

REPORT ON EXAMINATION

OF

KENDAL AT ITHACA, INC.

AS OF

DECEMBER 31, 2009

DATE OF REPORT

NOVEMBER 3, 2011

EXAMINER

TOMMY KONG

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

November 3, 2011

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

Sir:

Pursuant to the requirements of the New York Insurance Law, and acting in accordance with the instructions contained in Appointment Number 30530, dated May 20, 2010, attached hereto, I have made an examination of Kendal at Ithaca, Inc., 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, 2009, and respectfully submit the following report thereon.

The examination was conducted at the home office of Kendal at Ithaca, Inc. located at 2230 North Triphammer Road, Ithaca, New York.

Wherever the designations the “Community” or “Kendal” appear herein, without qualification, they should be understood to indicate Kendal at Ithaca, Inc.

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 Department of Insurance 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, 2005. This examination covered the four-year period from January 1, 2006 through December 31, 2009. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York State Department of Financial Services and the New York State Department of Health conducted a site survey of the Community's facility on June 30, 2010, pursuant to the requirements of Section 4614(1) of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2009, 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 and independent actuary. It is noted that the balance sheet included herein was reported as of December 31, 2008, on a statutory actuarial basis, pursuant to Department Regulation No. 140 (11 NYCRR 350).

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.

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

2. DESCRIPTION OF THE COMMUNITY

The Community was formed on June 3, 1992. Kendal is a continuing care retirement community (CCRC) as defined in Article 46 of the New York Public Health Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council and commenced operations on December 26, 1995. Kendal is a New York State not-for-profit organization and is a tax-exempt organization per Section 501(c)(3) of the Internal Revenue Code.

Kendal is designed for older adults who are in good physical health and able to live independently. The Community consists of two hundred twelve (212) independent living units ranging from studios to two-bedroom units with a den and a seventy-one (71) bed health center consisting of a thirty-six (36) bed adult care facility and a thirty-five (35) bed skilled nursing facility. In addition, the Community includes such common areas as dining rooms, lounges, a health club, a beauty/barber shop, library, auditorium, and administrative areas.

The Community provides residents with a continuum of services, including independent living, adult care 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 monthly service fee based on the size and type of living unit and the number of occupants.

The following is a description of the three types of lifecare contracts offered to prospective residents by the Community:

- Lifecare

The Lifecare contract provides personal care and nursing care. The entrance fee is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee and any cost incurred by the Community, at the request of the resident, until the refund amount reaches zero.

- 50% Return of Capital Lifecare

The 50% Return of Capital Lifecare contract has the same healthcare provisions as the Lifecare contract. The entrance fee for this contract is higher compared to the Lifecare contract and is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee, until

the refund amount reaches 50% of the entrance fee. Any cost incurred by the Community, at the request of the resident, could reduce the refund amount below 50% of the entrance fee.

- Modified Continuing Care

The Modified Continuing Care contract provides limited skilled nursing care, compared to the other two Lifecare contracts. This contract includes 100 days of prepaid skilled nursing care. Days in the skilled nursing facility which are paid under Medicare do not count towards the 100 prepaid days. After 100 days in the skilled nursing facility, the resident pays, for up to 3 years, the Community's per diem for services received. After 3 years, the resident no longer has to pay the per diem and skilled nursing care will be covered at no charge.

The entrance fee for this contract is lower than the Lifecare contract and, like the other two contracts, is due in two installments. Ten percent (10%) of the entrance fee is due when the contract is signed, with the remainder to be paid on or before the occupancy date. During the first 90 days, the entrance fee collected by the Community is fully refundable if the resident terminates the contract for any reason. After the 90-day period, the refund will be reduced by 2% for each month or fraction thereafter, as well as a 4% administrative fee and any cost incurred by the Community, at the request of the resident, until the refund amount reaches zero.

A. Management and Controls

Pursuant to the Community's Charter and By-laws, management of the Community is vested in a Board of Directors comprised of no less than ten (10) and no more than twenty (20) members.

As of December 31, 2009, the Community's Board of Directors was comprised of nineteen (19) members as follows:

<u>Name</u>	<u>Principal Affiliation</u>
Martha Armstrong Ithaca, New York	Vice President & Director, Tompkins County Area Development
James A. Brown Ithaca, New York	Executive Director, United Way of Tompkins County
Janet L. Corson-Rikert Ithaca, New York	Director of Gannett Health Center, Cornell University
Harold D. Craft Berkshire, New York	VP Emeritus & Senior University Consultant, Cornell University
Henrik N. Dullea Ithaca, New York	Vice President for University Relations Emeritus, Cornell University
Shirley M. Durfee Ithaca, New York	Resident, Kendal at Ithaca, Inc.
Gerald A. Kinchy Milan, Pennsylvania	Chairman of the Board, Kendal at Ithaca, Inc.
John A. Krout Ithaca, New York	Professor of Gerontology, Ithaca College
David K. McNiff Ithaca, New York	Board Treasurer, Kendal at Ithaca, Inc.
Susan Nohelty Ithaca, New York	Vice President for Patient Services, Cayuga Medical Center
Mary George Opperman Ithaca, New York	Vice President for Human Resources, Cornell University

