

Tony Evers  
Governor



Kirsten L. Johnson  
Secretary

**State of Wisconsin**  
**Department of Health Services**

**DIVISION OF QUALITY ASSURANCE**

BUREAU OF ASSISTED LIVING  
MADISON/SOUTHERN REGIONAL OFFICE  
Room 455  
PO BOX 2969  
MADISON WI 53701-2969

Telephone: 608-264-9888  
Fax: 608-264-9889  
TTY: 711 or 800-947-3529

June 27, 2024

**ELECTRONIC MAIL**  
**SOD #MXVF12**

**NOTICE and ORDER**

**NOTICE OF VIOLATION**

**ORDER TO COMPLY WITH REQUIREMENTS**

**ORDER NOT TO ADMIT NEW OR ADDITIONAL RESIDENTS**

**NOTICE OF SPECIAL ORDERS**

**NOTICE OF IMPOSED FORFEITURE**

**NOTICE OF RIGHT TO APPEAL**

**NOTICE OF REVISIT FEE**

Jonathan Moyer  
318 Samuel Dr. Apt 204  
Madison, WI 53717

C/O Licensee: Tennyson Family Care LLC

**Re:** Bay Harbor Memory Care Assisted Living of Madison (0019869)  
1936 Tennyson Lane  
Madison, WI 53704

Dear Jonathan Moyer:

This letter is a statutory NOTICE of VIOLATION and imposed ORDER on the licensee of Bay Harbor Memory Care Assisted Living Of Madison, located at 1936 Tennyson Ln, Madison, WI 53704, and sets forth appeal rights, if any. This regulatory action is taken by the Department of Health Services (Department) pursuant to Wis. Stat. § 50.03(5g), and Wis. Admin. Code ch. DHS 83.

**NOTICE OF VIOLATION**

On June 21, 2024, a standard survey, complaint investigation, self-report investigation and verification visit were concluded for Bay Harbor Memory Care Assisted Living of Madison by the Division of Quality Assurance, Bureau of Assisted Living, to determine if the above-referenced facility was in substantial compliance with Wis. Stat. ch. 50 or Wis. Admin. Code ch.

**[www.dhs.wisconsin.gov](http://www.dhs.wisconsin.gov)**

DHS 83, or both, which set forth requirements for the administration and operation of a community-based residential facility (CBRF). The Department is issuing Statement of Deficiency (SOD) #MXVF12 for violations of Wis. Stat. ch. 50 or Wis. Admin. Code ch. DHS 83, which establish the grounds for this action. SOD #MXVF12 is enclosed.

### **ORDER TO COMPLY WITH REQUIREMENTS**

1. Pursuant to Wis. Stat. § 50.03(5g)(b)3., effective immediately, the licensee shall comply with the requirements specified by Wis. Stat. ch. 50 and Wis. Admin. Code ch. DHS 83 that establish the standards for the operation of the Community Based Residential Facility in order to protect and promote the health, safety and welfare of the residents.

AS SOON AS PRACTICABLE AND WITHOUT DELAY, within 45 days of receipt of this notice, the licensee shall achieve and maintain substantial compliance with all requirements. All operational and resident records required as evidence of compliance with applicable rules will be available to department representatives upon request.

The Department may, without notice, conduct an inspection to verify the licensee's corrective action at any time after the date of compliance. Pursuant to Wis. Stat. § 50.03(5g)(cm), the department may impose a \$200 inspection fee for an on-site inspection to review compliance of violations resulting in enforcement action.

#### **ADDITIONALLY:**

WITHIN 10 DAYS of receipt of this notice, the licensee may request an extension for the date of compliance. The request for an extension must be submitted to the Assisted Living Regional Director, Southern Regional Office, at [DHSDQABALSRO@dhs.wisconsin.gov](mailto:DHSDQABALSRO@dhs.wisconsin.gov). The Regional Director will communicate to the licensee a decision on the date of compliance extension.

