DEPARTMENT OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

Electronically delivered
September 8, 2022

Administrator
St Marks Living
400 - 15th Avenue Southwest
Austin, MN 55912

RE: CCN: 245369
Cycle Start Date: June 16, 2022

Dear Administrator:

On July 26, 2022, we notified you a remedy was imposed. On September 7, 2022 the Minnesota Departments of Health and Public Safety completed a revisit to verify that your facility had achieved and maintained compliance. We have determined that your facility has achieved substantial compliance as of September 2, 2022.

As authorized by CMS the remedy of:

- Discretionary denial of payment for new Medicare and Medicaid admissions effective August 10, 2022 be discontinued as of September 2, 2022. (42 CFR 488.417 (b))

However, as we notified you in our letter of July 1, 2022, in accordance with Federal law, as specified in the Act at § 1819(f)(2)(B)(iii)(I)(b) and § 1919(f)(2)(B)(iii)(I)(b), we notified you that your facility is prohibited from conducting Nursing Aide Training and/or Competency Evaluation Programs (NATCEP) for two years from July 20, 2022. This does not apply to or affect any previously imposed NATCEP loss.

The CMS Region V Office may notify you of their determination regarding any imposed remedies.

Feel free to contact me if you have questions.

Sincerely,

Melissa Poepping, Compliance Analyst
Federal Enforcement | Health Regulation Division
Minnesota Department of Health
P.O. Box 64900
Saint Paul, Minnesota 55164-0970
Phone: 651-201-4117
Email: Melissa.Poepping@state.mn.us

DEPARTMENT OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

Electronically delivered

September 8, 2022

Administrator
St Marks Living
400 - 15th Avenue Southwest
Austin, MN 55912

Re: Reinspection Results
Event ID: 9SFC12

Dear Administrator:

On September 7, 2022 survey staff of the Minnesota Department of Health - Health Regulation Division completed a reinspection of your facility, to determine correction of orders found on the survey completed on August 25, 2022. At this time these correction orders were found corrected.

Please feel free to call me with any questions.

Sincerely,

Melissa Poepping, Compliance Analyst
Federal Enforcement | Health Regulation Division
Minnesota Department of Health
P.O. Box 64900
Saint Paul, Minnesota 55164-0970
Phone: 651-201-4117
Email: Melissa.Poepping@state.mn.us

Electronically delivered
September 1, 2022

Administrator
St Marks Living
400 - 15th Avenue Southwest
Austin, MN 55912

RE: CCN: 245369
Cycle Start Date: June 16, 2022

Dear Administrator:

On July 1, 2022, we informed you of imposed enforcement remedies.

On August 25, 2022, the Minnesota Department of Health completed a survey and it has been determined that your facility continues to not to be in substantial compliance. The most serious deficiencies in your facility were found to be widespread deficiencies that constitute no actual harm with potential for more than minimal harm that is not immediate jeopardy (Level F), as evidenced by the electronically attached CMS-2567, whereby corrections are required.

As a result of the survey findings:

- Discretionary Denial of Payment for new Medicare and/or Medicaid Admissions, Federal regulations at 42 CFR § 488.417(a), effective August 10, 2022, will remain in effect.

This Department continues to recommend that CMS impose a civil money penalty. (42 CFR 488.430 through 488.444). You will receive a formal notice from the CMS RO only if CMS agrees with our recommendation.

The CMS Region V Office will notify your Medicare Administrative Contractor (MAC) that the denial of payment for new admissions is effective August 10, 2022. They will also notify the State Medicaid Agency that they must also deny payment for new Medicaid admissions effective August 10, 2022.

You should notify all Medicare/Medicaid residents admitted on, or after, this date of the restriction. The remedy must remain in effect until your facility has been determined to be in substantial compliance or your provider agreement is terminated. Please note that the denial of payment for new admissions includes Medicare/Medicaid beneficiaries enrolled in managed care plans. It is your obligation to inform managed care plans contracting with your facility of this denial of payment for new admissions.

As we notified you in our letter of July 1, 2022, in accordance with Federal law, as specified in the Act at Section 1819(f)(2)(B)(iii)(I)(b) and 1919(f)(2)(B)(iii)(I)(b), your facility is prohibited from conducting Nursing Aide Training and/or Competency Evaluation Programs (NATCEP) for two years from July 20, 2022.

