IOWA DEPARTMENT OF
INSPECTIONS & APPEALS

HEALTH FACILITIES DIVISION
Lucas State Office Building
321 East 12th Street
Des Moines, IA 50319-0083
(515) 281-4115 Phone
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TERRY E. BRANSTAD
GOVERNOR

KIM REYNOLDS
LT. GOVERNOR

RODNEY A. ROBERTS, DIRECTOR

DEMAND LETTER
Complaint Intake #: 59426-C
59809-C

May 31, 2016

Ms. Monica Kuehl, RN Administrator
Gardens at Luther Park
2910 E. 16th Street
Des Moines, IA 50316

RE: I. NOTICE OF IMPOSITION OF CIVIL PENALTY – FINAL RECERTIFICATION & COMPLAINT/INCIDENT INVESTIGATION REPORT - GARDENS AT LUTHER PARK
II. Reduction of Civil Penalty
III. Informal Conference
IV. Conclusion

Dear Ms. Kuehl:

I. Final Recertification & Complaint/Incident Investigation Report – Gardens at Luther Park, Des Moines, IA

Enclosed is the **Final Recertification & 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 **May 17 - 19, 2016.** An investigation was conducted in reference to Complaint #59426-C and #59809-C:

1. Allegation-Staffing- a sufficient number of trained staff to meet the needs of tenants
   Findings – Not Substantiated
   Comments: Based on interview, incident report review, and file review no incidents were identified where staff did not respond appropriately. Staff training files documented nurse-delegated training related to tenant care.

2. Allegation – DIA notification. Based on information provided by the complainant, concern was raised that DIA was not notified of an incident as outlined in the regulations

Findings – Not Substantiated
Comments: Based on interview, incident report review and file review, no incidents were identified that were reportable to DIA.

3. Allegation – Tenant Rights – it was alleged a tenant did not receive appropriate care
Findings – Not Substantiated
Comments: Based on interview, observation, incident report review and tenant file review, no instances were identified that rose to the level of a tenant rights violation. There were instances identified where service plans did not meet tenant needs.

The Report notes Regulatory Insufficiencies in the area(s) of: Program Policies and Procedures, Service Plans and Food Service.

Gardens at Luther Park ("Program") is being assessed a **$500 civil penalty** pursuant to Iowa Code section 231C.14(1)(b) and 481 IAC 67.17(1)(b).

Pursuant to Iowa Code section 231C.14(1)(b) and 481 IAC rule 67.17(1)(b), 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.

Each Regulatory Insufficiency requires that the Program submit a written Plan of Correction (POC).

In preparing the POC, please use the tenant identifiers from the Report, i.e. Tenant #1, when reference is made to specific tenants. If your response includes a specific tenant's assessment or service plan, it is the Program's responsibility to conceal the tenant's name in order to maintain the tenant's anonymity. Your response shall include the following:

1. Elements detailing how the Program will correct each regulatory insufficiency.
2. What measures will be taken to ensure the problem does not recur.
3. How the Program plans to monitor performance to ensure compliance.
4. The date by which the regulatory insufficiency will be corrected.

Please note that all regulatory insufficiencies must be **corrected within 30 days of the date of the exit conference**; however, there may be situations where the timeframe may be shortened or lengthened, at the discretion of the department.

The POC must be submitted/emailed to DIA to my attention within ten (10) working days of receipt of this letter. It may be necessary for DIA to revisit the Program to confirm progress in fulfilling the POC's corrective measures.

The factors to be considered in determining the amount of a civil penalty are contained within rule 481 IAC 67.17(3) 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 previously received a Regulatory Insufficiency in the area of Policies and Procedures during an incident investigated in May, 2015.

The determination of a **$500 civil penalty** is based upon repeated in the area(s) of: Policies and Procedures. As the enclosed Report details, the Program failed to follow their discharge criteria as stated in their occupancy agreement.

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 481−67.17(5). 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 **Rose Boccella** 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. Informal Conference

As provided by IAC rule 481-67.14, you are afforded one opportunity to refute cited regulatory insufficiencies through the informal conference process. A request for an informal conference must be made within 20 working days of the notice or service of this letter and the final report.

