

**Report of Examination of**  
**Guardian Elder Care at Tyrone I, LLC**  
**d/b/a Epworth Healthcare and Rehabilitation Center**  
**Brockway, Pennsylvania**

**As of December 31, 2019**

For Informational Purposes Only

# Guardian Elder Care at Tyrone I, LLC

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Harrisburg, Pennsylvania  
June 28, 2022

Honorable Melissa L. Greiner  
Deputy Insurance Commissioner  
Commonwealth of Pennsylvania  
Insurance Department  
Harrisburg, Pennsylvania

Dear Madam:

In accordance with instructions contained in Examination Warrant Number, 19-273556932-CP-2, dated September 14, 2020, and in accordance with provisions of the Pennsylvania Continuing Care Provider Registration and Disclosure Act (“the Act”), as cited in 40 P.S. § 3219, an examination was made of

### **Guardian Elder Care at Tyrone I, LLC**

a Pennsylvania domiciled continuing-care retirement community (“CCRC”), hereinafter referred to as the “Provider.”

A report of this examination is hereby respectfully submitted.

### **SCOPE OF EXAMINATION**

The Pennsylvania Insurance Department (“Department”) has performed an examination of the Provider which was last examined as of December 31, 2015. This examination covered the period from January 1, 2016 through December 31, 2019.

Work programs employed in the performance of this examination were designed to comply with the standards promulgated by the Department.

The format of this report is consistent with the current practices of the Department and is limited to a description of the Provider, a discussion of key financial items that are specific regulatory concern, and a disclosure of other significant regulatory information.

The objective of this examination was to determine the extent of the Provider’s compliance with the Act and 31 Pa. Code § 151 (“the Regulations”).

For the fiscal years ending December 31, 2016, through December 31, 2018, the Provider’s financial statements were audited by the certified public accounting firm of Clyde, Ferraro & Co., LLP (“Clyde Ferraro”). Clyde Ferraro issued unmodified opinions on the Provider’s year-end financial statements based on generally accepted accounting principles.

For the fiscal year ending December 31, 2019, the Provider’s financial statements were audited by the certified public accounting firm (“CPA”) of BKD, LLP. The Provider is a member of a group of ten entities, the group name being Guardian Elder Care – The Guardian CCRC Group (“Group”). The CPA issued its independent auditors report as a combined financial statement for all members of the Group. The Group consists of the following CCRCs:

## **Guardian Elder Care at Tyrone I, LLC**

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Guardian Elder Care at Tyrone I, LLC (Provider)  
Jefferson Hills Manor, LLC  
Mulberry Square Elder Care and Rehabilitation Center, LLC  
Brookmont Healthcare Center, LLC  
North American Medical Centers, LLC  
Guardian Elder Care at Nanticoke II, LLC  
Brookline at Mifflintown, LLC  
Guardian Elder Care at Taylor, LLC  
Curwensville Nursing Home, LLC  
Guardian Elder Care at Mountain Top I, LLC

The CPA issued an unmodified opinion based on generally accepted accounting principles. Relevant work performed by the CPA, during its annual audit of the Provider, was reviewed during the examination and incorporated into the examination workpapers.

The Group's audited combined financial statements for year ending December 31, 2019, contained a Note 15, titled Management's Consideration of Going Concern Matters. This note presented various concerns by the CPA about the ability of the Group to continue as a going concern.

### **HISTORY**

The Provider is a for profit, domestic limited liability company, formed on September 24, 2010. On January 1, 2011, the Provider took possession of Epworth Manor from Asbury Atlantic, Inc. Asbury Atlantic operated the facility under its own Certificate of Authority ("COA").

On January 3, 2011, the Provider was granted its own COA to operate as a CCRC by the Department.

### **DESCRIPTION OF FACILITY**

The Provider is located on a 7.5 acre campus in Tyrone, Pennsylvania. The Provider offers a mix of independent living, rehabilitation, personal care services and skilled nursing care on one campus. The population of the independent living units consists of both CCRC residents (under a Residency Agreement), and non-CCRC residents (under a Rental/Lease Agreement) who were not considered in the scope of the examination.

