

Report on Examination

of

Penney Retirement Community, Inc.

Penney Farms, Florida

as of

December 31, 2018



**FLORIDA OFFICE OF
INSURANCE REGULATION**

Contents

Scope of Examination	1
Company History.....	1
Summary of Findings	2
Summary of Recommendations.....	10
Conclusion	12

SCOPE OF EXAMINATION

The Florida Office of Insurance Regulation (“Office”), Life & Health Financial Oversight unit, conducted a routine examination of Penney Retirement Community, Inc., pursuant to Section 651.105, Florida Statutes. The objective of the examination was to determine the extent of compliance with the provisions of Chapter 651, Florida Statutes, and Rule Chapter 69O-193, Florida Administrative Code. The scope period of the examination was July 1, 2012, through December 31, 2018.

COMPANY HISTORY

Penney Retirement Community, Inc., a Florida not-for-profit corporation was granted a certificate of authority by the Office to offer continuing care contracts on February 23, 1996. Penney Retirement Community operates a continuing care retirement community facility located in Penney Farms, Florida.

Penney Retirement Community operates on a July 1st to June 30th fiscal year. As of June 30, 2018, Penney Retirement Community reported: 366 Continuing Care Units consisting of 291 Independent Living Units and 75 Assisted Living Units; and 40 Skilled Nursing Units. (all designated as Community Beds). As of that same date, 509 individuals were reported residing at Penney Retirement Community pursuant to a continuing care agreement.

Penney Retirement Community is self-managed and does not utilize an individual or entity to perform the functions of a “manager” or “management company”, as defined by Rule 69O-193.002(13), Florida Administrative Code (2018).

SUMMARY OF FINDINGS

The following is a summary of findings. The findings are discussed in more detail in the pages that follow with recommendations beginning on page 10.

CANCELATIONS AND REFUNDS

Penney Retirement Community provided a list of 281 continuing care contracts canceled during the scope period of the examination. A sample of 65 contract cancelations was selected and reviewed to verify the amount of the refund due, if any, and whether refunds were properly issued. Of the 65 cancelations selected for review, 41 were eligible for refunds.

Finding:

Section 651.055(1)(h), Florida Statutes, provides in part that the continuing care contract provide the terms governing the refund of any portion of the entrance fee. Section 651.055(1)(i), Florida Statutes, provides that the contract states the terms under which a contract is canceled by the death of the resident.

Penney Retirement Community failed to issue a refund in accordance with the terms of the continuing care contract, as required by Section 651.055(1)(i), Florida Statutes. The contract cancelation was due to the death of the resident. Penney Retirement Community timely issued a refund in the amount of \$39,600. However, upon review of the continuing care contract and related documentation during the examination, the correct amount calculated and due as a refund was an amount of \$40,700 - a refund shortage of \$1,100.

Upon notification by the Office and review by Penney Retirement Community an additional \$1,100 refund was promptly issued.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Penney Retirement Community provided a list of 275 continuing care contracts executed during the scope period of the examination. A sample of 61 transactions was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

Finding:

Section 651.055(2), Florida Statutes, provides in pertinent part that a resident has the right to rescind a continuing care contract within seven (7) days after executing the contract. During this rescission period the resident's funds must be held in an escrow account unless the resident requests the provider hold and not deposit the check during the seven-day period, pursuant to Section 651.033(3)(c), Florida Statutes.

In 28 instances, Penney Retirement Community failed to hold and not deposit residents' checks for the seven-day rescission period of the continuing care contract, in accordance with Section 651.055(2), Florida Statutes. In lieu of depositing funds into an escrow account, the residents requested Penney Retirement Community to hold and not deposit their checks for the seven-day rescission period of the contract. In all instances, checks were deposited prior to the conclusion of the seven-day rescission period of the continuing care contract.

REQUIRED DISCLOSURES

Penney Retirement Community provided a list of 275 continuing care contracts executed during the scope period of the examination. A sample of 61 transactions was selected and reviewed for compliance with Sections 651.055(4), 651.091(3), and 651.091(4), Florida Statutes.

Finding 1:

Section 651.055(4), Florida Statutes, provides that before the transfer of any money or other property to a provider by or on behalf of a prospective resident, the provider shall present a typewritten or printed copy of the contract to the prospective resident and all other parties to the contract. The provider shall secure a signed, dated statement from each party to the contract certifying that a copy of the contract with the specified attachment was received.

In four instances, Penney Retirement Community failed to provide a typewritten or printed copy of the continuing care contract to the prospective residents prior to the transfer of any money or other property, as required by Section 651.055(4), Florida Statutes.