ELECTRONIC PLAN OF CORRECTION (ePOC)

Within ten (10) calendar days after your receipt of this notice, you must submit an acceptable plan of correction (ePOC) for the deficiencies cited. An acceptable ePOC will serve as your allegation of compliance. Upon receipt

of an acceptable ePOC, we will authorize a revisit to your facility to determine if substantial compliance has been achieved. The failure to submit an acceptable ePOC can lead to termination of your Medicare and Medicaid participation (42 CFR 488.456(b)).

To be acceptable, a provider's ePOC must include the following:

- How corrective action will be accomplished for those residents found to have been affected by the deficient practice.
- How the facility will identify other residents having the potential to be affected by the same deficient practice.
- What measures will be put into place, or systemic changes made, to ensure that the deficient practice will not recur.
- How the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur.
- The date that each deficiency will be corrected.
- An electronic acknowledgement signature and date by an official facility representative.

If an acceptable ePoC is not received within 10 calendar days from the receipt of this letter, we will recommend to the CMS Region V Office that one or more of the following remedies be imposed:

- Optional denial of payment for new Medicare and Medicaid admissions (42 CFR 488.417 (a));

- Per day civil money penalty (42 CFR 488.430 through 488.444).

DEPARTMENT CONTACT

Questions regarding this letter and all documents submitted as a response to the resident care deficiencies (those preceded by a "F" and/or an"E" tag), i.e., the plan of correction should be directed to:

Lisa Krebs, Rapid Response
Licensing and Certification Program
Health Regulation Division
Minnesota Department of Health
Rochester District Office
18 Woodlake Drive, Rochester MN, 55904
Email: Lisa.Krebs@state.mn.us
Office (507) 206-2728

PRESUMPTION OF COMPLIANCE - CREDIBLE ALLEGATION OF COMPLIANCE

The facility's ePoC will serve as your allegation of compliance upon the Department's acceptance. In order for your allegation of compliance to be acceptable to the Department, the ePoC must meet the criteria listed in the plan of correction section above. You will be notified by the Minnesota Department of Health - Health Regulation Division staff and/or the Department of Public Safety, State Fire Marshal Division staff, if your ePoC for their respective deficiencies (if any) is acceptable.

VERIFICATION OF SUBSTANTIAL COMPLIANCE

Upon receipt of an acceptable ePoC, a Post Certification Revisit (PCR), of your facility will be conducted to

validate that substantial compliance with the regulations has been attained in accordance with your verification.

If substantial compliance has been achieved, certification of your facility in the Medicare and/or Medicaid program(s) will be continued and remedies will not be imposed. Compliance is certified as of the latest correction date on the approved ePoC, unless it is determined that either correction actually occurred between the latest correction date on the ePoC and the date of the first revisit, or correction occurred sooner than the latest correction date on the ePoC.

FAILURE TO ACHIEVE SUBSTANTIAL COMPLIANCE BY THE SIXTH MONTH AFTER THE LAST DAY OF THE SURVEY

We will also recommend to the CMS Region V Office and/or the Minnesota Department of Human Services that your provider agreement be terminated by December 16, 2022 (six months after the identification of noncompliance) if your facility does not achieve substantial compliance. This action is mandated by the Social Security Act at Sections 1819(h)(2)(C) and 1919(h)(3)(D) and Federal regulations at 42 CFR Sections 488.412 and 488.456.

Please note that this notice does not constitute formal notice of imposition of alternative remedies or termination of your provider agreement. Should the Centers for Medicare & Medicaid Services determine that termination or any other remedy is warranted, it will provide you with a separate formal notification of that determination.

APPEAL RIGHTS

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:

Tamika.Brown@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. If you have any questions regarding this matter, please contact Tamika Brown, Principal Program Representative by phone at (312) 353-1502 or by e-mail at Tamika.Brown@cms.hhs.gov.