IV. Conclusion

The Program is being assessed a **$500 civil penalty** pursuant to Iowa Code section 231C.14(1)(a) and 481 IAC 67.17(1)(a).

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 as provided in IAC rule 481-67.14.

If you have any questions in regard to this letter and enclosed Report, please contact me at 515/281-7039 or **Rose.Boccella@dia.iowa.gov**.

Sincerely,

Rose Boccella

Rose Boccella, Program Coordinator
Adult Services Bureau

Enclosure

cc: Jean Herrity, Legal Assistant
Disability Rights Iowa

DEPARTMENT OF INSPECTIONS AND APPEALS

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	S0241	A. BUILDING: _____ B. WING _____	C 05/19/2016

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
GARDENS AT LUTHER PARK	2910 E16TH STREET DES MOINES, IA 50316

(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE
A 000	481-67 Initial Comments Assisted Living Programs are defined by the type of population served. The census numbers were provided by the Program at the time of the on-site. Dementia-Specific Program by Definition Number of tenants without cognitive disorder: 35 Number of tenants with cognitive disorder: 5 Total Population of Program at time of on-site: 40 Dementia-Specific Program by Dedication Number of tenants without cognitive disorder: 10 Number of tenants with cognitive disorder: 12 Total Population of Program at time of on-site: 22 TOTAL census of Assisted Living Program: 62 No regulatory insufficiencies were cited during the investigation of Complaint # 59426-C. The following regulatory insufficiencies were cited during the investigation of Complaint #59809-C: The following regulatory insufficiencies were cited during the recertification conducted to determine compliance with certification for an Assisted Living Program:	A 000		
A 003	481-67.2 Program policies and procedures 481-67.2(231B,231C,231D) Program policies and procedures, including those for incident reports. A program ' s policies and procedures must meet the minimum standards set by applicable	A 003		

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A 003	Continued From page 1 requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse. This REQUIREMENT is not met as evidenced by: It was alleged tenants were discharged without reason. (Complaint #59809-C). Based on interview, a review of three discharged tenant files, and a review of occupancy agreements the Program did not follow its occupancy agreement policies regarding tenant discharge. 1. Tenant #1, an 86 year-old, was admitted on 6-12-15 and had a diagnosis of: dementia. On 4-26-16, Tenant #1 was staged at four on the global deterioration scale which indicated moderate cognitive decline. Tenant #1 resided in the secured dementia unit. The functional evaluation completed by RN #2 dated 4-26-16 documented Tenant #1 was independent with all activities of daily living which included bathing, dressing grooming eating, ambulation, and toileting. The evaluations did not identify the need for outside service providers, and did not identify any conditions such as wound care which required nursing services. The Program did administer medications. Beginning 3-7-16 and ending 4-11-16, nurse's notes documented sexual behavior on four occasions. Nurse's notes dated 4-12-16 and completed by RN #1 documented Tenant #1 was	A 003		

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A 003	Continued From page 2 given a 30-day notice of discharge "due to needing more than part-time, intermittent care due to supervision needed." Tenant #1 was discharged on 4-27-16 according to nurse's notes. The Program provided a letter dated 4-12-16 which identified Tenant #1 was given a 30-day notice for exceeding criteria for retention in an assisted living program. The letter identified Iowa Administrative Code 481-69.23, requiring more than part-time or intermittent health care as the reason for discharge. Tenant #1's occupancy agreement with a date of 6-16-15 was reviewed. Section 11 identified termination, transfer and discharge rights. Occupancy agreement section 11.1.16 identified transfer mandated under Iowa law. Iowa Administrative Code 481-67 updated 3-16-16 defined part-time or intermittent care as licensed nursing services and professional therapies provided in combination with medication or activities of daily living that do not exceed 28 hours per week. Iowa Administrative Code 481-69.23(1)(f) updated 3-16-16 identified a program shall not retain a tenant who requires more than part-time or intermittent health care. In an interview with RN #1 on 5-17-16 at 4:10 p.m. she stated Tenant #1 did not require assistance with activities of daily living and did not need outside health services. In an interview with RN #2 on 5-18-16 at 12:10 p.m. she stated Tenant #1 did not require assistance with activities of daily living and received no outside health services.	A 003		