<u>Disclosure Document Receipt Date (included a copy of the contract)</u>	<u>Date Funds Transferred</u>
12/27/2016	12/20/2017
2/27/2017	2/22/2017
1/9/2018	12/14/2017
9/22/2018	9/21/2018

FINDING 2:

Section 651.091(3), Florida Statutes, provides in part that before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of specific disclosure documents to the prospective resident or his or her legal representative.

In five instances, Penney Retirement Community failed to provide to the prospective resident the required disclosure documents, pursuant to Section 651.091(3), Florida Statutes. In all five instances, residents were not provided with the then current copy of the required disclosures prior to entering into a contract to furnish continuing care.

Date Prospective Resident
Provided Disclosure Documents

8/21/2001
10/12/2004
12/07/2006
3/25/2008
8/01/2013

Date Prospective Resident
Signed Continuing Care Contract

5/15/2013
12/27/2012
1/02/2017
8/01/2012
12/23/2015

Finding 3:

Section 651.091(3)(h), Florida Statutes (2018), requires the provider to include as a required disclosure document, a copy of Section 651.071, Florida Statutes, entitled “Contracts as preferred claims on liquidation or receivership.”

In three instances, Penney Retirement Community failed to include as a required disclosure, a copy of Section 651.071, Florida Statutes, as required by Section 651.091(3)(h), Florida Statutes (2018). Specifically, disclosure documents labeled 01/2014, 07/2017, 07/2018, did not contain a copy of Section 651.071, Florida Statutes. The examination noted these disclosure documents were utilized in 57 transactions with individuals that executed a continuing care contract.

Finding 4:

Section 651.091(3), Florida Statutes, provides in part that before entering into a contract to furnish continuing care, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, and provide copies of specific disclosures to the prospective resident or his or her legal representative. Section 651.091(3)(b), Florida Statutes, requires a concise summary of the last examination report issued by the Office as a required disclosure.

Penney Retirement Community failed to provide in three versions of its disclosure documents a concise summary of the last Market Conduct Examination Report issued by the Office, as required by Section 651.091(3)(b), Florida Statutes. The disclosure document

labeled 1/2014, 07/2017, and 07/2018 failed to include a concise summary of the Market Conduct Examination Report that was issued by the Office on January 16, 2013. Penney Retirement Community did include in these versions of its disclosure documents information pertaining to the last Financial Examination Report that was issued by the Office on November 18, 2013.

Finding 5:

Section 651.091(4), Florida Statutes, provides in pertinent part that a true and complete copy of the full disclosure document to be used must be filed with the Office before use.

Penney Retirement Community failed to file two versions of its Section 651.091(3), Florida Statutes, disclosure documents with the Office prior to use, as required by Section 651.091(4), Florida Statutes. The disclosure document versions labeled 01/2012 and 01/2014 each contained changes to the Plans for Expansion which were different from the disclosure documents previously filed with the Office. Neither version was filed with the Office prior to use.

WAIT LIST CONTRACTS

Penney Retirement Community provided a list of 206 Wait List contracts executed during the scope period of the examination. A sample consisting of 34 transactions was selected and reviewed for compliance with Sections 651.022(2)(g) and 651.033(4), Florida Statutes, and Rule 69O-193.018, Florida Administrative Code.

Finding:

Section 651.022(2)(g), Florida Statutes, provides in pertinent part that Wait List contract forms be filed and approved by the Office prior to use.

In 31 instances, Penney Retirement Community utilized two Wait List contracts “PPL-01-26-11” and “PPL-2014” that were not approved by the Office, as required by Section 651.022(2)(g), Florida Statutes. Specifically, 24 wait list contracts were executed on the form “PPL-01-26-11” and the remaining 7 wait list contracts were executed on the form “PPL-2014”.

Penney Retirement Community submitted Wait List contract “PPL-07-19” to the Office for approval. The Office approved this Wait List contract on July 29, 2019.

NEW FINANCING, ADDITIONAL FINANCING OR REFINANCING

Information was obtained and reviewed related to new financing, additional financing, and refinancing during the scope period of the examination to determine compliance with Section 651.019, Florida Statutes (2018).

Finding:

Section 651.019(2), Florida Statutes (2018), states in pertinent part that the provider shall submit to the Office copies of executed financing documents within 30 days after the closing date.

Penney Retirement Community failed to provide to the Office copies of the executed financing documents within 30 days after the closing date of the transaction, as required by Section 651.019(2), Florida Statutes (2018). Specifically, Penney Retirement Community closed on a financing transaction on July 17, 2017, and the related executed financing documents were submitted to the Office 43 days later on January 19, 2018.