INFORMAL DISPUTE RESOLUTION/ INDEPENDENT INFORMAL DISPUTE RESOLUTION (IIDR)

In accordance with 42 CFR 488.331, you have one opportunity to question cited deficiencies through an informal dispute resolution process. You are required to send your written request, along with the specific deficiencies being disputed, and an explanation of why you are disputing those deficiencies, to:

Nursing Home Informal Dispute Process
Minnesota Department of Health
Health Regulation Division
P.O. Box 64900
St. Paul, Minnesota 55164-0900

This request must be sent within the same ten days you have for submitting an ePoC for the cited deficiencies. All requests for an IDR or IIDR of federal deficiencies must be submitted via the web at:
https://mdhprovidercontent.web.health.state.mn.us/ltc_idr.cfm

You must notify MDH at this website of your request for an IDR or IIDR within the 10 calendar day period allotted for submitting an acceptable plan of correction. A copy of the Department's informal dispute resolution policies are posted on the MDH Information Bulletin website at:
https://www.health.state.mn.us/facilities/regulation/infobulletins/ib04_8.html

Please note that the failure to complete the informal dispute resolution process will not delay the dates specified for compliance or the imposition of remedies.

Feel free to contact me if you have questions.

Melissa Poepping, Compliance Analyst
Federal Enforcement | Health Regulation Division
Minnesota Department of Health
P.O. Box 64900
Saint Paul, Minnesota 55164-0970
Phone: 651-201-4117
Email: Melissa.Poepping@state.mn.us

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	245369	A. BUILDING _____ B. WING _____	C 08/25/2022

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
ST MARKS LIVING	400 - 15TH AVENUE SOUTHWEST AUSTIN, MN 55912

(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) COMPLETION DATE
F 000	INITIAL COMMENTS On August 25, 2022, a standard abbreviated survey was conducted at your facility. Your facility was found to be NOT in compliance with the requirements of 42 CFR 483, Subpart B, Requirements for Long Term Care Facilities. The following complaint was found to be SUBSTANTIATED: H53694256C (MN86181), with deficiencies cited at F725. The facility's plan of correction (POC) will serve as your allegation of compliance upon the Departments acceptance. Because you are enrolled in ePOC, your signature is not required at the bottom of the first page of the CMS-2567 form. Your electronic submission of the POC will be used as verification of compliance. Upon receipt of an acceptable electronic POC, an onsite revisit of your facility may be conducted to validate that substantial compliance with the regulations has been attained.	F 000		
F 725 SS=F	Sufficient Nursing Staff CFR(s): 483.35(a)(1)(2) §483.35(a) Sufficient Staff. The facility must have sufficient nursing staff with the appropriate competencies and skills sets to provide nursing and related services to assure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care and considering the number, acuity and diagnoses of the facility's resident population in accordance with the facility assessment required at §483.70(e).	F 725		9/2/22

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE | TITLE | (X6) DATE

Electronically Signed | 09/02/2022

Any deficiency statement ending with an asterisk (*) denotes a deficiency which the institution may be excused from correcting providing it is determined that other safeguards provide sufficient protection to the patients. (See instructions.) Except for nursing homes, the findings stated above are disclosable 90 days following the date of survey whether or not a plan of correction is provided. For nursing homes, the above findings and plans of correction are disclosable 14 days following the date these documents are made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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F 725	Continued From page 1 §483.35(a)(1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans: (i) Except when waived under paragraph (e) of this section, licensed nurses; and (ii) Other nursing personnel, including but not limited to nurse aides. §483.35(a)(2) Except when waived under paragraph (e) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty. This REQUIREMENT is not met as evidenced by: Based on interview and document review, the facility failed to provide 24-hour licensed nursing care on August 21, 2022 for four (4) hours. This had the potential to effect all resident residing in the facility. Findings include: During an interview on 8/25/22, at 8:50 a.m. director of nursing (DON) indicated on 8/17/22, the overnight shift (10:30 p.m. to 6:30 a.m.) for 8/21/22 had not been filled and she had planned to work it, but could not because of a family emergency. DON stated she asked pool agency staff registered nurse (RN)-A who had worked the evening shift on 8/21/22 if she could cover the shift, however RN-A was not able to. She attempted to call all the nurses on the staff listing (kept at the nurse's station), but was not successful. DON explained she then called trained medication assistant (TMA)-A and	F 725	How will Corrective action be accomplished for those residents found to have been affected by the deficient practice? No residents were found to be affected by the deficient practice. How will the facility identify other residents having the potential to be affected by the same deficient practice? All residents had the potential to be affected by the deficient practice. What measures will be put into place, or systemic changes made, to ensure that the deficient practice will not recur? Facility has a staffing plan that includes reaching out to current team members, utilizing the seniority list for mandatory	