### **ORDER NOT TO ADMIT NEW OR ADDITIONAL RESIDENTS**

**Based on the results of the Department's investigation, and pursuant to Wis. Stat. § 50.03(5g)(b)7., EFFECTIVE UPON RECEIPT OF THIS NOTICE and ORDER, the Department of Health Services HEREBY ORDERS that Bay Harbor Memory Care Assisted Living of Madison NOT ADMIT ANY NEW OR ADDITIONAL RESIDENTS until all violations in Statement of Deficiency MXVF12 are corrected, compliance is verified by the Department, and this Order is rescinded in writing.**

### **SPECIAL ORDERS**

Based on the results of the Department's investigation, and pursuant to Wis. Stat. § 50.03(5g)(b), **EFFECTIVE UPON RECEIPT OF THIS NOTICE and ORDER**, the Department of Health Services **HEREBY ORDERS** that **Bay Harbor Memory Care Assisted Living of Madison**:

#### **PROBATIONARY LICENSE**

1. Based on the results of the Department's investigation, and pursuant to Wis. Stat. §§ 50.03(5g)(b)3. and (b)6., the licensee shall correct all violations identified in Statement of Deficiency (SOD) MXVF12 and will achieve substantial compliance with all laws and administrative rules governing the facility and its operation prior to expiration of the facility's Probationary License on 1/11/2025. IF the licensee has not achieved substantial compliance with all laws and administrative rules governing the facility and its operation AND IF the violations identified in SOD MXVF12 remain substantially uncorrected, the PROBATIONARY LICENSE for Bay Harbor Memory Care Assisted Living of Madison may be INVALID and the Department may NOT ISSUE A REGULAR LICENSE for Bay Harbor Memory Care Assisted Living of Madison, 1936 Tenneson Ln, Madison, WI, 53704.

This NOTICE is provided in accordance with:

- Wis. Stat. § 50.03(4m)(b), whereby, if the applicant for licensure as a community-based residential facility has not been previously licensed under this subchapter or if the community-based residential facility is not in operation at the time application is made, the department shall issue a probationary license. Prior to the expiration of a probationary license, the department shall evaluate the community-based residential facility. In evaluating the community-based residential facility, the department may conduct an inspection of the community-based residential facility. If, after the department evaluates the community-based residential facility, the department finds that the community-based residential facility meets the applicable requirements for licensure, the department shall issue a regular license under sub. (4)(a)1.b. If the department finds that the community-based residential facility does not meet the requirements for licensure, the department may not issue a regular license under sub. (4)(a)1.b.
- Wis. Admin. Code § DHS 83.08(2), whereby the Department shall deny a probationary license or regular license to any applicant who does not substantially comply with any provision of Wis. Admin. Code ch. DHS 83 or Wis. Stat. ch. 50.

#### **CONSULTANT REQUIRED**

2. Pursuant to Wis. Stat. § 50.03(5g)(b)6., **EFFECTIVE IMMEDIATELY**, the licensee shall ensure the provision of services to meet residents' physical and mental health needs. The licensee will correct all identified deficiencies in consultation with a qualified professional (e.g., registered nurse, health care administrator), not currently affiliated with the

licensee. The consultant will have knowledge of assisted living regulations (e.g., Wis. Admin. Code ch. 83, Wis. Stat. ch. 50) and knowledge of the client groups served by Bay Harbor Memory Care Assisted Living of Madison. The licensee will provide the consultant with a copy of Statement of Deficiency MXVF12, along with this Notice and Order letter prior to providing consultation services.

Consultation will include the development (or revision) of written procedures and staff training (as appropriate) to address:

#### **Behavior Management**

The procedure shall include, but is not limited to: (a) identifying specific behavior patterns that are or may be harmful to the resident or others, (b) assessing and documenting contributing factors to the behaviors, (c) developing and implementing the Individualized Service Plan (ISP) with specific individualized interventions to reduce incidences of these behaviors, (d) staff response when the identified interventions are not effective, (e) monitoring the effectiveness of any behavioral intervention including the use of PRN psychotropic medications, and (f) notifying the resident's legal representative and physician when there is a significant change in a resident's mental condition.