<u>Name</u>	<u>Principal Affiliation</u>
Hannah Richter Genoa, New York	Director, Kendal at Ithaca, Inc.
John B. Rudd Ithaca, New York	Vice President of Finance/CFO, Cayuga Medical Center
Tanya Saunders Ithaca, New York	Assistant Provost and Dean of the Division of Interdisciplinary & International Studies, Ithaca College
Carol U. Sisler Ithaca, New York	Resident, Kendal at Ithaca, Inc.
James S. Spero Ithaca, New York	Board Secretary, Kendal at Ithaca, Inc.
Donald S. Stewart Ithaca, New York	Executive VP & Senior Trust Officer, Tompkins Trust Company
Mark Travis Ithaca, New York	Owner/Developer, Ithaca Rentals and Renovations, Inc.
William D. White Ithaca, New York	Vice Chairman, Kendal at Ithaca, Inc.

The Board of Directors is required to meet at least on a quarterly basis each year, of which one (1) of the meetings is designated as the annual meeting of the Board of Directors. Unless the Board designates a different date, the annual meeting is to take place on the third Wednesday of March of each year. Special meetings of the Board of Directors may be called by the Chairman of the Board or by any three (3) directors.

The Community incorrectly reported in its filed 2009 annual statement, a Board member whose term did not begin until April 1, 2010.

It is recommended that the Community report in its filed annual statements only those Board members who are actually on the Board of Directors as of the filing date of the annual statement.

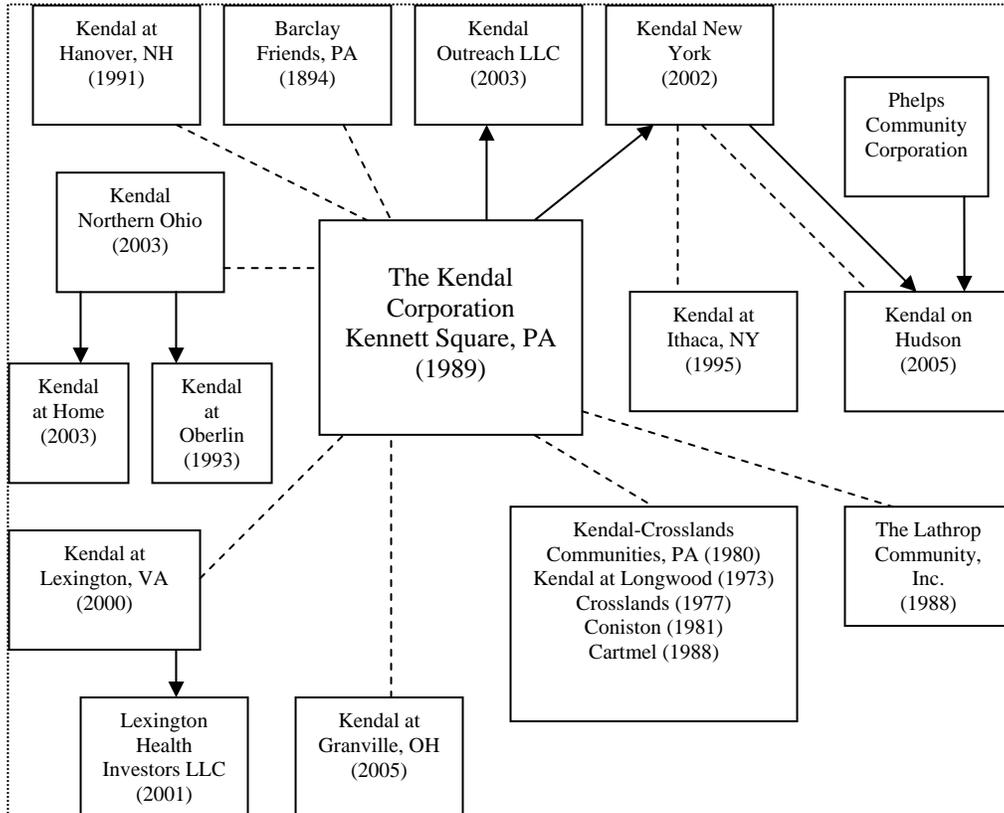
A review of the minutes of the meetings of the Board of Directors during the examination period revealed that the meetings were generally well attended with all board members attending at least one-half of the meetings that they were eligible to attend.