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F 725	Continued From page 2 instructed her to call her with any concerns, emergencies or before giving as needed medications. DON stated RN-A left the facility after her shift at 10:30 p.m. TMA-A and two nursing assistants (NA)-A and NA-B worked without a nurse until DON arrived at 2:30 a.m. The DON indicated there were no negative outcomes to the 35 residents as a result of not having a licensed nurse in the facility for four hours. DON indicated there was not a system in place to ensure shifts were covered in cases of emergencies. They are currently trying to develop a system. However on 8/24/22 she instructed all facility nurses they could not leave until they were replaced by another nurse. During an interview on 8/25/22, at 9:00 a.m. administrator stated the facility kept a scheduling folder at nurse's station with staff contact information to be used on evenings and weekends. If there was a call-in then a staff member would call each person on the list. Staff were to call him or the DON if the shift could not be filled, then incentives were offered. Administrator confirmed there was not a system in place for covering emergent situation to ensure a licensed nurse was in the facility at all times. During an interview on 8/25/22, at 11:52 a.m. with RN-B and RN-C, RN-B stated when someone called in, the nurse on duty would call people on the list at the nurse's station, if nobody would come in, then the nurse was supposed to call the DON and be mandated to stay however, they could not mandate pool agency staff. RN-C stated on 8/21/22, at 5:09 p.m.she had gotten a call from the administrator asking if DON was supposed to work the night shift to which she confirmed as true. Administrator told her DON	F 725	staffing, contacting agencies, etc. At the time of this incident the staffing plan was not followed. Re-education completed with DON regarding importance of 24 hour licensed nurse coverage and the staffing plan. Administrator / DON / designee will review daily staffing to ensure compliance. Administrator / DON / Regional Nurse/ Designee will have a weekly recruiting call with HR to hire additional staff. Additional staff have been hired and added to the daily schedule which includes licensed nursing team members. Refusal of shift mandation is subject to disciplinary action. Nurses were educated that they cannot leave the shift until another nurse replaces them. We are doing the same education with the agency and are going to require that the agency makes nurses acknowledge this before they can work at St. Mark's. We cross trained the RN's in assisted living to work the SNF floor shifts as additional options. If all else fails the DON is responsible for covering the shift unless the DON has left for vacation and designated someone else to act on behalf of the DON then that designee would be responsible. How will the facility monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur? All current, and new licensed staff to be educated on staffing plans, and has been	

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F 725	Continued From page 3 was not going to be able to work, but was not asked to cover the shift. Both RN-B and RN-C stated they received a text message from the DON at 5:20 p.m. explaining the family emergency, she would not be able to work, and that a $400.00 incentive was offered to cover the shift. RN-B and RN-C both stated they had been out with family and/or friends and were not able to work the shift. Neither were aware if DON had contacted other nurses and both stated there was not an assigned or designated "on-call" nurse to replace shifts for emergent situations. During an interview on 8/25/22, at 11:39 a.m. TMA-A verified that she was alone in facility with NA-A and NA-B from 10:30 p.m. until 2:30 a.m. TMA-A indicated RN-A was not able to work the overnight shift and left the facility at the end of her shift. TMA-A stated she had been instructed by the DON to call her for any concerns but would have called 911 if there was an emergency. During an interview on 8/25/22, at 2:10 p.m. licensed practical nurse (LPN)-A stated if there was a call in, the nurse would use the staff call list to try to replace the shift. LPN-A indicated the schedules were not always complete when they were posted. Sometimes there were empty shifts and it was a surprise when people showed up. If the shift was not replaced then they would call DON. LPN-A stated DON first sent out a group text message on 8/19/22, looking for someone to cover the overnight shift on 8/21/22. DON sent out another group text on 8/21/22 at approximately 5:00 p.m. asking for someone to work with the offer of double time plus $100.00. LPN-A no one had called her on 8/21/22, nothing aside from the text message. She was not able to work the shift and was not sure how many other	F 725	added to orientation list. Administrator / DON / designee will monitor staffing weekly to ensure compliance. Audits to ensure licensed nursing coverage will be completed weekly for 4 weeks and bi-weekly for 4 weeks. After completion of audits it will be reviewed at the QAPI meeting and determined if additional audits are necessary based on findings. Responsible Persons: Administrator/DON/designee	