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A 003	Continued From page 3 A review of evaluations completed 4-26-16 identified Tenant #1 was independent with activities of daily living and required no outside services. Interviews with RN #1 and RN #2 confirmed Tenant #1 did not require more than 28 hours per week of licensed nursing services and professional therapies in combination with medications or activities of daily living. Tenant #1 did not meet discharge criteria as defined by Iowa law. The Program did not follow their discharge policy as included in the occupancy agreement. 2. Tenant #2, a 92 year-old, was admitted on 5-3-14 and had diagnoses of: dementia, hypertension, and arthritis. On 3-30-16 Tenant #2 was staged at four on the global deterioration scale (GDS) which indicated moderate cognitive decline. Prior cognitive evaluations had staged Tenant #2 at three on the GDS and indicated mild cognitive decline. Tenant #2 did not reside in the dedicated dementia unit. The functional evaluations completed by RN #2 dated 12-31-15 and completed by RN #1 on 3-30-16, documented Tenant #2 was independent with all activities of daily living which included bathing, dressing grooming eating, ambulation, and toileting. The evaluations did not identify the need for outside service providers, and did not identify any conditions such as wound care which required nursing services. The Program did administer medications. An incident report dated 2-16-16 documented Tenant #2 was heating food in the microwave for an unknown amount of time resulting in smoke in the apartment. Nurse's notes dated 3-8-16 documented by RN #1 revealed Tenant #2 had	A 003		

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A 003	Continued From page 4	A 003		

subtle changes in increased confusion. The note indicated RN #1 spoke to the family regarding a higher level of care. Nurse's notes dated 3-22-16 documented the Program sent a 30-day notice via certified mail due to Tenant #2 exceeding level of care and requiring more than part-time or intermittent care. Tenant #2 was discharged from the Program on 5-2-16 according to the nurse's notes.

The Program provided a letter dated 3-22-16 which identified Tenant #2 was given a 30-day notice for exceeding criteria for retention in an assisted living program. The letter identified Iowa Administrative Code 481-69.23, requiring more than part-time or intermittent health care as the reason for discharge.

Tenant #1's occupancy agreement with a date of 5-3-14 was reviewed. Section 11 identified termination, transfer and discharge rights. Occupancy agreement section 11.1.16 identified transfer mandated under Iowa law.

Iowa Administrative Code 481-67 updated 3-16-16 defined part-time or intermittent care as licensed nursing services and professional therapies provided in combination with medication or activities of daily living that do not exceed 28 hours per week. Iowa Administrative Code 481-69.23(1)(f) updated 3-16-16 identified a program shall not retain a tenant who requires more than part-time or intermittent health care.

In an interview with RN #1 on 5-17-16 at 4:10 p.m. she stated Tenant #2 did not require assistance with activities of daily living and did not need outside health services.

In an interview with RN #2 on 5-18-16 at 12:10

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A 003	Continued From page 5 p.m. she stated Tenant #2 did not require assistance with activities of daily living and received no outside health services. A review of evaluations completed 12-31-15 and 3-30-16, identified Tenant #2 was independent with activities of daily living and required no outside services. Interviews with RN #1 and RN #2 confirmed Tenant #2 did not require more than 28 hours per week of licensed nursing services and professional therapies in combination with medications or activities of daily living. Tenant #2 did not meet discharge criteria as defined by Iowa law. The Program did not follow their discharge policy as included in the occupancy agreement.	A 003		
A 083	481-69.26(1) Service Plans 481-69.26(231C) Service plans. 69.26(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1) and 69.22(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed. This REQUIREMENT is not met as evidenced by: It was alleged service plans did not meet the needs of the tenants (Complaint #59809-C). Based on a review of tenant files, and interviews,	A 083		