QUARTERLY MEETINGS WITH RESIDENTS

Quarterly meeting minutes, notices to residents, agenda, and meeting dates contained in the Annual Reports filed with the Office during the scope period of the examination were reviewed for compliance with Section 651.085, Florida Statutes.

Finding:

Section 651.085(1), Florida Statutes, provides in pertinent part that the Annual Report required pursuant to Section 651.026, Florida Statutes, shall include the dates on which quarterly meetings with residents were held during the reporting period.

In four instances, Penney Retirement Community failed to accurately report in the Annual Reports filed with the Office the dates on which quarterly meetings with residents were held, as required by Section 651.085(1), Florida Statutes. The examination revealed that in four instances the dates the quarterly meetings were actually held, conflicted and were different than the dates reported in the Fiscal Year 2016, 2017, and 2018 Annual Reports filed with the Office:

<u>Date Meeting Held</u>	<u>Date Meeting Held per Annual Report</u>
6/1/2016	6/4/2016
9/7/2016	6/7/2016
1/4/2017	1/20/2017
None held	1/3/2018

AMENDED BYLAWS

Minutes from the Board of Directors meetings held during the scope period of examination were reviewed for items of significance.

Findings:

In two instances, Penney Retirement Community amended its bylaws and failed to timely notify the Office of such amendments. Penney also failed to file pertinent documents within five business days, as required by Rule 69O-193.058, Florida Administrative Code. In one instance, the bylaws were amended effective October 25, 2013; the Office was notified of the amendment approximately 91 days later on January 24, 2014. In the second instance, the bylaws were amended effective October 23, 2015; documentation notifying the Office of the change has not been submitted to the Office. In addition, Penney Retirement Community failed to disclose in their December 31, 2015, Quarterly Report interrogatory responses filed with the Office, the above-mentioned October 23, 2015, bylaws amendment.

MINIMUM LIQUID RESERVE

As of June 30, 2018, Penney Retirement Community's Minimum Liquid Reserve (MLR) was funded in accordance with Section 651.035, Florida Statutes.

SUMMARY OF RECOMMENDATIONS

CANCELATIONS AND REFUNDS

The Office recommends Penney Retirement Community ensure that refunds are issued in accordance with Section 651.055(1), Florida Statutes.

REQUIRED ESCROW DEPOSITS OR WAIVERS

The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure that during the seven-day rescission period of the continuing care contract, resident funds are handled in accordance with Section 651.055(2), Florida Statutes.

REQUIRED DISCLOSURES

Finding 1. The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure that before the transfer of any money or other property by or on behalf of a prospective resident, a type-written or printed copy of the contract is presented to the prospective resident and all other parties to the contract. The Office also recommends that Penney Retirement Community ensure that a signed and dated statement from each party to the contract certifying that a copy of the contract with the specified attachment was received is obtained, in accordance with Section 651.055(4), Florida Statutes.

Findings 2, 3, and 4. The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure all disclosures required by Section 651.091(3)(a) – (k), Florida Statutes, are provided to prospective residents and/or their legal representatives in their current form prior to entering into a continuing care contract. It is also recommended that documentation be obtained to demonstrate the required disclosures were provided.

Finding 5. The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure that copies of its disclosure documents are filed with the Office before use, in accordance with Section 651.091(4), Florida Statutes, and documentation is maintained to demonstrate the disclosure documents have been filed.

WAIT LIST CONTRACTS

The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure Wait List contracts are submitted and approved by the Office prior to use, in accordance with Section 651.022(2)(g), Florida Statutes.

NEW FINANCING, ADDITIONAL FINANCING OR REFINANCING

The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure that all notifications and executed documents related to new financing, additional financing, or refinancing are submitted to the Office, in accordance with the provisions of Sections 651.019(1) and (2), Florida Statutes.

QUARTERLY MEETINGS WITH RESIDENTS

The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure the actual dates on which the quarterly meetings with residents are held, are reported in the Annual Reports filed with the Office, in accordance with Section 651.085(1), Florida Statutes.

AMENDED BYLAWS

The Office recommends Penney Retirement Community establish adequate procedures and controls to ensure that any changes to its organizational documents are timely reported to the Office, in accordance with Rule 69O-193.058, Florida Administrative Code.

CONCLUSION

This Final Report of Examination is based upon the information provided to the Office by Penney Retirement Community and additional research conducted by the Office.

The following individuals from the Office of Insurance Regulation participated in the examination: Bernie L. Stoffel, Senior Management Analyst Supervisor and Alicia Thompkins-Perryman, APIR, Financial Specialist.

Respectfully submitted,



Carolyn M. Morgan, APIR
Director, Life & Health Financial Oversight
Florida Office of Insurance Regulation