

**REPORT ON EXAMINATION**

**OF**

**KENDAL ON HUDSON**

**AS OF**

**DECEMBER 31, 2010**

**DATE OF REPORT**

**AUGUST 23, 2012**

**EXAMINER**

**VICTOR ESTRADA**

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NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

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Andrew M. Cuomo  
Governor

Benjamin M. Lawsky  
Superintendent

August 23, 2012

Honorable Benjamin M. Lawsky  
Superintendent of Financial Services  
Albany, New York 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and the New York Public Health Law and acting in compliance with the instructions contained in Appointment Number 30825, dated February 3, 2012, attached hereto, I have made an examination 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, as of December 31, 2010, and respectfully submit the following report thereon.

The examination was conducted at the home office of Kendal on Hudson, located 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.

Wherever the designation the “Department” appears herein, without qualification, it should be understood to indicate the New York State Department of Financial Services. It

should be noted that the New York State Insurance Department merged with the New York State Banking Department on October 3, 2011 to become the New York State Department of Financial Services.

## **1. SCOPE OF THE EXAMINATION**

The previous examination was conducted as of December 31, 2007. This examination covers the three year period from January 1, 2008 through December 31, 2010. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities of the Community as of December 31, 2010, in accordance with generally accepted accounting principles (“GAAP”), as modified by the Department pursuant to Department Regulation No. 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. It is noted that the balance sheet included herein was reported as of December 31, 2010 on a statutory actuarial basis, pursuant to Department Regulation No. 140 (11 NYCRR 350).

Representatives of the New York Department of Financial Services and the New York State Department of Health conducted a site survey of the Community’s facility on May 2, 2012, pursuant to Section 4614(1) of the New York Public Health Law.

A review was also made of the following items:

- Community documents
- Compliance with By-Laws
- Occupancy levels
- Financial documents
- Board of Directors' minutes of meetings

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

The Prior Report on Examination did not include any recommendations.

## **2. DESCRIPTION OF THE COMMUNITY**

The Community was formed on March 19, 1992 as a Continuing Care Retirement Community ("CCRC"), as such item is 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.

Kendal on Hudson 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

two hundred twenty-two (222) independent living units, twenty-four (24) enriched housing/adult care units and a forty-two (42) bed skilled nursing facility. In addition, the Community also contains a community center, which includes dining rooms, administrative offices, a library, an auditorium, lounges and other public gathering spaces.

Kendal on Hudson provides residents with a continuum of services, including: independent living, enriched housing and skilled nursing home care. As a condition precedent to providing these services, the Community enters into a lifecare contract with each prospective resident that sets forth the responsibilities of both parties. For the right to occupy, use the living accommodations, and utilize the services of the Community, each resident is required to pay an entrance fee and a monthly service fee based on the size and type of living unit and the number of occupants.

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 the actuarially determined life expectancy of

each resident or couple. The refundable portion of the residential component is not amortized into operating revenue. For 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.

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 once the 100 prepaid day period has lapsed. *Contract 53* provides for a three-year self-payment period, while *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 residential component is based upon the size of the unit.

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 (10), nor more than twenty directors.

As of the examination date, the board of directors was comprised of fifteen (15) members.

The Community's directors at December 31, 2010 were as follows:

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Leonard Andrew Sleepy Hollow, NY	Retired
Bard Bunaes New York, NY	Retired
Edward Doty White Plains, NY	Executive Director, Youth Service Opportunities Project
Norma Ellis White Plains, NY	Family Nurse Practitioner, Montefiore Family Health Center, Montefiore School Health Program
Marge Glusker Sleepy Hollow, NY	Retired
Ed Hanin Sleepy Hollow, NY	Retired
Aubrey Hawes Briarcliff Manor, NY	Retired
Linda Martin Briarcliff Manor, NY	Executive Vice President, Aging in America
Bill Melvin * Ossining, NY	President, Acorn Derivatives Management Corp.