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A 083	Continued From page 6 service plans did not meet the specific service needs of individual tenants. 1. Tenant #2, a 92 year-old, was admitted on 5-3-14 and had diagnoses of: dementia, hypertension, and arthritis. On 3-30-16 Tenant #2 was staged at four on the global deterioration scale (GDS) which indicated moderate cognitive decline. Prior cognitive evaluations had staged Tenant #2 at three on the GDS and indicated mild cognitive decline. Tenant #2 did not reside in the dedicated dementia unit. Nurse's notes dated 3-8-16 documented by RN #1 revealed identification of subtle changes in increased confusion in Tenant #2. It was documented Tenant #2 was looking for the spouse and refused to eat until speaking to the spouse. Evaluations dated 3-30-16 documented Tenant #2 was hard of hearing and used hearing aids. Tenant #2's vision was described as impaired, and Tenant #2 required glasses. The 24-hour report dated 3-30-16 contained documentation for Tenant #2 which indicated Tenant #2 was not allowed to go outside by self, and needed staff or family to accompany outside. The documentation was attributed to RN #1. The Office Assistant was interviewed on 5-18-16 at 8:30 a.m. and stated she would always ask Tenant #2 if he/she had keys and fob to get back into the building once going out. Tenant #2 was very hard of hearing. Tenant #2 didn't always have them and the Office Assistant would make sure Tenant #2 had the keys and fob before going out. Sometimes Tenant #2 wouldn't have a coat when needed. The Office Assistant reported	A 083		

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A 083	Continued From page 7 Tenant #2 didn't seem to know how to get inside the building. The Office Assistant would watch for Tenant #2 when able to make sure Tenant #2 got back in the building. RN #1 was interviewed on 5-17-16 at 4:10 p.m. and stated Tenant #2's needs were increasing. Tenant #2 was issued a discharge notice for setting off the fire alarm when something overheated in the microwave. Tenant #2 would also go outside and couldn't get back in. RN #1 was worried about what would happen if staff did not know Tenant #2 was outside. Tenant #2 knew the code to enter the building, but couldn't get back in. A review of the service plan updated 3-30-16 documented Tenant #2 had declining ability and was unshaven for long periods of time and the face was dirty at times. The service plan indicated Tenant #2 was independent with hygiene and did not identify interventions for Tenant #2 who was declining and demonstrated an inability to maintain self-care. The service plan did not identify Tenant #2's being hard of hearing or needing glasses as identified in the evaluations of 3-30-16. The service plan did not identify Tenant #2 did not always have keys and fob and had difficulty gaining entry into the building once going outside. The service plan did not identify interventions to maintain Tenant #2's safety. Tenant #2's service plan was not based on evaluations and did not meet the specific service needs of Tenant #2. 2. Tenant #5, an 87 year-old, was admitted on	A 083		

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A 083	Continued From page 8 12-11-11 and had diagnoses of: benign prostatic hyperplasia, hypertension, dementia, and urinary frequency. Nurse's notes dated 5-3-16 through 5-18-16 documented several instances of Tenant #5 urinating in the restroom but not in the toilet. Evaluations completed 1-28 an 4-18-16 documented Tenant #5 was visually impaired and required glasses. Staff C, Universal Worker, was interviewed on 5-17-16 at 10:02 a.m. and stated Tenant #5 had good vision with glasses. Nurse's notes dated 5-4-16 documented the Program was installing black toilet seats in public restrooms and Tenant #5's apartment to contrast with the white toilets for better visualization. The service plan of 1-28-16 with updates did not identify Tenant #5's visual impairment and need for glasses. The service plan was not based on evaluations and did not meet the identified needs of Tenant #5.	A 083		
A 104	481-69.28(5) Food Service 481-69.28(231C) Food service. 69.28(5) Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection. This REQUIREMENT is not met as evidenced by: Based on observation, interview, and a review of staff files, staff employed by the program	A 104		