The campus includes a two-story building containing a 54-bed personal care unit and 10 independent living apartment units. A separate four-story building is used as a 102-bed skilled nursing facility.

As of December 31, 2019, the independent living units had a resident population of 2 residents who were under an active CCRC residency agreement, and 7 residents who were under a rental/lease agreement. The personal care facility's population was 40 residents, and the skilled nursing facility's population was 93 residents. The census of the skilled nursing facility changes daily.

## FEES AND SERVICES

As of December 31, 2019, the entrance fee was \$15,000 per unit for single and/or double occupancy. The entrance fee does not increase in the event of double occupancy. There are three entrance fee options available. Under Option A, the entrance fee is 100% refundable at any time. Under both Options B and C, the entrance fee is subject to an amortization schedule of sixty months. The entrance fee is amortized at an approximate monthly rate of 1.667%. After five years, the entrance fee would be fully amortized and there would be no refund due to the resident. Under any of the entrance fee options, utilized refunds would be subject to adjustment or reduction due to amounts being owed to the community.

In addition to the entrance fee, residents are charged a monthly service fee. The fees for the existing units range from \$675 to \$975 for single and/or double occupancy. The monthly fee shall not increase in the event of double occupancy. The monthly fee charged is determined by the type of unit, and the entrance fee refund option chosen by the resident.

Some of the services continuing care residents are entitled to include an emergency alert system, access to cable television and telephone service, security personnel, grounds and common area maintenance, limited transportation, social and recreational activities, chapels, solariums, fitness room, billiards room, libraries, craft room, and utilities including heat and air-conditioning. Other services are available at an additional charge.

## REFUND POLICY

During the examination period, there were four CCRC agreements terminated. All four agreements were selected for review of applicable refunds due to the resident or the resident's estate. During the review of the terminated agreements, the examiner noted that two of the terminated agreement's refunds were not due because the entrance fees had been fully amortized. For the two remaining terminated agreements, the examiner noted that there were partial refunds of entrance fees due for each. The examiner made an independent calculation of each refund due and noted that one of the refunds was calculated and issued in accordance with the respective resident agreement. The examiner noted that the other partial refund of entrance fee due was calculated and issued incorrectly due to the amortization period being two months longer than the term of the Resident Agreement.

***It is recommended that any refund of an entrance fee be calculated and issued correctly in accordance with the provisions of the applicable Resident Agreement and 40 P.S. § 3214(a)(8).***

The following describes the Provider's refund policy which is in compliance with the Act.

## REFUND DURING THE RECISSION PERIOD

All entrance fee payments shall be refunded within sixty days to the resident if a resident rescinds the Residency Agreement within seven days of signing the Residency Agreement by signing the Notice of Right to Rescind and delivering it to Guardian Elder Care, LLC.

In the event of termination by the Provider, a full refund of any entrance fee payments shall be made to the resident.

### **REFUND AFTER RECISSION PERIOD BUT PRIOR TO OCCUPANY**

After the lapse of the seven-day rescission period, but prior to occupancy, if the resident is precluded from occupying the unit because of death, injury, illness, incapacity, etc., the entrance fee paid would be refunded, without interest. The resident shall pay back the Provider for any expenses that the Provider incurred at the resident's request (such as, for example, structural changes, upgrades, additions, etc). These expenses may be deducted from the refund of the entrance fee.

### **REFUND AFTER OCCUPANY**

In the event of termination after occupancy for any reason, the entrance fee will be refunded in accordance to the plan the resident selected with the Residency Agreement. No interest will accrue on any amounts including the entrance fee.

Plan A will refund the amount of the entrance fee in full without interest. The Provider reserves the right to reduce the amount refundable by any amounts remaining due from the resident.

Plans B and C entrance fee refunds are subject to a five-year amortization schedule. The entrance fee is amortized over a sixty-month period at a rate of 1.667% per month of occupancy. After sixty months of occupancy, the entrance fee is fully amortized, and no refund would be due.