The officers of the Community as of December 31, 2009 were as follows:

<u>Name</u>	<u>Title</u>
Gerald A. Kinchy	Board Chairman
William D. White	Board Vice Chairman
Daniel Governanti	Executive Director/CEO
James S. Spero	Board Secretary
David K. McNiff	Board Treasurer
Annie E. Wall	Director of Finance/CFO

B. Holding Company System

The structure of the Community's holding company system as of December 31, 2009 was as follows:



In 2005, the Community became affiliated with Kendal New York, a New York not-for-profit corporation, through By-laws and an affiliation agreement entitled, Mutual Expectations, System Services, and Financial Understandings (“Agreement”), between the two entities. Together, Kendal New York and the Kendal Corporation and its affiliates comprise the Kendal System. The Agreement, approved by the New York State Department of Health provides for the Community's CEO to be accountable to the President of Kendal New York for managing the Community in harmony with the values, standards, and strategic plans of the Kendal System. The Agreement calls for the Community to pay Kendal New

York a system fee. This fee is for the usage of the Kendal name and for basic services such as operational support, administration support and IT and benefits management.

Pursuant to the Agreement, Kendal New York must approve the election of Board members of the Community and any amendments to the articles of incorporation or specific sections of the Community's By-laws. Furthermore, Kendal New York must approve changes in corporate purpose, the substance of resident contracts, the incurrence of debt of a specified value, the purchase, sale, lease, disposition or improvement(s) of any real estate of a specified value and the dissolution, merger with another entity or division or acquiring control of another entity.

C. Occupancy Rates

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

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Independent living units	97.2%	98.1%	97.2%	95.8%
Adult care facility	86.1%	83.3%	84.9%	75.0%
Skilled nursing facility	97.1%	97.1%	92.5%	97.1%

The occupancy rate of the independent living units was relatively stable during the examination period. The occupancy rate for the adult care units was stable during most of the examination period, except in 2009 when the rate decreased to 75% from 84.9%. This decrease was attributed to the normal fluctuation in the continuum of care to the residents of the Community. The skilled nursing facility occupancy rate was also relatively stable during the examination period.

D. Disaster Recovery/Business Continuity Plans

The Community maintains business continuity and disaster recovery plans which provide for the essential maintenance of services to the Community's residents in the event of a disaster.

E. Disclosure Statement

In the Community's disclosure statement to its residents and prospective residents, on page 9, under item L, the second sentence in bold provides for "*a statement in the changes in scope of or the rates for care or services provided*" and Kendal stated as "*not applicable.*"

Section 4606(8) of the New York Public Health Law states the following in part, relative to the information which an operating CCRC must provide to its residents and prospective residents:

"...a statement of the changes in the scope of or the rates for care or services provided".

Also under item L, on page 9 of the disclosure statement, the third sentence in bold type provides for "*tables showing the frequency and average dollar amounts of increases in periodic rates at each facility for the previous five years or a shorter period if in operation for less than five years.*" Instead of providing the average dollar amount at this item, Kendal provided a percentage of each increase in the periodic rates for the previous five years.

According to Section 4606(8) of the New York Public Health Law in part, an operating CCRC should include the following within its disclosure statement:

"...tables showing the frequency and average dollar amount of each increase in periodic rates at each such facility for the previous five years or such shorter period as the facility may have been operated by the provider".

It is recommended that, if there are no changes in the Community's scope of coverages, the Community provide the rates and the average dollar amount of each rate increase for the previous five years within the applicable areas of its disclosure statement, as required by Section 4606(8) of the New York Public Health Law.

In the Community's standard information sheet, the title and the introductory paragraphs on page 12 are in 11 point font size, not the 12 point font size required by Section 4606(14) of the New York Public Health Law.

Section 4606(14) of the New York Public Health Law states in part:

"The standard information sheet shall be... in twelve point type."

It is recommended that the Community maintain in its standard information sheet, 12 point font size, as required by Section 4606(14) of the New York Public Health Law.

Also, in the standard information sheet, there was no indication as to whether the skilled nursing facility beds were on-site or off-site.

Section 4606(14)(c) of the New York Public Health Law states in part:

"The number and types of...nursing home beds and whether such beds are on-site or off-site."

It is recommended that the Community indicate whether its nursing beds are on-site or off-site in its standard information sheet, as required by Section 4606(14)(c) of the New York Public Health Law.

Furthermore, a standard information sheet was not included in Kendal's marketing brochure.

Section 4606(14) of the New York Public Health Law states in part:

"...the operator shall prepare a standard information sheet for each approved continuing care retirement community, which must be approved by the department of health, distributed with the community's marketing materials."

