

REPORT ON EXAMINATION

OF

KENDAL ON HUDSON

AS OF

DECEMBER 31, 2007

DATE OF REPORT

FEBRUARY 27, 2009

EXAMINER

VICTOR ESTRADA

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

Eric R. Dinallo
Superintendent

February 27, 2009

Honorable Eric R. Dinallo
Superintendent of Insurance
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and the New York Public Health Law and in compliance with the instructions contained in Appointment Number 30217, dated October 15, 2008, annexed hereto, I have made an examination, as of December 31, 2007, into the condition and affairs of Kendal on Hudson, a not-for-profit continuing care retirement community licensed pursuant to the provisions of Article 46 of the New York Public Health Law and submit the following report thereon.

The examination was conducted at the office of the Community at 1010 Kendal Way, Sleepy Hollow, New York.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate Kendal on Hudson.

1. SCOPE OF EXAMINATION

The Community commenced operations on May 9, 2005. This examination covers the three year period from January 1, 2005 through December 31, 2007. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities as of December 31, 2007 in accordance with generally accepted accounting principles (GAAP) as modified by the New York Insurance Department pursuant to New York Insurance Department Regulation 140 (11 NYCRR 350), a review of income and disbursements deemed necessary to accomplish such verification and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants. A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of directors
- Occupancy levels

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, rules or regulations, or which are deemed to require explanation or description.

2. **DESCRIPTION OF COMMUNITY**

Kendal on Hudson is a continuing care retirement community, as defined under Article 46 of the New York Public Health Law. The Community received a certificate of authority from the New York Continuing Care Retirement Council, effective July 11, 2002 and a final certificate of authority from the New York State Department of Health on August 16, 2002. The Community commenced operations on May 9, 2005. The Community is a New York not-for-profit organization and is tax exempt pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code.

The Community includes 222 independent living units, which range in size from a studio to a two bedroom unit with a den, 24 enriched housing/adult care units and a 42 bed skilled nursing facility. In addition, the Community also contains a community center, which includes dining rooms and a bistro, administrative offices, a library, an auditorium, lounges and other public gathering spaces.

Kendal on Hudson offers residents two refundable entry fee plans that consist of a residential component and a life care contract. The residential components are either 50% or 90% refundable after resale of the residential unit, not to exceed one year from contract termination. The residential and life care components of the entry fees are subject to refund provisions. Refunds on the life care component are reduced 2% per month of occupancy, with no refund payable after 50 months. For a surviving spouse, a pro rata refund is provided based on the deceased member's life care component. Refunds for the residential component of the

entry fee are based on the refund option selected, and are reduced 2% per month of occupancy to a minimum refund of either 50% or 90% of the entry fee. The non-refundable portion of all entry fees is amortized into operating revenue over actuarially determined life expectancy of each resident or couple. The refundable portion of the residential component is not amortized into operating revenue. Under both components, upon death of a sole surviving resident, any remaining unamortized portion of the nonrefundable portion of the deferred entry fee is recognized as operating revenue.

The following is a description of the two contract options available to residents:

Residence and Care Agreement for Life Care

This contract provides lifetime coverage of nursing care in private rooms and personal care services in the adult care facility; available with a 50% refundable or 90% refundable residential component of the entry fee. The 90% refundable entry fee is based on age.

Residence and Care Agreement for Modified Continuing Care

This contract provides for 100 prepaid days of nursing care excluding any Medicare covered period. There are three self-payment choices: Contract 51 provides for a one-year self-payment period for nursing care relative subsequent to the end of the aforementioned 100 prepaid day period, Contract 53 provides for a three-year self-payment period and Contract 55 provides for a five-year self-payment period. Subsequent to the self-payment period, lifetime nursing care coverage is provided by the Community at the independent living monthly fee rate. Personal care services in the adult care facility are covered, available with 50% refundable or

90% refundable residential component of the entry fee. Residents pay an entry fee composed of a life care component and a residential component. The 90% refundable entry fee is based on age. The residential component is based upon the size of the unit and is 50% refundable.

A. Management

Pursuant to the Community's charter and by-laws, management of the Community is vested in a board of directors consisting of not less than ten nor more than twenty directors. As of the examination date, the board of directors was comprised of fifteen members. The Community's board met at least once each quarter during the exam period in compliance with its by-laws.