### **REFUND WHERE TWO RESIDENTS EXECUTE THE AGREEMENT**

If one of two residents covered under the agreement remains in the residence after the other resident's death or relocation from the Provider's facility, no refund of the entrance fee will be payable. In situations of double occupancy, a full refund will be made when the last surviving co-resident vacates and surrenders the living unit, and the agreement has been terminated. As long as the resident or a co-resident continues to occupy any living accommodation, no refund shall be paid until the death, permanent transfer, discharge or voluntary departure outside the community.

### **CONDITIONS AND DUE DATE FOR REFUND PAYMENTS**

Prior to occupancy, all applicable refunds will be made after termination and within sixty days of a resident's request. After occupancy, all applicable refunds will be made no later than sixty days following the date payment is received of an entrance fee from a replacement resident for the residence designated under the agreement.

## MANAGEMENT AND CONTROL

### BOARD OF DIRECTORS

The Provider does not have a Board of Directors and is managed exclusively by the managers of the LLC per an operating agreement. As of December 31, 2019, the managers were Raymond Calhoun, Peter Varischetti, and Nicholas Varischetti. The Provider's campus is managed on a daily basis by a Nursing Home Administrator.

### OFFICERS

As of December 31, 2019, the following officers were appointed and serving in accordance with the Provider's operating agreement:

| Name                 | Title                 |
|----------------------|-----------------------|
| Barmi Akbar          | President             |
| Peter Varischetti    | Treasurer             |
| Michael Herald       | Secretary             |
| Nicholas Varischetti | Vice President        |
| Raymond Calhoun      | Chairman of the Board |

## CORPORATE RECORDS

### CERTIFICATE OF ORGANIZATION

The Provider was issued a Certificate of Organization ("Certificate") to operate as a limited liability company in Pennsylvania on September 24, 2010. There have been no changes to the Provider's Certificate during the current examination period ending December 31, 2019.

### ANNUAL DISCLOSURE STATEMENT

The Provider's 2019 Annual Disclosure Statement ("Disclosure Statement") was reviewed for compliance with the Act and Regulations, specifically § 151.7 and § 151.9. The examiner found that the 2019 Disclosure Statement was not in compliance with all information required by the Act and the Regulations, as described below.

The examiner noted that the Disclosure Statement does not contain a statement as to whether the Provider is a partnership, corporation, or other type of legal entity in accordance with 40 P.S. § 3207(a)(1).

***It is recommended that the Disclosure Statement include a statement as to whether the Provider is a partnership, corporation, or other type of legal entity in accordance with 40 P.S. § 3207(a)(1).***

The examiner noted that the Disclosure Statement Summary Page does not contain a sample of the fees charged to residents based upon occupancy of a one-bedroom unit by one and

two persons, including entrance and periodic fees, in numbered paragraph form, in accordance with 31 Pa. Code § 151.7(c)(8).

***It is recommended that the Disclosure Statement Summary Page include a sample of the fees charged to residents based upon occupancy of a one-bedroom unit by one and two persons, including entrance and periodic fees, in numbered paragraph form, in accordance with 31 Pa. Code § 151.7(c)(8).***

The examiner noted that the Disclosure Statement does not fully disclose the officers of the Provider in accordance with 40 P.S. § 3207(a)(2).

***It is recommended that the Disclosure Statement fully disclose the officers of the Provider in accordance with 40 P.S. § 3207(a)(2).***

The examiner noted that the Disclosure Statement is missing the probable or anticipated costs to the Provider from its related party transactions, in accordance with 40 P.S. § 3207(a)(3)(iii)(B)(I).

***It is recommended that the Disclosure Statement include the probable or anticipated costs to the Provider from related party transactions, in accordance with 40 P.S. § 3207(a)(3)(iii)(B)(I).***

***It is further recommended that the related party entities disclosed be correctly named in order to correlate with the respective agreements.***

The examiner noted that the attestation contained in the Disclosure Statement did not identify the required persons in accordance with 40 P.S. § 3207(a)(3)(iii)(C)(I)&(II).