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Barry Morris Irvington, NY	Founder, Morris Capital Markets
Mary Nichols Scarborough, NY	Retired
Joan Oltman Sleepy Hollow, NY	Retired
Katherine Swibold Toano, VA	Barnard College, Executive Assistant to VP of Development and Alumni Affairs,
James Wood ** Sleepy Hollow, NY	Retired
Michael Zavelle Rye, NY	Chief of Investor Relationships, New Mexico Finance Authority

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

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

The Community's board met at least once each quarter during the exam period, in compliance with its 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, with all members attending at least 50% of the meetings.

The principal officers of the Community at December 31, 2010 were as follows:

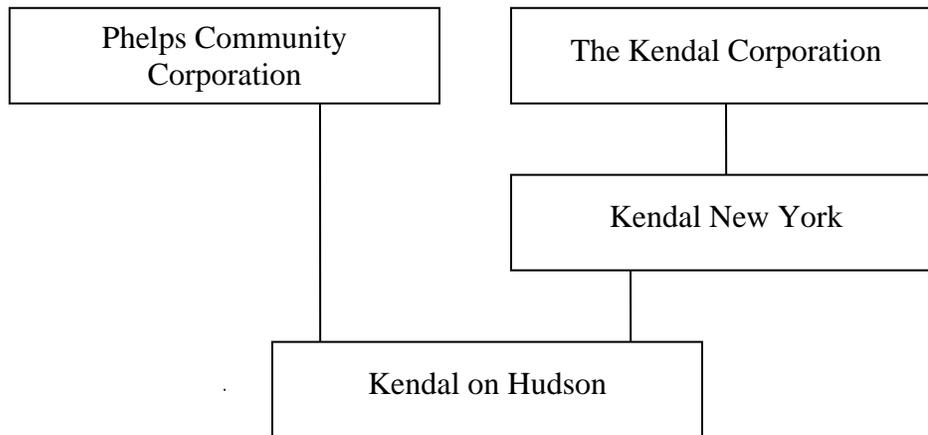
<u>Officers</u>	<u>Title</u>
Barry Morris	Chairman of the Board
Patricia A. Doyle	Chief Executive Officer
Jennifer Anderson	Chief Financial Officer

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 aged population. 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, 2010 was as follows:



The Community entered into an affiliation agreement with Kendal New York on January 7, 2003. This Agreement was revised on November 5, 2009, with the approval of the New York State Department of Health. 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.

In return for providing the above-mentioned Basic Services, Kendal on Hudson pays the Kendal Corporation a System Fee consisting of the following four components:

- a. Affiliation Fee - 2% of annual budgeted operating expenses.
- b. Basic Service Fee - 2% of budgeted operating expenses initially then decreased by 0.25% each subsequent year to 1.00%.
- c. Contingency Reserve - 0.25% of annual budgeted operating expenses until the target of 6.5% is met.
- c. d. System Growth Fund – 0.25% of annual budgeted operating expenses until the target of 4% is met.

C. Occupancy Rates

The following reflects the occupancy rates at each year-end during the examination period for each of the facilities within the Community:

	<u>2008</u>	<u>2009</u>	<u>2010</u>
Independent living units	99%	98%	98%
Enriched Housing/ Adult Care	75%	67%	71%
Skilled Nursing facility	86%	85%	92%

D. Annual Statement

Section 4607(1) of the New York Public Health Law states:

“Within four months of close of the operator’s fiscal year, unless an extension of time to file has been granted, the operator shall file an annual statement with the commissioner and superintendent showing the condition as of the last day of the preceding calendar or fiscal year. If the commissioner and superintendent do not receive the annual statement within four months of the end of the operator’s fiscal year or have not granted an extension of time to file, the council may charge a late fee.”

While the Community’s 2010 annual statement was due April 30, 2011, some portions of the statement were not provided until May 18, 2011, and the audited financial statement was not submitted until June 1, 2011.

It is recommended that the Community complies with Public Health Law 4607 and file its annual statement within the required time limitation, or request an extension as permitted by that law.

E. Disaster Recovery/Business Continuity Plans

As of December 31, 2010, the Community maintained a disaster recovery plan which provides for the essential maintenance of services to the Community's residents in the event of a disaster. It should be noted that this plan was not reviewed for best practices..