The Community's directors at December 31, 2007 were as follows:

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
Leonard Andrew Sleepy Hollow, NY	Retired
Norma Ellis White Plains, NY	Family Nurse Practitioner, Montefiore Family Health Center, Montefiore School Health Program
Ed Hanin Sleepy Hollow, NY	Retired
Linda Martin Briarcliff Manor, NY	Executive Vice President, Aging in America
Bill Melvin * Ossining, NY	President, Acorn Derivatives Management Corporation

<u>Name and Residence</u>	<u>Principal Business Affiliation</u>
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Barry Morris Irvington, NY	Founder, Morris Capital Markets
JoAnne Murray Tarrytown, NY	President, Allan M. Block Agency, Inc.
Raymond Mutter Ossining, NY	Retired
Mary Nichols Scarborough, NY	Retired
James Oltman Sleepy Hollow, NY	Retired
Robert Spencer Toano, VA	Self employed, Attorney
Barbara Thomas Oberlin, OH	CEO, Kendal Northern Ohio
Barry Whitcomb ** Greensboro, NC	Retired
James Wood Sleepy Hollow, NY	Retired
Michael Zavelle Rye, NY	Vice Chancellor, City University of New York

* Phelps Community Corporation representative as required by the Community's by-laws.

** Kendal New York representative as required by the Community's by-laws.

A review of the attendance records of the board of directors' meetings held during the period under examination revealed that the meetings were generally well attended.

The principal officers of the Community at December 31, 2007 were as follows:

Officers

Leonard Andrew
 Patricia A. Doyle
 Jennifer Anderson

Title

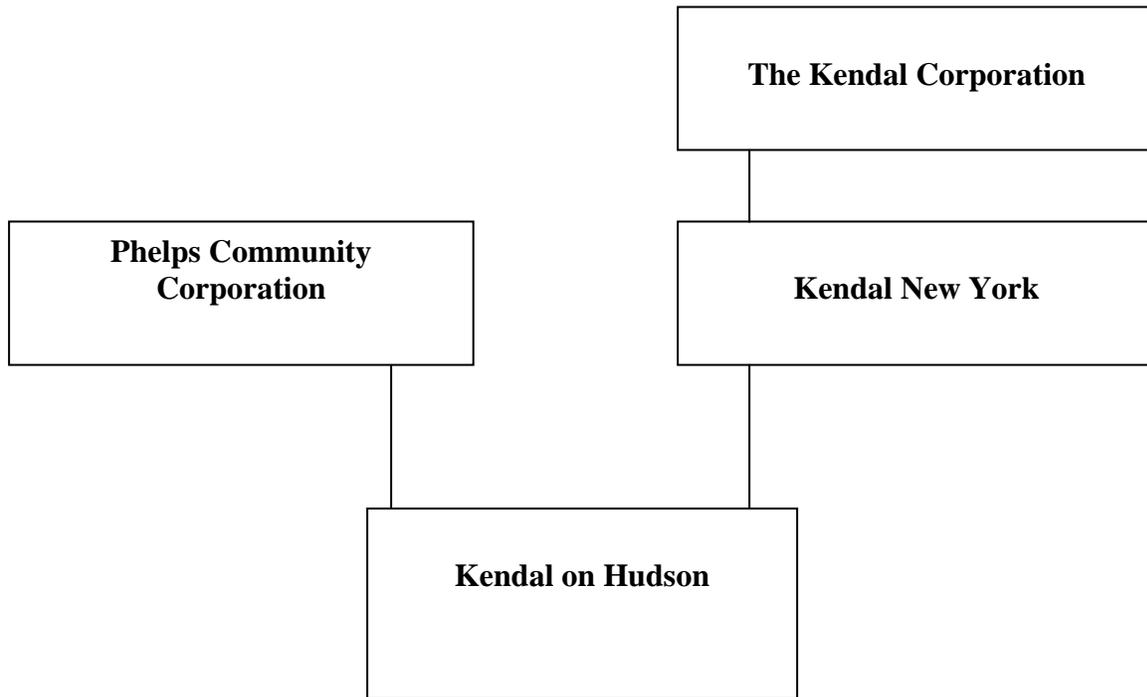
Chairman of the Board
 Chief Executive Officer
 Chief Financial Officer

B. Corporate Structure

The Community is an affiliate of The Kendal Corporation, a Pennsylvania non-profit corporation which is associated with a system of entities providing services to older adults. The Kendal Corporation, Kendal New York and affiliates, including Kendal on Hudson, comprise the Kendal System.

The by-laws of the Community state that it shall have two members: Phelps Community Corporation, a New York not-for-profit corporation, and Kendal New York, a New York not-for-profit corporation, whose only rights and responsibilities as members shall be those set forth in the by-laws. Through by-law requirements, control of the Community is shared with Kendal New York. Kendal New York must approve any amendments to the articles of incorporation or certain sections of the by-laws. Furthermore, Kendal New York must approve changes in corporate purpose, incurring of debt, use of the name “Kendal”, the substance of residence contracts, and the purchase, sale, lease or other disposition of any real estate or improvements thereon. The by-laws also specify that the Community shall have certain board members in common with Kendal New York and Phelps Community Corporation (or a staff member of Phelps Memorial Hospital).

The Community's corporate structure at December 31, 2007 was as follows:



The Community entered into an affiliation agreement with Kendal New York on January 7, 2003. The agreement provides for Kendal New York to provide consultation, assistance and information in order to provide quality care and services to the residents and patients of the Community, consistent with the values and standards of the Kendal System.