It is recommended that the Community include an approved standard information sheet in its marketing brochure, as required by Section 4606(14) of the New York Public Health Law.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2008. It is the same as the actuarial balance sheet reported by the Community presented on a statutory actuarial basis pursuant to Department Regulation No. 140 (11 NYCRR 350):

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Cash and invested assets	\$ 24,984,000	\$ 24,984,000
Accounts receivable and prepaid expenses	2,019,000	2,019,000
Land	2,572,000	2,572,000
Building	45,788,000	45,788,000
Furniture, fixtures and equipment	6,061,000	6,061,000
Accumulated depreciation	(12,691,000)	(12,691,000)
Deferred financing costs	732,000	732,000
Long term debt	<u>(21,830,000)</u>	<u>(21,830,000)</u>
Total assets	\$ <u>47,635,000</u>	\$ <u>47,635,000</u>
 <u>Liabilities</u>		
Actuarial reserve	\$ 48,125,000	\$ 48,125,000
Adjustment for release of excess in retrospective reserve	<u>(488,000)</u>	<u>(488,000)</u>
Total liabilities	\$ 47,637,000	\$ 47,637,000
Total net surplus	\$ 0	\$ 0
Total liabilities and net surplus	\$ <u>47,637,000</u>	\$ <u>47,637,000</u>
Ratio of net surplus to total liabilities	<u>0%</u>	<u>0%</u>

Note: It should be noted that the 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 statutory modified GAAP basis for the three-year examination period January 1, 2006 through December 31, 2008.

Revenue

Monthly maintenance fess	\$47,670,857	
Other revenue from residents	889,021	
Earned entrance fees (net of refunds)	13,223,121	
Patient revenue from nonresidents	973,926	
Interest and dividend income	3,242,807	
Net realized capital gains	454,105	
Aggregate write-ins for other operating revenue	<u>551,854</u>	
Total revenue		\$67,005,691

Expenses

Interest expense	\$ 4,040,893	
Facility and dining expenses	18,076,941	
Health expenses	14,103,393	
Administration expenses	13,398,505	
Depreciation and amortization charges	7,655,999	
Real estate taxes	4,112,541	
NYS health facilities assessment	<u>278,702</u>	
Total expenses		<u>\$61,666,972</u>
Net income		\$ <u>5,338,718</u>

Change in Actuarial Surplus

Actuarial surplus was unchanged during the three-year actuarial examination period

January 1, 2006 through December 31, 2008, detailed as follows:

Surplus, per report on examination, as of December 31, 2005			\$ 0
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$5,338,718		
Net realized and unrealized capital loss		\$ 768,721	
Change in paid-in and contributed capital	125,435		
Aggregate write-ins for other changes in net assets	727,557		
Statutory adjustment as per examination	<u>0</u>	<u>5,422,989</u>	
Net increase/decrease actuarial surplus			\$ <u>0</u>
Surplus, per report on examination, as of December 31, 2008			\$ <u>0</u>

4. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2005 contained no comments or recommendations.

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Management</u></p> <p>It is recommended that the Community report in its filed annual statements only those Board members who are actually on the Board of Directors as of the filing date of the annual statement.</p>	<p>7</p>
<p>B. <u>Disclosure Statement</u></p> <p>i. It is recommended that, if there are no changes in the Community's scope of coverages, the Community provide the rates and the average dollar amount of each rate increase for the previous five years within the applicable areas of its disclosure statement, as required by Section 4606(8) of the New York Public Health Law</p> <p>ii. It is recommended that the Community maintain in its standard information sheet, 12 point font size, as required by Section 4606(14) of the New York Public Health Law.</p> <p>iii. It is recommended that the Community indicate whether its nursing beds are on-site or off-site in its standard information sheet, as required by Section 4606(14)(c) of the New York Public Health Law.</p> <p>iv. It is recommended that the Community include an approved standard information sheet in its marketing brochure, as required by Section 4606(14) of the New York Public Health Law.</p>	<p>12</p> <p>12</p> <p>13</p> <p>13</p>

Appointment No. 30530

**STATE OF NEW YORK
INSURANCE DEPARTMENT**

I, James J. Wrynn, Superintendent of Insurance of the State of New York, pursuant to the provisions of the Insurance Law, do hereby appoint:

Tommy Kong

as a proper person to examine into the affairs of the

Kendal at Ithaca

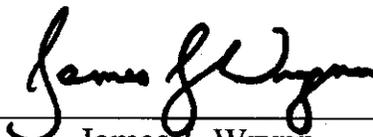
and to make a report to me in writing of the condition of the said

CCRC

with such other information as he shall deem requisite.

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

this 20th day of May, 2010



James J. Wrynn
Superintendent of Insurance