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F 725	Continued From page 4 nurses were contacted to cover that shift. During an interview on 8/25/22, at 2:29 p.m. NA-A verified that he worked with TMA-A and NA-B without a licensed nurse for four hours on 8/21/22 between hours of 10:30 p.m. and 2:30 a.m. During an interview on 8/25/22, at 3:06 p.m. human resources representative (HRR) from staffing agency confirmed RN-A left the facility at 10:30 p.m. HRR indicated an unfamiliarity with of the agency's policy and/or contract with the facility that pertained to mandating and would not be able to provide that information. During a phone interview on 8/25/22, at 3:24 p.m. RN-A (pool agency staff) verified that she had left the facility on 8/21/22 at 10:30 p.m. She had received a phone call from DON around 8:30 pm asking if she could stay for a couple of hours but she was not able to. RN-A also stated that after TMA-A talked with DON on same phone call time, TMA-A informed her she could leave at the end of her shift. Facility staffing policy's did not address mandating of agency staff and/or procedures for when/if mandating was refused and the shift was not covered as a result. Facility policy Staffing revised October 2017, states that licensed nurses are available 24 hours a day to provide direct resident care services. Facility policy Departmental Supervision revised April 2006, states that a Registered or Licensed Practical/Vocation Nurse is on duty twenty-four hours per day, seven (7) days per week, to supervise the nursing services activities in	F 725		

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F 725	Continued From page 5 accordance with physician orders and facility policy. 5.8 Mandated Work Time: If the employer find it necessary to mandate an employee to stay on duty after the end of their shift to fill open hours arising during the shift due to call-in's the following procedure will apply; 1) The employer must first designate the open hours as mandated, 2) The mandated hours will be offered by seniority, to all on premises Nurses; 3) Should no one accept the least senior on-premises nurse must work until a replacement is found (up to 8 hours). An employee cannot be mandated more than one time in a one-month period nor can they be required to work more than 16 hours in one day. P. Mandating B.1) First the employer will call employees who are not scheduled to work that day and request they they cover the hours needed. 2) Second the employer will seek volunteers from those working to fill the hours needed. Volunteers will be solicited starting with the highest seniority. 3) If no volunteers are secured, the employer will declare the open hours as mandated. 5) Should no one accept the least senior on premise must work until a replacement can be found.	F 725		

DEPARTMENT OF HEALTH

Protecting, Maintaining and Improving the Health of All Minnesotans

Electronically delivered
September 1, 2022

Administrator
St Marks Living
400 - 15th Avenue Southwest
Austin, MN 55912

Re: State Nursing Home Licensing Orders
Event ID: 9SFC11

Dear Administrator:

The above facility was surveyed on August 25, 2022 through August 25, 2022 for the purpose of assessing compliance with Minnesota Department of Health Nursing Home Rules and Statutes. At the time of the survey, the survey team from the Minnesota Department of Health - Health Regulation Division noted one or more violations of these rules or statutes that are issued in accordance with Minn. Stat. § 144.653 and/or Minn. Stat. § 144A.10. If, upon reinspection, it is found that the deficiency or deficiencies cited herein are not corrected, a civil fine for each deficiency not corrected shall be assessed in accordance with a schedule of fines promulgated by rule and/or statute of the Minnesota Department of Health.

To assist in complying with the correction order(s), a "suggested method of correction" has been added. This provision is being suggested as one method that you can follow to correct the cited deficiency. Please remember that this provision is only a suggestion and you are not required to follow it. Failure to follow the suggested method will not result in the issuance of a penalty assessment. You are reminded, however, that regardless of the method used, correction of the order within the established time frame is required. The "suggested method of correction" is for your information and assistance only.