Under this agreement, Kendal New York provides basic services and in return Kendal on Hudson pays a system fee.

The following is a summary of the basic services that Kendal New York provides as well as a brief description of each:

1. Governance and Administration:

- a. Board – templates for board manuals, profiles minutes, committee descriptions and policies.
- b. Public Policy – information to staff and boards on subjects of interest.
- c. Research and Planning – technical assistance/consultation regarding planning issues.

2. Finance:

- a. General Finance – comparison of financial reports and analyses, technical assistance with actuarial studies and projections, as well as consulting on long-term debt management.
- b. Information Services – set standards for system-wide hardware and software. Evaluate new hardware and software.

3. Marketing, Public Relations and Admissions:

- a. Consultation on the design and production of admission materials.
- b. Guidelines and standards for Marketing/ Public Relations /Admission Programs.

4. Human Resources:

- a. Consultation on job description and performance appraisal systems as well as Human Resources' Policies.
- b. Resources for employee orientation, education and supervisors' training.

5. Operations:

- a. General – (1) assist Kendal on Hudson in complying with and interpreting state and federal regulations, (2) consultation on labor, refinancing, healthcare and other regulations.
- b. Dining Services – assist with program and menu development/diet system.
- c. Health Services – share of information on current research and innovations in health facility design, service provision, care techniques, and other developments in health care.
- d. Housekeeping, Laundry and Maintenance Services – review capital project plans and budgets for capital projects.

C. Occupancy Rates

The following reflects the occupancy rates at each year-end during the examination period for the Community's Independent Living Units:

Period	2005	2006	2007
Occupancy	88%	98%	99%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Enriched Housing/Adult Care Units:

Period	2005	2006	2007
Occupancy	13%	83%	83%

The following reflects the occupancy rates at each year-end during the examination period for the Community's Skilled Nursing Facility:

Period	2005	2006	2007
Occupancy	33%	45%	74%

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2007. It is the same as the actuarial balance sheet filed by the Community, presented on a statutory actuarial basis, pursuant to Section 350 of New York Insurance Department Regulation 140 (11 NYCRR 350):

Assets

Cash and investable assets	\$ 32,887,000
Property, plant and equipment	130,208,000
Prepaid land lease	3,030,000
Deferred financing costs	2,275,000
Deferred marketing costs	<u>2,059,000</u>
Total assets	<u>\$170,459,000</u>

Liabilities

Long-term debt	\$ 77,880,000
Required reserve liability	<u>91,619,000</u>
Total liabilities	<u>\$169,499,000</u>

Net surplus

Net actuarial surplus	\$ <u>960,000</u>
Total liabilities and net actuarial surplus	<u>\$170,459,000</u>

NOTE:

It should be noted that the net asset values herein are reported on a statutory/actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's certified public accountants.

B. Statement of Revenue, Expenses and Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 2005 through December 31, 2007 as follows:

Revenue

Resident fees	\$ 28,241,287	
Other revenue from residents	1,720,508	
Earned entrance fees	12,014,049	
Patient revenues from nonresidents	9,927,744	
Interest and dividend income	<u>3,337,730</u>	
Total revenue		\$ 55,241,318

Expenses

Interest expense	\$ 12,975,140	
Facility expenses	13,419,837	
Dining expenses	926,719	
Health expenses	8,490,448	
Administration expenses	7,942,322	
Depreciation and amortization	12,733,815	
Change in uncollectible accounts provision	63,417	
Real estate taxes	984,607	
NYS health facilities assessment	76,210	
Aggregate write-ins for other operating expenses	<u>11,940,394</u>	
Total expenses		(69,552,909)
Net loss		\$ <u>(14,311,591)</u>

Change in Actuarial Surplus

Actuarial surplus increased \$960,000 during the examination period, January 1, 2005 through December 31, 2007, detailed as follows:

Actuarial surplus as of January 1, 2005, per report on organization			\$ 0
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
GAAP basis net loss		\$(14,311,591)	
Change in paid-in and contributed capital		(921,500)	
Aggregate write-ins for gains and losses		(793,782)	
Statutory adjustment	<u>\$16,986,873</u>	<u> </u>	
Net increase in surplus			<u>960,000</u>
Actuarial surplus as of December 31, 2007, per report on examination			\$ <u>960,000</u>

Appointment No. 30217

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, **Eric R. Dinallo**, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Victor Estrada

as a proper person to examine into the affairs of the

Kendal on Hudson

and to make a report to me in writing of the said

Continuing Care Retirement Community

with such information as he shall deem requisite.

In Witness Whereof, I have hereunto subscribed by the name and affixed the official Seal of this Department, at the City of New York.

this 15th day of October 2008



Eric R. Dinallo

Superintendent of Insurance

