

Report on Examination

of

Cypress Cove at HealthPark Florida, Inc.

Fort Myers, Florida

as of

March 31, 2019



CONTENTS

Scope of Examination	1
Company History	1
Summary of Findings	2
Minimum Liquid Reserve.....	6
Summary of Recommendations	7
Conclusion	9

SCOPE OF EXAMINATION

The Florida Office of Insurance Regulation (“OIR”), Life & Health Financial Oversight unit, conducted a routine examination of Cypress Cove at HealthPark Florida, 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 October 1, 2012 through March 31, 2019.

COMPANY HISTORY

Cypress Cove at HealthPark Florida, a Florida not-for-profit corporation was granted a certificate of authority by the OIR to offer continuing care contracts on July 23, 1997. Cypress Cove at HealthPark Florida operates a continuing care retirement community facility located in Fort Myers, Florida. Cypress Cove at HealthPark Florida is controlled by Lee Memorial Hospital, Inc., d/b/a Lee Healthcare Resources and is managed by Lee F.P., Inc., an affiliated entity.

Cypress Cove at HealthPark Florida operates on the fiscal year October 1 through September 30. As of September 30, 2019, Cypress Cove at HealthPark Florida reported in its Annual Report filed with the OIR: 437 Continuing Care Units consisting of 377 Independent Living Units and 60 Assisted Living Units; 64 Skilled Nursing Units consisting of 43 Sheltered Beds and 21 Community Beds; and 28 Rental Units. As of that date, there were 586 individuals reported residing at the facility: 535 pursuant to a continuing care contract; 30 pursuant to a rental agreement; and 21 skilled nursing community patients (non-CCRC).

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 8.

REQUIRED ESCROW DEPOSITS OR WAIVERS

Cypress Cove at HealthPark Florida provided a list of 496 continuing care contracts executed during the scope period of the examination. A sample of 58 transactions was selected and reviewed for compliance with Section 651.055(2), Florida Statutes.

Finding:

Section 651.055(2), Florida Statutes, provides that a resident has the right to rescind a continuing care contract within seven days after executing the contract and 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.

Cypress Cove at HealthPark Florida failed to deposit and maintain resident funds in an escrow account or obtain authorization from the resident to hold and not deposit the check for the 7-day rescission period of the continuing care contract, as required by Section 651.055(2), Florida Statutes. The examination revealed that there was not a statutory escrow account established to handle resident funds for the 7-day rescission period of the continuing care contract nor was documentation provided to demonstrate that the residents requested their check be held and not deposited for the rescission period of the contract.

Subsequent Event: During this examination process Cypress Cove at HealthPark Florida filed with the OIR an amendment to its escrow agreement and a form titled "Residents Request that Provider

Hold Entrance Fees Check”. The OIR approved the amendment to the escrow agreement on July 21, 2021. The “Residents Request that Provider Hold Entrance Fees Check” form was approved by the OIR on January 2, 2020.

REQUIRED DISCLOSURES

Cypress Cove at HealthPark Florida provided a list of 496 continuing care contracts executed during the scope period of the examination. A sample of 58 transactions was selected and reviewed for compliance with Sections 651.055(4) and 651.091(4), Florida Statutes, as well as, Section 651.091(3), Florida Statutes (2018).

Findings:

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.

Finding 1:

In four instances, Cypress Cove at HealthPark Florida failed to provide a typewritten or printed copy of the contract to the prospective resident and all other parties to the contract prior to the transfer of any money or other property, as required by Section 651.055(4), Florida Statutes. In each instance, the document acknowledging receipt of a copy of the contract was dated after the transfer of money to Cypress Cove at HealthPark Florida.

<u>Date Funds Received</u>	<u>Disclosure Document Receipt Date</u>
12/13/2013	12/18/2013
2/24/2014	3/1/2014
1/20/2016	2/2/2016
7/10/2017	7/17/2017

Finding 2:

In 30 instances, Cypress Cove at HealthPark Florida failed to secure a signed, dated statement from the prospective residents certifying that a copy of the contract was received prior to the transfer of any money or other property, as required by Section 651.055(4), Florida Statutes. In each instance Cypress Cove at HealthPark Florida only secured the written certification statement from one of the two prospective residents.

Finding 3:

Section 651.091(3), Florida Statutes (2018), 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 the specific disclosure documents to the prospective resident or his or her legal representative.

In 30 instances, Cypress Cove at HealthPark Florida failed to provide copies of the required disclosures to the prospective residents, as required by Section 651.091(3), Florida Statutes (2018). In each instance only one of the two prospective residents signed and dated the disclosure document receipt acknowledging receipt of the required disclosures.

Forms

Cypress Cove at HealthPark Florida provided a list of 496 continuing care contracts executed during the scope period of the examination. A sample of 58 transactions was selected and reviewed for compliance with Section 651.055(1), Florida Statutes.