You have agreed to participate in the electronic receipt of State licensure orders consistent with the Minnesota Department of Health Informational Bulletin 14-01, available at https://www.health.state.mn.us/facilities/regulation/infobulletins/ib04_8.html. The State licensing orders are delineated on the Minnesota Department of Health State Form and are being delivered to you electronically. The Minnesota Department of Health is documenting the State Licensing Correction Orders using federal software. Tag numbers have been assigned to Minnesota state statutes/rules for Nursing Homes.

The assigned tag number appears in the far left column entitled "ID Prefix Tag." The state statute/rule number and the corresponding text of the state statute/rule out of compliance is listed in the

"Summary Statement of Deficiencies" column and replaces the "To Comply" portion of the correction order. This column also includes the findings that are in violation of the state statute or rule after the statement, "This MN Requirement is not met as evidenced by." Following the surveyors findings are the Suggested Method of Correction and the Time Period For Correction.

PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN WHICH STATES, "PROVIDER'S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE.

THERE IS NO REQUIREMENT TO SUBMIT A PLAN OF CORRECTION FOR VIOLATIONS OF MINNESOTA STATE STATUTES/RULES.

Although no plan of correction is necessary for State Statutes/Rules, please enter the word "corrected" in the box available for text. You must then indicate in the electronic State licensure process, under the heading completion date, the date your orders will be corrected prior to electronically submitting to the Minnesota Department of Health. We urge you to review these orders carefully, item by item, and if you find that any of the orders are not in accordance with your understanding at the time of the exit conference following the survey, you should immediately contact:

Lisa Krebs, Rapid Response
Licensing and Certification Program
Health Regulation Division
Minnesota Department of Health
Rochester District Office
18 Woodlake Drive, Rochester MN, 55904
Email: Lisa.Krebs@state.mn.us
Office (507) 206-2728

You may request a hearing on any assessments that may result from non-compliance with these orders provided that a written request is made to the Department within 15 days of receipt of a notice of assessment for non-compliance.

Please feel free to call me with any questions.

Melissa Poepping, Compliance Analyst
Federal Enforcement | Health Regulation Division
Minnesota Department of Health
P.O. Box 64900
Saint Paul, Minnesota 55164-0970
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STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION	(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER:	(X2) MULTIPLE CONSTRUCTION	(X3) DATE SURVEY COMPLETED
	00394	A. BUILDING: _____ B. WING _____	C 08/25/2022

NAME OF PROVIDER OR SUPPLIER	STREET ADDRESS, CITY, STATE, ZIP CODE
ST MARKS LIVING	400 - 15TH AVENUE SOUTHWEST AUSTIN, MN 55912

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2 000	Initial Comments *****ATTENTION****** NH LICENSING CORRECTION ORDER In accordance with Minnesota Statute, section 144A.10, this correction order has been issued pursuant to a survey. If, upon reinspection, it is found that the deficiency or deficiencies cited herein are not corrected, a fine for each violation not corrected shall be assessed in accordance with a schedule of fines promulgated by rule of the Minnesota Department of Health. Determination of whether a violation has been corrected requires compliance with all requirements of the rule provided at the tag number and MN Rule number indicated below. When a rule contains several items, failure to comply with any of the items will be considered lack of compliance. Lack of compliance upon re-inspection with any item of multi-part rule will result in the assessment of a fine even if the item that was violated during the initial inspection was corrected. You may request a hearing on any assessments that may result from non-compliance with these orders provided that a written request is made to the Department within 15 days of receipt of a notice of assessment for non-compliance. INITIAL COMMENTS: On August 25, 2022, a complaint survey was conducted at your facility by surveyors from the Minnesota Department of Health (MDH). Your facility was found NOT in compliance with the MN State Licensure. Please indicate in your electronic plan of correction you have reviewed these orders and identify the date when they will be completed.	2 000		