***It is recommended that the attestation contained in the Disclosure Statement specify the officers, managers, and owners/members in accordance with 40 P.S. § 3207(a)(3)(iii)(C)(I)&(II).***

The examiner noted that the Disclosure Statement Summary did not contain an accurate statement of the current resident population in accordance with 31 Pa. Code § 151.7(c)(7).

***It is recommended that the Disclosure Statement Summary contain an accurate statement of the current resident population in accordance with 31 Pa. Code § 151.7(c)(7).***

The examiner noted that the Disclosure Statement does not include a description of the security deposit required to be paid by the resident upon occupancy in accordance with 40 P.S. § 3207(a)(7).

***It is recommended that the Disclosure Statement include a description of the security deposit required to be paid by the resident upon occupancy in accordance with 40 P.S. § 3207(a)(7).***

The examiner noted the Provider did not obtain and file the required Biographical Affidavits with the Department in accordance with 31 Pa. Code § 151.7(e)(1).

***It is recommended that the Provider obtain and file the required Biographical Affidavits with the Department in accordance with 31 Pa. Code § 151.7(e)(1).***



## RESIDENT AGREEMENT

The Provider's 2019 Resident Agreement was reviewed for compliance with the Act, 40 P.S. § 3214, and the Regulations, specifically § 151.8 and § 151.9. The 2019 Resident Agreement was not in compliance with all information required by the Act and the Regulations.

The examiner noted that the Resident Agreement did not fully disclose the manner and circumstances by which any change in fees or charges or scope of care or services may be effective in accordance with 40 P.S. § 3214(a)(10).

***It is recommended that the Resident Agreement fully disclose the manner and circumstances by which any change in fees or charges or scope of care or services may be effective in accordance with 40 P.S. § 3214(a)(10).***

The examiner noted that the Resident Agreement did not contain the provision whereby the Provider agrees that the resident shall not be liable to a health care provider for services rendered under a resident's agreement in accordance with 31 Pa. Code § 151.8(d).

***It is recommended that the Resident Agreement include the resident is not liable provision required in accordance with 31 Pa. Code § 151.8(d).***

The examiner noted that a Resident Agreement did not indicate the entrance fee option selected, the appropriate monthly fee, or whether the entrance fee is subject to an amortization schedule in accordance with 40 P.S. § 3214(a)(1).

***It is recommended that the Resident Agreement clearly indicate the entrance fee option selected by the resident, the appropriate monthly fee, and whether the entrance fee is subject to an amortization schedule in accordance with 40 P.S. § 3214(a)(1).***

The examiner noted that the Notice of Right to Rescind contained in the Resident Agreement was blank and did not contain the dates for the required rescission period in accordance with 40 P.S. § 3214(b).

***It is recommended that the Resident Agreement contain a valid Notice of Right to Rescind, showing the dates of the applicable rescission period in accordance with 40 P.S. § 3214(b).***

The examiner noted that the Resident Agreement does not contain a provision for the required security deposits charged to residents in accordance with 40 P.S. § 3214(a)(1).

***It is recommended that the Resident Agreement include a provision for the required security deposits charged to residents in accordance with 40 P.S. § 3214(a)(1).***

The examiner noted that a Resident Agreement contained signatures that were not witnessed, and another agreement was not signed by the co-resident in accordance with 31 Pa. Code § 151.8(b).

***It is recommended that all Resident Agreements be fully executed by all of the appropriate parties, and the signatures be witnessed in accordance with 31 Pa. Code § 151.8(b).***

The examiner noted that a Resident Agreement contained a discrepancy and did not show the correct size and type of the unit occupied in accordance with 40 P.S. § 3214(a).

***It is recommended that the size and type of unit occupied by the resident be clearly specified in the executed Residency Agreement in accordance with 40 P.S. § 3214(a).***

The examiner noted that Residency Agreement, Section 4.2 Amortized Entrance Fee Schedule, is confusing and cannot be understood by a lay person as required by 40 P.S. § 3214 (a).