### 3. FINANCIAL STATEMENTS

#### A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2010. It is the same as the actuarial balance sheet filed by the Community, presented on a statutory actuarial basis, pursuant to Section 350 of Department Regulation No. 140 (11 NYCRR 350):

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Cash and investable assets	\$ 37,633,000	\$ 37,633,000
Accounts receivable and prepaid expenses	2,852,000	2,852,000
Property, plant and equipment	128,326,000	128,326,000
Furniture and equipment	8,543,000	8,543,000
Accumulated depreciation	(9,705,000)	(9,705,000)
Prepaid land lease	1,881,000	1,881,000
Deferred financing costs	1,488,000	1,488,000
Deferred marketing costs	<u>2,065,000</u>	<u>2,065,000</u>
<u>Total assets</u>	<u>\$ 173,083,000</u>	<u>\$ 173,083,000</u>
 <u>Liabilities</u>		
Long-term debt	\$ 73,055,000	\$ 73,055,000
Required reserve liability	<u>97,986,000</u>	<u>97,986,000</u>
Total liabilities	\$171,041,000	\$171,041,000
 <u>Net surplus</u>		
Net actuarial surplus	\$ <u>2,042,000</u>	\$ <u>2,042,000</u>
Total liabilities and net actuarial surplus	<u>\$173,083,000</u>	<u>\$173,083,000</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 Change in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis for the three-year examination period January 1, 2008 through December 31, 2010. The Community's actuarial surplus increased \$1,082,000 during this period.

Revenue

Resident fees	\$ 39,056,931	
Health center fees, net	16,442,542	
Amortization of deferred entrance fees	16,691,193	
Investment return	3,545,220	
Other revenue	<u>2,479,961</u>	
Total revenue		\$ 78,215,847

Expenses

General and administrative expenses	\$ 6,603,094	
Housekeeping	2,274,872	
Maintenance	4,212,793	
Food Service	7,176,898	
Health service	12,813,176	
Employee benefits	6,622,665	
Utilities	4,476,956	
Real estate taxes	1,570,436	
Interest	11,881,479	
Affiliation and service fees	3,314,235	
Provision for bad debts	325,000	
Depreciation and amortization	13,229,664	
Rent expense	<u>1,367,292</u>	
Total expenses		<u>(75,868,560)</u>
Income from operations before change in fair value of interest rate swap		\$ 2,347,287
Change in fair value of interest rate swap		\$ <u>(2,831,174)</u>
Net loss from operations		\$ <u>(483,887)</u>

Change in Actuarial Surplus

Actuarial surplus, per report on examination, as of December 31, 2007			\$ 960,000
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	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net (loss)		\$ 483,887	
Net unrealized capital gains	\$ 8,631		
Statutory adjustment	1,018,944		
Contributions	538,312		
Net increase in net worth			\$ <u>1,082,000</u>
Actuarial surplus, per report on examination as of December 31, 2010			\$ <u>2,042,000</u>

**4. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

There were no comments and recommendations in the prior report on examination.

**ITEM NO.**

**PAGE NO.**

A. Annual Statement

It is recommended that the Community complies with Public Health Law 4607 and file its annual statement within the required time limitation, or request an extension as permitted by that law.

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**NEW YORK STATE**

**DEPARTMENT OF FINANCIAL SERVICES**

I, **BENJAMIN M. LAWSKY**, Superintendent of Financial Services of the State of New York, pursuant to the provisions of the Financial Services Law and the Insurance Law, do hereby appoint:

**Victor Estrada**

*as a proper person to examine the affairs of the*

**Kendal on Hudson**

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

**CCRC**

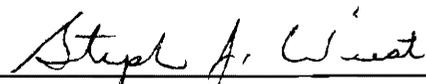
*with such other information as he shall deem requisite.*

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

*this 3rd day of February, 2012*

**BENJAMIN M. LAWSKY**  
*Superintendent of Financial Services*

By:



**Stephen J. Wiest**  
*Deputy Health Bureau Chief*