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2 000	Continued From page 1 The following complaint was found to be SUBSTANTIATED: H53694256C (MN86181), with a licensing order issued at 0800. The Minnesota Department of Health is documenting the State Licensing Correction Orders using Federal software. Tag numbers have been assigned to Minnesota state statutes/rules for Nursing Homes. The assigned tag number appears in the far-left column entitled "ID Prefix Tag." The state statute/rule out of compliance is listed in the "Summary Statement of Deficiencies" column and replaces the "To Comply" portion of the correction order. This column also includes the findings which are in violation of the state statute after the statement, "This Rule is not met as evidence by." Following the surveyor ' s findings are the Suggested Method of Correction and Time Period for Correction. You have agreed to participate in the electronic receipt of State licensure orders consistent with the Minnesota Department of Health Informational Bulletin 14-01, available at <https://www.health.state.mn.us/facilities/regulation/infobulletins/ib14_1.html> The State licensing orders are delineated on the attached Minnesota Department of Health orders being submitted to you electronically. Although no plan of correction is necessary for State Statutes/Rules, please enter the word "CORRECTED" in the box available for text. You must then indicate in the electronic State licensure process, under the heading completion date, the date your orders will be corrected prior to electronically submitting to the Minnesota Department of Health. The facility is enrolled in ePOC and therefore a signature is not required at the bottom of the first page of state form.	2 000		

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2 000	Continued From page 2 PLEASE DISREGARD THE HEADING OF THE FOURTH COLUMN WHICH STATES, "PROVIDER'S PLAN OF CORRECTION." THIS APPLIES TO FEDERAL DEFICIENCIES ONLY. THIS WILL APPEAR ON EACH PAGE.	2 000		
2 800	MN Rule 4658.0510 Subp. 1 Nursing Personnel; Staffing requirements Subpart 1. Staffing requirements. A nursing home must have on duty at all times a sufficient number of qualified nursing personnel, including registered nurses, licensed practical nurses, and nursing assistants to meet the needs of the residents at all nurses' stations, on all floors, and in all buildings if more than one building is involved. This includes relief duty, weekends, and vacation replacements. This MN Requirement is not met as evidenced by: Based on interview and document review, the facility failed to provide 24-hour licensed nursing care on August 21, 2022 for four (4) hours. This had the potential to effect all resident residing in the facility. Findings include: During an interview on 8/25/22, at 8:50 a.m. director of nursing (DON) indicated on 8/17/22, the overnight shift (10:30 p.m. to 6:30 a.m.) for 8/21/22 had not been filled and she had planned to work it, but could not because of a family emergency. DON stated she asked pool agency staff registered nurse (RN)-A who had worked the evening shift on 8/21/22 if she could cover the	2 800	Corrected	9/2/22

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2 800	Continued From page 3 shift, however RN-A was not able to. She attempted to call all the nurses on the staff listing (kept at the nurse's station), but was not successful. DON explained she then called trained medication assistant (TMA)-A and instructed her to call her with any concerns, emergencies or before giving as needed medications. DON stated RN-A left the facility after her shift at 10:30 p.m. TMA-A and two nursing assistants (NA)-A and NA-B worked without a nurse until DON arrived at 2:30 a.m. The DON indicated there were no negative outcomes to the 35 residents as a result of not having a licensed nurse in the facility for four hours. DON indicated there was not a system in place to ensure shifts were covered in cases of emergencies. They are currently trying to develop a system. However on 8/24/22 she instructed all facility nurses they could not leave until they were replaced by another nurse. During an interview on 8/25/22, at 9:00 a.m. administrator stated the facility kept a scheduling folder at nurse's station with staff contact information to be used on evenings and weekends. If there was a call-in then a staff member would call each person on the list. Staff were to call him or the DON if the shift could not be filled, then incentives were offered. Administrator confirmed there was not a system in place for covering emergent situation to ensure a licensed nurse was in the facility at all times. During an interview on 8/25/22, at 11:52 a.m. with RN-B and RN-C, RN-B stated when someone called in, the nurse on duty would call people on the list at the nurse's station, if nobody would come in, then the nurse was supposed to call the DON and be mandated to stay however, they could not mandate pool agency staff. RN-C	2 800		