***It is recommended that Residency Agreement, Section 4.2 Amortized Entrance Fee Schedule, be amended so that it is easily understood by a lay person in accordance with 40 P.S. § 3214(a).***

### **PENDING LITIGATION**

There were pending and potential legal actions known which could have a materially adverse effect on the Provider's financial condition as of the examination date. Due to the Provider Group and related parties being investigated by The Office of the Attorney General of Pennsylvania, and by the United States Department of Health and Human Services Office of the Inspector General, there were pending settlements payable in the aggregate amounts of \$1,012,000 and approximately \$16,000,000 respectively. Subsequently, the settlements were paid in full during the year ended December 31, 2020.

## **FINANCIAL STATEMENTS**

The financial condition of the Provider, as of December 31, 2019, and the results of its operations for the last two years under examination, are reflected in the following statements:

Comparative Statement Balance Sheet;  
Comparative Statement of Operations; and  
Comparative Statement of Cash Flows

The financial information of the Provider that is presented in the following financial statements was obtained from the audited combined financial statements of Guardian Elder Care – The Guardian CCRC Group as of December 31, 2019. There were no changes made to the financial statements as a result of this examination.

For Informational Purposes Only

# Guardian Elder Care at Tyrone I, LLC

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## Comparative Statement Balance Sheet For the Year Ended December 31,

|  | 2019         | 2018         |
|--|--------------|--------------|
| <b>Assets</b>  |              |              |
| <b>Current Assets</b>  |              |              |
| Cash   | \$ 6,543     | \$ 12,074    |
| Funds held for residents   | 53,358       | 83,480       |
| Patient accounts receivable  | 1,124,724    | 1,278,049    |
| Prepaid expenses and other assets  | 90,654       | 144,172      |
| Total current assets   | 1,275,279    | 1,517,775    |
| <b>Property and Equipment</b>  | 931,493      | 999,188      |
| <b>Other Assets</b>  |              |              |
| Statutory liquid reserve   | 20,000       | 20,000       |
| Goodwill, net  | -            | -            |
| Other  | -            | 100          |
| Total other assets   | 20,000       | 20,100       |
| Total assets   | \$ 2,226,772 | \$ 2,537,063 |
| <b>Liabilities and Shareholders' and Members' Equity (Deficit)</b>       |              |              |
| <b>Current Liabilities</b>   |              |              |
| Accounts payable   | \$ 242,508   | \$ 119,167   |
| Accrued payroll and related liabilities                                  | 416,255      | 363,493      |
| Due to affiliates  | 2,948,394    | 1,629,433    |
| Security deposits  | 8,148        | 8,648        |
| Funds held for residents   | 53,358       | 83,480       |
| Settlements payable  | 86,543       | 40,703       |
| Other  | 10,327       | 36,253       |
| Total current liabilities  | 3,765,533    | 2,281,177    |
| <b>Other Liabilities</b>   |              |              |
| Deferred leases  | -            | -            |
| Advance fees   | 18,750       | 29,750       |
| Total other liabilities  | 18,750       | 29,750       |
| Total liabilities  | 3,784,283    | 2,310,927    |
| <b>Shareholders' and Members' Equity (Deficit)</b>                       |              |              |
| Common stock   | -            | -            |
| Paid-in capital and Members' capital                                     | 2,728,364    | 2,728,364    |
| Retained earnings (accumulated deficit)<br>and members' equity (deficit) | (4,285,875)  | (2,502,228)  |
| Total shareholders' and members' equity (deficit)                        | (1,557,511)  | 226,136      |
| Total liabilities and shareholders'<br>and members' equity (deficit)     | \$ 2,226,772 | \$ 2,537,063 |