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A 104	Continued From page 9 responsible for food preparation and service did not have an orientation on safe food handling prior to handling food and did not have an annual inservice on food protection. (Recertification) 1. Staff A, Cook, was hired 10-21-15. Training files lacked documentation of an orientation on safe food handling. Staff A was interviewed on 5-18-16 at 12:45 p.m. and stated he had not had food service training since starting at this Program. Staff A had been observed working in the kitchen on 5-18-16. 2. Staff B, Certified Nursing Assistant, was hired 12-22-14. Training files lacked documentation of an annual inservice on food protection. The Director of Operations was interviewed on 5-18-16 at 11:00 a.m. and stated there was no documented training on safe food handling for Staff A and Staff B. Both were involved in either the preparation or serving of food. A tenant meeting was held on 5-18-16. It was reported staff use gloves in the dining room but "touch everything" including the inside of the glass ware and the tines of the forks after touching multiple objects.	A 104		

Luther Park Community

Embracing the aging experience with Christian compassion.

June 2, 2016

HEALTH FACILITIES

JUN 14 2016

Department of Inspections and Appeals
Attn: Rose Boccella
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319

Dear Ms. Boccella:

On behalf of Gardens at Luther Park, I respectfully submit our Plan of Correction for your approval. Our response is specific to the Recertification and Complaint/Incident Investigation Report dated May 31, 2016. Preparation and/or execution of this Plan of Correction does not constitute admission or agreement by the provider of the truth of the facts alleged or conclusions set forth in the statement of insufficiencies. The Plan of Correction is prepared and/or executed solely because it is required by the provisions of Iowa law.

Gardens at Luther Park will not request a formal hearing and will remit the civil penalty with this Plan of Correction.

Program Policies and Procedures
Occupancy Agreement Policies Regarding Tenant Discharge

1. Elements detailing how the Program will correct each regulatory insufficiency.
    - Tenant #1 and #2 no longer reside at Gardens at Luther Park.

2. What measures will be taken to ensure the problem does not recur.
    - The RN Director and Director of Nursing will receive education on criteria for admission as identified in Chapter 69.23. In addition, the Director of Nursing and RN will receive education on occupancy and retention criterion identified in the occupancy agreement.

3. How the Program plans to monitor performance to ensure compliance.
    - The RN Director or designee will audit at least two discharged tenant charts annually to ensure appropriate protocol and policies were followed related to the tenant's discharge.

4. The date by which the regulatory insufficiency will be corrected.
    - The Gardens at Luther Park will be in compliance by June 30, 2016.

Service Plans

A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1).

A service plan shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

1. Elements detailing how the Program will correct each regulatory insufficiency.
    - Tenant #2 no longer reside at Gardens at Luther Park.
    - Tenant #5's service plan will be updated based on evaluations and will include interventions related to Tenant #5's identified needs. Including interventions related to assistance with toileting, visual impairment, and need for glasses.

2. What measures will be taken to ensure the problem does not recur.
    - The RN Director and Director of Nursing will receive education on service plan development as required by Chapter 69.26.

3. How the Program plans to monitor performance to ensure compliance.
    - The RN Director and/or Director of Nursing will audit tenant charts when completing the 90 day nurse review to ensure the service plan identifies tenant needs and evaluations are completed as required by regulation.
    - The RN or Designee will audit tenant charts at least two times per year to ensure compliance.

4. The date by which the regulatory insufficiency will be corrected.
    - The Gardens at Luther Park will be in compliance by June 30, 2016.

Food Service

Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual inservice training on food protection.

1. Elements detailing how the Program will correct each regulatory insufficiency.
    - Staff A and B will receive required training on safe food handling.

2. What measures will be taken to ensure the problem does not recur.
    - All staff responsible for food preparation and service will be retrained on safe food handling.
    - New hires will be trained on safe food handling prior to performing any task related to food service.
    - Annual food service safe food handling training will be scheduled annually for all employees.

3. How the Program plans to monitor performance to ensure compliance.
    - The RN Director or designee will audit staff files at least two times per year to ensure staff receive required safe food handling training prior to doing the task and annually.

4. The date by which the regulatory insufficiency will be corrected.
    - The Gardens at Luther Park will be in compliance by June 30, 2016.

Please contact me at 515-265-1887 with any questions you have. Thank you.

Sincerely,

Monica Kuehl, RN

Monica Kuehl
RN Director