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2 800	Continued From page 4 stated on 8/21/22, at 5:09 p.m.she had gotten a call from the administrator asking if DON was supposed to work the night shift to which she confirmed as true. Administrator told her DON was not going to be able to work, but was not asked to cover the shift. Both RN-B and RN-C stated they received a text message from the DON at 5:20 p.m. explaining the family emergency, she would not be able to work, and that a $400.00 incentive was offered to cover the shift. RN-B and RN-C both stated they had been out with family and/or friends and were not able to work the shift. Neither were aware if DON had contacted other nurses and both stated there was not an assigned or designated "on-call" nurse to replace shifts for emergent situations. During an interview on 8/25/22, at 11:39 a.m. TMA-A verified that she was alone in facility with NA-A and NA-B from 10:30 p.m. until 2:30 a.m. TMA-A indicated RN-A was not able to work the overnight shift and left the facility at the end of her shift. TMA-A stated she had been instructed by the DON to call her for any concerns but would have called 911 if there was an emergency. During an interview on 8/25/22, at 2:10 p.m. licensed practical nurse (LPN)-A stated if there was a call in, the nurse would use the staff call list to try to replace the shift. LPN-A indicated the schedules were not always complete when they were posted. Sometimes there were empty shifts and it was a surprise when people showed up. If the shift was not replaced then they would call DON. LPN-A stated DON first sent out a group text message on 8/19/22, looking for someone to cover the overnight shift on 8/21/22. DON sent out another group text on 8/21/22 at approximately 5:00 p.m. asking for someone to work with the offer of double time plus $100.00.	2 800		

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2 800	Continued From page 5 LPN-A no one had called her on 8/21/22, nothing aside from the text message. She was not able to work the shift and was not sure how many other nurses were contacted to cover that shift. During an interview on 8/25/22, at 2:29 p.m. NA-A verified that he worked with TMA-A and NA-B without a licensed nurse for four hours on 8/21/22 between hours of 10:30 p.m. and 2:30 a.m. During an interview on 8/25/22, at 3:06 p.m. human resources representative (HRR) from staffing agency confirmed RN-A left the facility at 10:30 p.m. HRR indicated an unfamiliarity with of the agency's policy and/or contract with the facility that pertained to mandating and would not be able to provide that information. During a phone interview on 8/25/22, at 3:24 p.m. RN-A (pool agency staff) verified that she had left the facility on 8/21/22 at 10:30 p.m. She had received a phone call from DON around 8:30 pm asking if she could stay for a couple of hours but she was not able to. RN-A also stated that after TMA-A talked with DON on same phone call time, TMA-A informed her she could leave at the end of her shift. Facility staffing policy's did not address mandating of agency staff and/or procedures for when/if mandating was refused and the shift was not covered as a result. Facility policy Staffing revised October 2017, states that licensed nurses are available 24 hours a day to provide direct resident care services. Facility policy Departmental Supervision revised April 2006, states that a Registered or Licensed Practical/Vocation Nurse is on duty twenty-four	2 800		

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2 800	Continued From page 6 hours per day, seven (7) days per week, to supervise the nursing services activities in accordance with physician orders and facility policy. 5.8 Mandated Work Time: If the employer find it necessary to mandate an employee to stay on duty after the end of their shift to fill open hours arising during the shift due to call-in's the following procedure will apply; 1) The employer must first designate the open hours as mandated, 2) The mandated hours will be offered by seniority, to all on premises Nurses; 3) Should no one accept the least senior on-premises nurse must work until a replacement is found (up to 8 hours). An employee cannot be mandated more than one time in a one-month period nor can they be required to work more than 16 hours in one day. P. Mandating B.1) First the employer will call employees who are not scheduled to work that day and request they they cover the hours needed. 2) Second the employer will seek volunteers from those working to fill the hours needed. Volunteers will be solicited starting with the highest seniority. 3) If no volunteers are secured, the employer will declare the open hours as mandated. 5) Should no one accept the least senior on premise must work until a replacement can be found SUGGESTED METHOD OF CORRECTION: The administrator, DON or designee should ensure adequate policy and programs are developed to ensure that the facility has at least one licensed nurse available 24-hours licensed hours a day. The facility should educate staff on protocols in the event of call in's or schedule deficits in nursing coverage. The facility should develop and implement an auditing system and report the	2 800		

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2 800	Continued From page 7 findings of these audits to the quality assurance performance improvement (QAPI) committee for further recommendations to determine compliance or the need for further monitoring. TIME PERIOD FOR CORRECTION: Twenty-one (21) days.	2 800		