**Comparative Statement of Operations**  
**For the Year Ended December 31,**

|   | <u>2019</u>                  | <u>2018</u>                  |
|---|------------------------------|------------------------------|
| <b>Patient Service Revenue</b>                        | \$10,549,827                 | \$ 11,486,581                |
| <b>Other Revenue</b>                                  | -                            | 29,098                       |
| Total operating revenue                               | <u>10,549,827</u>            | <u>11,515,679</u>            |
| <b>Operating Expenses</b>                             |                              |                              |
| Salaries and wages                                    | 4,528,775                    | 4,192,024                    |
| Payroll taxes   | 345,008                      | 349,022                      |
| Employee benefits                                     | 681,004                      | 569,758                      |
| Supplies and expenses                                 | 3,675,954                    | 3,644,171                    |
| Repairs and maintenance                               | 83,088                       | 100,182                      |
| Advertising and marketing                             | 8,445                        | 21,836                       |
| Provision for uncollectible accounts                  | -                            | 191,583                      |
| Insurance   | 143,812                      | 109,425                      |
| Real estate taxes                                     | 149,550                      | 146,936                      |
| Total operating expenses                              | <u>9,615,636</u>             | <u>9,324,937</u>             |
| <b>Income (Loss) from Operations Before</b>           |                              |                              |
| <b>Depreciation, Amortization , Rent and Interest</b> | <u>934,191</u>               | <u>2,190,742</u>             |
| <b>Other Expenses</b>                                 |                              |                              |
| Depreciation and amortization                         | 133,274                      | 126,064                      |
| Rent  | 3,190,330                    | 3,133,130                    |
| Interest  | 39,130                       | -                            |
| Total other expenses                                  | <u>3,362,734</u>             | <u>3,259,194</u>             |
| <b>Income (Loss) Before Nonoperating Gains</b>        |                              |                              |
| <b>and Losses</b>                                     | (2,428,543)                  | (1,068,452)                  |
| <b>Nonoperating Gains (Losses)</b>                    | <u>(12,465)</u>              | <u>928</u>                   |
| <b>Net Income (Loss)</b>                              | <u><u>\$ (2,441,008)</u></u> | <u><u>\$ (1,067,524)</u></u> |

# Guardian Elder Care at Tyrone I, LLC

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## Comparative Statement of Cash Flow For the Year Ended December 31,

|  | 2019           | 2018           |
|--|----------------|----------------|
| <b>Operating Activities</b>                            |                |                |
| Net income (loss)                                      | \$ (2,441,008) | \$ (1,067,524) |
| Items not requiring (providing) cash                   |                |                |
| net cash provided by (used in) operating activities:   |                |                |
| Depreciation   | 133,274        | 126,064        |
| Amortization   | -              | -              |
| Amortization of deferred revenue (advance fees)        | (6,000)        | (6,250)        |
| Straight-line rent                                     | -              | -              |
| Change in  |                |                |
| Patient Accounts receivable                            | 153,325        | 209,846        |
| Due to and from affiliates                             | 1,318,961      | (1,828,988)    |
| Prepaid expenses and other assets                      | 53,618         | (4,313)        |
| Accounts payable                                       | 119,048        | 37,063         |
| Accrued expenses and other                             | 72,176         | 97,185         |
| Funds held for residents                               | (30,122)       | 7,614          |
| Net cash provided by (used in) operating activities    | (626,728)      | (2,429,303)    |
| <b>Investing Activities</b>                            |                |                |
| Payments for acquisition of property and equipment     | (61,286)       | (74,732)       |
| Net Cash Provided by (used in) investing activities    | (61,286)       | (74,732)       |
| <b>Financing Activities</b>                            |                |                |
| Net payments to and borrowing from affiliates          | 657,361        | -              |
| Proceeds from refundable advance fees                  | -              | 15,000         |
| Refunds of advance fees                                | (5,000)        | -              |
| Contributed capital                                    | -              | 2,478,164      |
| Net cash provided by (used in) financing activities    | 652,361        | 2,493,164      |
| <b>Increase (Decrease) in Cash and Restricted Cash</b> | (35,653)       | (10,871)       |
| <b>Cash and Restricted Cash, Beginning of Year</b>     | 115,554        | 126,425        |
| <b>Cash and Restricted Cash, End of Year</b>           | \$ 79,901      | \$ 115,554     |

## **NOTES TO FINANCIAL STATEMENTS**

### **STATUTORY MINIMUM LIQUID RESERVE**

**\$20,000**

In accordance with 40 P.S. § 3209, the Provider must establish and maintain a statutory liquid reserve in an amount equal to or exceeding the greater of:

- (1) The total of all principal and interest payments due during the next 12 months on account of any mortgage loan or other long-term financing of the facility;  
or
- (2) Ten percent of the projected annual operating expenses of the facility exclusive of depreciation.

