

June 24, 2024

Patricia Peck, Administrator  
The Mulberry At Waverly  
11041 North 137th St  
Waverly, NE 68462

CMS CERTIFICATION NUMBER: 285143

Dear Ms. Peck:

**IMPORTANT NOTICE - PLEASE READ CAREFULLY**

On June 4, 2024-June 17, 2024, a partial Health survey was conducted at your facility by representatives of this Department to determine whether your facility was in compliance with Federal participation requirements for nursing homes participating in the Medicare and/or Medicaid programs and state licensure requirements. This survey found the most serious deficiency(ies) in your facility to be isolated deficiencies that constitute actual harm that is immediate jeopardy to resident health or safety, as evidenced by the enclosed CMS-2567 whereby significant corrections are required.

All references to regulatory requirements contained in this letter are found in Title 42, Code of Federal Regulations.

**Plan of Correction (POC)**

A POC for the deficiencies must be submitted by 10 calendar days after receipt of the CMS-2567.

An acceptable POC must:

- **CORRECTION TO RESIDENT(S) AFFECTED** - Contain elements detailing how the facility will correct the deficiency as it relates to the individual;

**SYSTEM CHANGES (IDENTIFICATION AND CORRECTION FOR OTHER RESIDENTS POTENTIALLY AFFECTED):**

- Indicate how the facility will act to protect residents in similar situations;
- Include the measures the facility will take or systems that will be altered to ensure that the problem will not recur. The facility must look at the system and determine if a change to the existing system will work, if a new system is necessary, or if a system does not exist and must be developed.

**MONITORING PROCESS FOR THE SYSTEM CHANGE INCLUDING FREQUENCY AND TITLE OF THE PERSON RESPONSIBLE:**

- Indicate how the facility plans to monitor performance to make sure that solutions are permanent. The monitoring plan should include the method of monitoring, the frequency of monitoring and the person responsible. The facility must develop a quality assurance tool for ensuring that correction is achieved and sustained. This tool must be implemented. Failure to implement a quality assurance tool to sustain compliance will reflect that the facility has an ineffective quality assurance system.
- Provide dates when corrective action will be completed. Correction dates should be no later than August 1, 2024.

If your plan of correction is not acceptable and requires modification, we will notify you in writing. Subsequently, you must reply within ten (10) calendar days of the notification by submitting an addendum to your plan of correction. If your plan of correction is acceptable as submitted we will notify you via email.

### **Denial of Payment for New Admissions (DPNA)**

As a result of the survey findings, a denial of payment for new admissions will be imposed effective July 6, 2024. This action is based on the fact that deficiencies that constitute a level of actual harm or above were found on the current partial survey on June 17, 2024. We are also advising the State Medicaid Agency to deny payment for new admissions effective July 6, 2024. This DPNA will remain in effect until your facility has achieved substantial compliance or your provider agreement is terminated. Please note that the denial of payment for new Medicare admissions includes Medicare beneficiaries enrolled in managed care plans. It is your obligation to inform Medicare and Medicaid managed care plans contracting with your facility of this denial of payment for new admissions. We will also impose, effective immediately, state monitoring [§488.422].

**Please note that this notice does not constitute formal notice of imposition of alternative remedies. Should the Centers for Medicare & Medicaid Services (CMS) determine that a Civil Money Penalty (CMP), termination of the provider agreement, or any other remedy is warranted, CMS will provide you with a separate formal notification.**

### **NATCEP**

Please note that Federal law, as specified in the Social Security Act 1819(f)(2)(B) and 1919(f)(2)(B), prohibits approval of nurse aide training and competency evaluation programs (NATCEP) and nurse aide competency evaluation programs (CEP) offered by or in a facility which within the previous two years has operated under an 1819(B)(4)(C)(ii)(II) or 1919(b)(4)(C)(ii) waiver; has been subject to an extended or partial extended survey; has been assessed a CMP of not less than \$12,924.00; or, has been subject to a denial of payment; the appointment of a temporary manager; termination; or, in the case of emergency, has been closed and/or had its residents transferred to other facilities. If any of these situations occur, you will be notified by the State agency.

### **Appeal Rights**

- DPNA
- State Monitoring

If you disagree with this action imposed on your facility, you or your legal representative may request a hearing before an administrative law judge of the Department of Health and Human Services, Departmental Appeals Board (DAB). Procedures governing this process are set out in 42 C.F.R. 498.40, et seq. You must file your hearing request electronically by using the Departmental Appeals Board's Electronic Filing System (DAB E-File) at <https://dab.efile.hhs.gov> no later than sixty (60) days after receiving this letter. Specific instructions on how to file electronically are attached to this notice. A copy of the hearing request shall be submitted electronically to:

MO\_NE\_LTCEnforcement@cms.hhs.gov

Requests for a hearing submitted by U.S. mail or commercial carrier are no longer accepted as of October 1, 2014, unless you do not have access to a computer or internet service. In those circumstances you may call the Civil Remedies Division to request a waiver from e-filing and provide an explanation as to why you cannot file electronically or you may mail a written request for a waiver along with your written request for a hearing. A written request for a hearing must be filed no later than sixty (60) days after receiving this letter, by mailing to the following address:

Department of Health & Human Services  
Departmental Appeals Board, MS 6132  
Director, Civil Remedies Division  
330 Independence Avenue, S.W.  
Cohen Building – Room G-644  
Washington, D.C. 20201  
(202) 565-9462

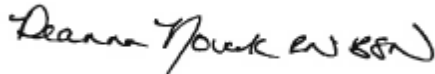
A request for a hearing should identify the specific issues, findings of fact and conclusions of law with which you disagree. It should also specify the basis for contending that the findings and conclusions are incorrect. At an appeal hearing, you may be represented by counsel at your own expense.

**Informal Dispute Resolution**

In accordance with §488.331, you have an opportunity to question cited deficiencies through an Informal Dispute Resolution (IDR) process. To be given such an opportunity, you are required to complete the attached form and submit it to DHHS.HealthCareFacilities@Nebraska.gov. This request must be sent during the same 10 calendar days you have for submitting a POC for the cited deficiencies. The IDR process will not delay the effective date of any enforcement action.

If you have any questions concerning the instructions contained in this letter, please contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanna Novak RN BSN".

Deanna Novak, RN, BSN, Program Manager  
Office of Long Term Care Facilities  
Health Facilities Licensure Unit  
PO Box 94669, 301 Centennial Mall South, Lincoln, Nebraska 68509-4669  
(402) 471-3324, FAX: (402) 742-2398

DN/ls

c: NE State Medicaid Agency  
CMS - RO

Attachments: CMS-2567