#### **Fall Management**

The procedure shall include, but is not limited to: (a) documenting comprehensive assessments to identify fall risks; (b) developing the Individualized Service Plan (ISP) with specific measures to address risks and prevent injuries (such as increased supervision, therapy services, environmental modifications, positioning or other assistive devices, or assistance with ambulation, toileting, bathing); (c) staff response when falls occur, including monitoring for, and documentation of, changes in resident status following a fall; and (d) conducting and documenting an assessment after each fall incident to identify contributing factors and new fall prevention interventions. Information related to fall management is available on the following websites:

<https://www.cdc.gov/homeandrecreationalafety/falls/index.html>

<https://www.dhs.wisconsin.gov/injury-prevention/falls/index.htm>

#### **Written Emergency and Disaster Plan**

The plan shall include (a) procedures for orderly evacuation, or other department approved response, during an emergency or disaster; (b) procedures for any resident who refuses to follow evacuation or emergency procedures; (c) the location of an emergency shelter for the residents; (d) the responsibilities of employees during emergency and evacuation procedures.

#### **Additionally:**

- All managers and resident care staff (as appropriate) will receive in-service training regarding the facility's written procedures required by Order #1.
- Training will be documented in employee files and will include the date/duration of training, the signature/qualifications of the instructor, and an outline of course content.

- **Consultation activities, including dates of consultation, will be documented, signed and dated by the consultant.**
- **A copy of the written procedures and all documentation as evidence of meeting the requirements in Order #1 will be made available to department representatives upon request.**

**NOTICE OF FORFEITURE\***

In addition to other sanctions enumerated in Wis. Stat. § 50.03(5g)(b)1. to 8., according Stat. § 50.03(5g)(c)1.b., the Department of Health Services may impose a forfeiture on a licensee or any other person who violates the applicable statutory provisions or administrative rules governing CBRFs. If imposed, the forfeiture amount may not be less than \$10 or more than \$1,000 per day for each violation.

The Department has determined that you violated state statutes or administrative code provisions, or both, as identified in the enclosed SOD #MXVF12. Therefore, pursuant to Wis. Stat. § 50.03(5g)(c), **IT IS HEREBY ORDERED** that a total **FORFEITURE OF \$3900.00 IS IMPOSED** for the following violations described in SOD #MXVF12. Some of the forfeitures may accrue daily until compliance is achieved and verified for that cited violation.

| <b>TAG</b>  | <b>DHS CODE</b>      | <b>AMOUNT(\$)</b> |
|-------------|----------------------|-------------------|
| <b>N214</b> | <b>83.15(3)(a)</b>   | <b>500.00</b>     |
| <b>N239</b> | <b>83.20(2)(a-d)</b> | <b>200.00</b>     |
| <b>N243</b> | <b>83.21(1-3)</b>    | <b>600.00</b>     |
| <b>N353</b> | <b>83.32(3)(i)</b>   | <b>400.00</b>     |
| <b>N389</b> | <b>83.35(3)(d)</b>   | <b>1200.00</b>    |
| <b>N433</b> | <b>83.38(1)(i)</b>   | <b>1000.00</b>    |

**Total Forfeiture Due: \$3900.00**

You must pay the Total Forfeiture amount within ten (10) days of receipt of this NOTICE and ORDER.

**REDUCED FORFEITURE OPTION**

If you choose not to appeal the forfeiture, any of the violations in SOD #MXVF12, **AND** any Orders contained in this NOTICE and ORDER, then the Department will reduce the total forfeiture due by 35%.

This 35% reduced forfeiture option also applies to any accruing forfeiture. Final calculation of any accruing forfeiture due will be based on a verified date of compliance.

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\* According to Art. X, §2 of the Wisconsin Constitution and Wis. Stat. § 50.03(5g)(c)1.c., all forfeitures collected by the Department are deposited in the State's School Fund.