Of the above two requirements the value of (1) is \$0 and the value of (2) is \$18,267. As of December 31, 2019, the Provider had established and reported a reserve of \$20,000 for this purpose. The Provider's current assets meet this requirement.

### **ESCROW ACCOUNT REQUIREMENTS**

The Provider has established an escrow account as required by 40 P.S. § 3212. The Provider did not hold any resident deposits in the account as of December 31, 2019. Should the Provider begin to accept entrance fee deposits from CCRC residents prior to the residents' right to take occupancy of the designated unit, the Provider must then establish an escrow account with a bank as required by 40 P.S. § 3212.

### **SUBSEQUENT EVENTS**

The Group became a party to a lease financing arrangement with related parties to collectively obtain up to \$9,500,000 in funding for planned capital improvements and equipment purchases. The Group will be considered co-lessees and will be liable for lease obligations entered into specific to the Group. The funding of the lease line has been suspended due to the effects of the COVID-19 coronavirus and will be reevaluated in future months. The agreement term is 36 months at a variable rate beginning at 2.79 percent, subject to changes in the 36-month U.S. Treasury note. Monthly payments will vary according to amounts drawn.

As a result of the spread of the COVID-19 coronavirus, economic uncertainties have arisen which may negatively affect the financial position, results of operations and cash flows of the Group. The Group has experienced declines in census as a result of reduced admissions. In addition, skilled nursing and assisted living facilities are incurring additional operating costs as a result of increased regulations to try and reduce patients' exposure to the virus. The duration of these uncertainties and the ultimate financial effects cannot be reasonably estimated at this time.

On or about December 2018, Guardian Healthcare ("Guardian") underwent a corporate reorganization which involved a redistribution with respect to ten CCRCs within Guardian's corporate structure. The Provider was one of those ten CCRCs. The reorganization was

embarked upon to simplify tax filing within Guardian, however, the Department was not notified of the corporate reorganization within 30 days, as required under 31 Pa. Code § 151.6(b)(2).

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Group has elected to defer applicable payroll taxes from March 27, 2020, through December 31, 2020. The Group currently estimate the deferred amount to be approximately \$1,620,000. The deferred amount will be accrued when earned and will be due in two equal installments on December 31, 2021, and December 31, 2022. The CARES Act also contains provisions expanding the Medicare Accelerated and Advanced Payment Program. This is a short-term advance payment that will have to be paid back on terms that are set by the regulations. The Group is participating in this program and has received advanced payments of \$920,720. They will continue to submit claims as usual after receiving the advanced payment; however, 120 calendar days after the lump-sum accelerated payment is received, the Medicare Administrative Contractor will recoup 100 percent of any future Medicare remittance payments to satisfy the accelerated payment received by the Group. The CARES Act also provided relief funds directly to health care providers to support healthcare related expenses or lost revenues as a result of the coronavirus response. The Group has received relief funds estimated at \$2,601,033.

A Management Agreement, effective October 20, 2020, was executed between the Provider and Guardian Elder Care, LLC.

## **RECOMMENDATIONS**

### **PRIOR EXAMINATION**

The prior examination report contained no recommendations.

### **CURRENT EXAMINATION**

As a result of the current examination, the following recommendations are being made:

1. ***It is recommended that any refund of an entrance fee be calculated and issued correctly in accordance with the provisions of the applicable Resident Agreement and 40 P.S. § 3214(a)(8). (See “Refund Policy”, page 3).***
2. ***It is recommended that the Disclosure Statement include a statement as to whether the Provider is a partnership, corporation, or other type of legal entity in accordance with 40 P.S. § 3207(a)(1). (See “Annual Disclosure Statement”, page 5).***
3. ***It is recommended that the Disclosure Statement Summary Page include a sample of the fees charged to residents based upon occupancy of a one-bedroom unit by one and two persons, including entrance and periodic fees, in numbered paragraph form, in accordance with 31 Pa. Code § 151.7(c)(8). (See “Annual Disclosure Statement”, page 6).***