Finding:

Section 651.055(1), Florida Statutes, requires each continuing care contract and each addendum

be submitted to and approved by the OIR before its use in this state. Thereafter, no other form of contract shall be used by the provider until it has been submitted to and approved by the OIR.

In four instances, Cypress Cove at HealthPark Florida utilized a form titled “Addendum to Residency and Care Agreement Relating to Non-Qualifying Resident 22088998.1” that was not approved by the OIR, as required by Section 651.055(1), Florida Statutes.

Subsequent Event: On May 24, 2019, Cypress Cove at HealthPark Florida submitted to the OIR a form titled “Addendum to Residency and Care Agreement Relating to Non-Qualifying Resident Form NQO Addendum Rev. 05/19” for approval. The OIR approved the form on May 24, 2019.

Advertising

Advertising was reviewed for compliance with Section 651.095, Florida Statutes and Rules 69O-193.038 and 69O-193.040, Florida Administrative Code.

Finding:

Rule 69O-193.038(6)(b)1., Florida Administrative Code, provides that an advertisement shall not refer to a sponsor, holding company, or subsidiary of a continuing care retirement community unless it fully discloses that it is a separate entity and is not responsible for the financial condition or contractual obligations of the continuing care retirement community.

Cypress Cove failed to disclose in advertisements that its sponsor, Lee Memorial Hospital, Inc., d/b/a Lee Healthcare Resources, is a separate entity and is not responsible for the financial condition or contractual obligations of Cypress Cove at HealthPark Florida, as required by Rule 69O-193.038(6)(b)1., Florida Administrative Code. The examination noted 110 instances in which the sponsor was identified, and this disclosure was not made:

<u>Fiscal Year</u>	<u>Instances</u>	<u>Fiscal Year</u>	<u>Instances</u>
2015-2016	31	2017-2018	18
2016-2017	54	2018-2019	7

Unfair Trade & Deceptive Practices

Finding:

Pursuant to Section 651.106(15), Florida Statutes, the certificate of authority of a continuing care provider may be suspended or revoked if the OIR finds that the provider in the conduct of business under the license, is engaging in unfair methods of competition or in unfair or deceptive acts or practices prohibited under Part IX of Chapter 626, Florida Statutes, the Unfair Insurance Trade Practices Act. Section 626.9541(1)(j), Florida Statutes, of the Unfair Insurance Trade Practices Act, provides that a provider shall maintain a complete record of all complaints received since the date of the last examination and defines “complaint” as any written communication primarily expressing a grievance.

Cypress Cove at HealthPark Florida failed to maintain a complete record of all complaints received since the date of the last examination, as required by Section 626.9541(1)(j), Florida Statutes. The initial response to item 10 of the Unfair and Deceptive Trade Practices Questionnaire pertaining to if a complete record of all complaints received since the date of the last examination was maintained was “yes”. Subsequent clarification regarding this response was received via email dated April 22, 2019, which stated: “For clarification, we have received no formal complaints/grievances since the date of the last examination.” During the course of the examination, two instances were noted wherein written complaints were received by Cypress Cove at HealthPark Florida since the last report of examination was issued.

Minimum Liquid Reserve

As of June 30, 2019, Cypress Cove at HealthPark Florida’s Minimum Liquid Reserve (MLR) was funded in accordance with Section 651.035, Florida Statutes (2018).

SUMMARY OF RECOMMENDATIONS

REQUIRED ESCROW DEPOSITS OR WAIVERS

The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure that during the 7-day rescission period of the continuing care contract resident funds are deposited and maintained in a statutory escrow account or upon the request of the resident, their check is held and not deposited, in accordance with Section 651.055(2), Florida Statutes.

REQUIRED DISCLOSURES

Findings 1 and 2: The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure that prior to the transfer of any money or other property, a copy of the contract is presented to the prospective resident and all other parties to the contract and a signed and dated statement is secured from each party to the contract certifying that a copy of the contract with the specified attachment was received, in accordance with Section 651.055(4), Florida Statutes.

Finding 3: The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure copies of the disclosure documents are provided to the prospective resident or their legal representative and written acknowledgement of receipt is obtained, in accordance with Section 651.091(3), Florida Statutes.

Forms

The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure that forms requiring statutory approval are submitted to and approved by the

OIR before use in this state, in accordance with Section 651.055(1), Florida Statutes.

ADVERTISING

The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure advertising complies with the requirements of Section 651.095, Florida Statutes and Rule 69O-193.038, Florida Administrative Code.

UNFAIR AND DECEPTIVE TRADE PRACTICES

The OIR recommends Cypress Cove at HealthPark Florida establish adequate procedures and controls to ensure a complete record of all the complaints received since the date of the last examination is maintained, in accordance with Section 626.9541(1)(j), Florida Statutes.

CONCLUSION

This Final Report of Examination is based upon the information provided to the OIR from Cypress Cove at HealthPark Florida, Inc., and additional research conducted by the OIR.

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

Respectfully submitted,



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