At this time, the reduced forfeiture amount due to the Department within ten (10) days of receipt of this NOTICE and ORDER is \$2535.00.

Please make the forfeiture payment payable to “DHS 639” and send it to:

ENFORCEMENT SPECIALIST  
DHS / DQA / BAL  
PO BOX 2969  
MADISON, WI 53701-2969

### **NOTICE OF RIGHT TO APPEAL**

According to Wis. Stat. §§ 50.03(5g)(b) and (f), you may request an administrative hearing of the Department’s action. To notify the Department of your request for a hearing, your written request **must be filed with (served upon) the Division of Hearings and Appeals (DHA) within ten (10) days after receipt of this NOTICE**. Please note that according to Wis. Admin. Code § HA 1.03(3)(a), materials **mailed** to DHA are **considered filed on the date of the postmark**. Send your request for a hearing to:

CBRF APPEAL  
DHA  
P.O. BOX 7875  
MADISON, WI 53707-7875

Include in your written request for a hearing **ALL** of the following:

- ✓ The name and address of the facility;
- ✓ What you are appealing (attach a copy of this NOTICE to your appeal);
- ✓ The effective date of the action;
- ✓ A concise statement of the reasons for objecting to the action;
- ✓ What type of relief you are seeking; and
- ✓ The name, address and telephone number of any person who may be expected to appear on behalf of the facility

**YOUR APPEAL MAY BE DENIED OR DISMISSED IF THE REQUEST IS INCOMPLETE OR NOT FILED WITH DHA WITHIN THE 10-DAY APPEAL TIME.**

Please note that according to Wis. Stat. § 50.03(5g)(c)1.c., if you file an appeal, then payment of any forfeiture is due within 10 days after you receive the final decision in the case after exhaustion of administrative review.

### **NOTICE OF REVISIT FEE**

According to Wis. Stat. § 50.03(5g)(cm), if the Department imposes a sanction on, or takes other enforcement action against a community-based residential facility for violation of this subchapter

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or rules promulgated under it, and the Department subsequently conducts an onsite inspection to review the facility's action to correct the violation(s), the Department may impose a \$200 inspection fee on the community-based residential facility.

On June 21, 2024, a verification visit was concluded at Bay Harbor Memory Care Assisted Living of Madison by the Division of Quality Assurance, Bureau of Assisted Living, to determine if the violation(s) contained in Statement of Deficiency (SOD) #MXVF11 were corrected. **Therefore, an inspection fee of \$200 is being assessed.**

Please send a check or money order in the amount of \$200 made payable to "Division of Quality Assurance" and send it to:

Division of Quality Assurance  
Bureau of Assisted Living  
Southern Regional Office  
Room 455  
PO Box 2969  
Madison, WI 53701-2969

The revisit fee is due within ten (10) days of receipt of this Notice. Failure to submit this revisit fee will result in additional department action against Bay Harbor Memory Care Assisted Living of Madison. There are no appeal rights for revisit fees.

### POSTING OF NOTICES

According to Wis. Admin. Code DHS §§ 83.13(3)(a) and 83.14(2)(h), each facility shall immediately upon receipt post next to its CBRF license, and in a public area that is visually and physically available, any citation/statement of deficiency, notice of revocation, notice of non-renewal, and any other notice of enforcement action. Citations and statements of deficiency shall remain posted for ninety (90) days following receipt. Notices of revocation, non-renewal, and other notices of enforcement action shall remain posted until a final determination is made.

Therefore, the license shall immediately post this Notice and Order letter and it shall remain posted until a final determination is made.

\* \* \*

If you have questions about this letter, please contact Hillary Holman, Assisted Living Regional Director, at (608) 266-8339.

Sincerely,

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Bay Harbor Memory Care Assisted Living of Madison

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A handwritten signature in black ink, appearing to read "Kenneth Brotheridge". The signature is fluid and cursive, with a long horizontal line extending from the end.

Kenneth Brotheridge, Assisted Living Director  
Bureau of Assisted Living  
Division of Quality Assurance

Enclosure  
KB/MSE