4. ***It is recommended that the Disclosure Statement fully disclose the officers of the Provider in accordance with 40 P.S. § 3207(a)(2).***  
(See “Annual Disclosure Statement”, page 6).
5. ***It is recommended that the Disclosure Statement include the probable or anticipated costs to the Provider from related party transactions, in accordance with 40 P.S. § 3207(a)(3)(iii)(B)(I).***  
***It is further recommended that the related party entities disclosed be correctly named in order to correlate with the respective agreements.***  
(See “Annual Disclosure Statement”, page 6).
6. ***It is recommended that the attestation contained in the Disclosure Statement specify the officers, managers, and owners/members in accordance with 40 P.S. § 3207(a)(3)(iii)(C)(I)&(II).*** (See “Annual Disclosure Statement”, page 6).
7. ***It is recommended that the Disclosure Statement Summary contain an accurate statement of the current resident population in accordance with 31 Pa. Code § 151.7(c)(7).*** (See “Annual Disclosure Statement”, page 6).
8. ***It is recommended that the Disclosure Statement include a description of the security deposit required to be paid by the resident upon occupancy in accordance with 40 P.S. § 3207(a)(7).*** (See “Annual Disclosure Statement”, page 6).
9. ***It is recommended that the Provider obtain and file the required Biographical Affidavits with the Department in accordance with 31 Pa. Code § 151.7(e)(1).***  
(See “Annual Disclosure Statement”, page 6).
10. ***It is recommended that the Resident Agreement fully disclose the manner and circumstances by which any change in fees or charges or scope of care or services may be effective in accordance with 40 P.S. § 3214(a)(10).***  
(See “Resident Agreement”, page 7).
11. ***It is recommended that the Resident Agreement include the resident is not liable provision required in accordance with 31 Pa. Code § 151.8(d).***  
(See “Resident Agreement”, page 7).
12. ***It is recommended that the Resident Agreement clearly indicate the entrance fee option selected by the resident, the appropriate monthly fee, and whether the entrance fee is subject to an amortization schedule in accordance with 40 P.S. § 3214(a)(1).***  
(See “Resident Agreement”, page 7).
13. ***It is recommended that the Resident Agreement contain a valid Notice of Right to Rescind, showing the dates of the applicable rescission period in accordance with 40 P.S. § 3214(b).*** (See “Resident Agreement”, page 7).
14. ***It is recommended that the Resident Agreement include a provision for the required security deposits charged to residents in accordance with 40 P.S. § 3214 (a)(1).*** (See “Resident Agreement”, page 7).

15. ***It is recommended that all Resident Agreements be fully executed by all of the appropriate parties, and the signatures be witnessed in accordance with 31 Pa. Code § 151.8(b).*** (See “Resident Agreement”, page 7).
16. ***It is recommended that the size and type of unit occupied by the resident be clearly specified in the executed Residency Agreement in accordance with 40 P.S. § 3214(a).*** (See “Resident Agreement”, page 8).
17. ***It is recommended that Residency Agreement, Section 4.2 Amortized Entrance Fee Schedule, be amended so that it is easily understood by a lay person in accordance with 40 P.S. § 3214(a).*** (See “Resident Agreement”, page 8).

## CONCLUSION

The examination of Guardian Elder Care at Tyrone I, LLC, as of December 31, 2019, determined the Provider is not in compliance with all applicable Pennsylvania laws and regulations as pertaining to CCRCs as described in the Recommendations section on pages 14 - 16 of this report. It is recommended that another examination of the Provider be performed within the next five-year period.

This examination was conducted by Charles E. Albert, Jr.

Respectfully,



Matthew C. Milford, CFE  
Director  
Bureau of Financial Examinations



Shannon Hopkins (Jan 31, 2023 13:03 EST)  
Shannon Hopkins, CFE  
Examination Manager



Charles E. Albert, Jr.  
Examiner-in-Charge