/APAP as ordered.

Tenant #4, an 85 year old, was admitted on 10-27-11 and diagnoses included: Arthritis, Pulmonary HTN, Anemia, Profound Weakness, Hyperactive Bladder and Depression. Tenant #4 had an order for Tramadol HCL tablet 50 mg, two tablets (100 mg) by mouth every six hours as needed. The Controlled Substance Shift Count and Usage Record reflected Tramadol 50 mg two tablets every six hours, Tramadol 50 mg two tablets by mouth every six hours as needed. One of the Controlled Substance Shift Count and Usage Record sheets did not reflect the Tramadol as needed as ordered.

Tenant #6, an 83 year old, was admitted on 5-5-12 and diagnoses included: HTN and Macular Degeneration. Tenant #6 had an order for Xanax 0.25 mg one tablet by mouth twice a day as needed. One of the Controlled Substance Shift Count and Usage Record reflected Xanax 0.25 mg one tablet twice a day and two others indicated Xanax 0.25 mg. Three of the Controlled Substance Shift Count and Usage Record sheets did not reflect the Xanax as needed as ordered and the frequency of the as needed order.

The table below reflects medications not documented as administered, lack of effectiveness of as needed medications documented and no explanations provided for medication initialed and circled.

TENANT	MEDICATION	DOCUMENTATION ON THE MAR
Tenant #3	Hydrocodone/APAP tablet 5-325 mg, one tablet every four to six hours as needed max 4 GM APAP/24 hours	2-28-13 at 5:30 a.m. documented as administered; the effectiveness of the medication was not documented
Tenant #3	Cholestyram Powder 4 GM, 2 scoop (8GM) by mouth dissolve as directed	4-15-13 at 8:00 a.m. and 4:00 p.m. initialed and circled with no explanation

	twice daily. Needs to be given one hour after other medications and give other medications at least four hours	on the back of the MAR
Tenant #4	APAP 650 mg ER Arthritis, two tablets (1300 mg) by mouth every eight hours. 6:00 a.m., 2:00 p.m. and 10:00 p.m.	4-9-13 at 10:00 p.m. not documented as administered
Tenant #6	Nystatin Cream 10000 apply to bilateral gluteal folds twice daily	4-10-13 at 4:00 p.m. initialed and circled with no explanation on the back of the MAR
Tenant #6	Loperamide Cap 2 mg one cap orally every six hours as needed	2-23-13 documented as given at 4:40 p.m.; the effectiveness of the medication was not documented
Tenant #7	Warfarin tablet 3 mg one tablet orally daily	4-7-13 initialed and circled with no explanation on the back of the MAR

Review of tenant files indicated medication administration and documentation protocol was not followed.

- Regulatory Insufficiency: When medications are administered traditionally by the program: The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by unlicensed assistive personnel in accordance with requirements in 655-Chapter 6 governing nurse delegation. (IAC r. 481-67.5(6)(a))