

REPORT ON EXAMINATION

OF

HEBREW HOSPITAL SENIOR HOUSING, INC.

d/b/a/ WESTCHESTER MEADOWS

AS OF

DECEMBER 31, 2008

DATE OF REPORT

SEPTEMBER 28, 2011

EXAMINER

VICTOR ESTRADA

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

Andrew M. Cuomo
Governor

James J. Wrynn
Superintendent

September 28, 2011

Honorable James J. Wrynn
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to the requirements of the New York Insurance Law and acting in accordance with the instructions contained in Appointment Number 30387, dated October 8, 2009 annexed hereto, I have made an examination into the condition and affairs of Hebrew Hospital Senior Housing, Inc. d/b/a/ Westchester Meadows, 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, 2008, and respectfully submit the following report thereon.

The examination was conducted at the home office of Westchester Meadows located at 55 Grasslands Road, Valhalla, NY.

Wherever the designations the "Community" or "CCRC" appear herein, without qualification, they should be understood to indicate Westchester Meadows.

<http://www.ins.state.ny.us>

Wherever the designations “HHCS” or the “Parent” appear herein, without qualification, they should be understood to indicate Hebrew Hospital Corporate Services.

Wherever the designation, the “Department” appears herein, without qualification, it should be understood to refer to the New York State Insurance Department.

As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community’s minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(16,679,330) as of December 31, 2008.

The Community is operating under a Plan of Restoration (the “Plan”) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 12, 2010.

1. SCOPE OF THE EXAMINATION

The previous examination of the Community was conducted as of December 31, 2006. This examination covered the two year period from January 1, 2007, through December 31, 2008. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets, liabilities as of December 31, 2008, in accordance with generally accepted accounting principles (GAAP), as modified by Department Regulation No. 140 (11 NYCRR 350); a verification of assets and liabilities as of December 31, 2008 on an actuarial basis, as modified by Department Regulation No. 140, 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:

- Board of directors' meeting minutes
- Community documents
- Compliance with by-laws
- Financial documents
- Inter-company transactions
- Occupancy levels
- Plan to restore surplus

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.

A review was also made to ascertain what actions were taken by the Community with regard to comments and recommendations contained in the prior report on examination.

2. EXECUTIVE SUMMARY

The results of this examination revealed certain operational deficiencies during the examination period. The most significant findings of this examination include the following:

As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements was deficient in the amount of \$(16,679,330) as of December 31, 2008.

The Community is operating under a Plan of Restoration (Plan) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 12, 2010.

3. DESCRIPTION OF THE COMMUNITY

Westchester Meadows was formed on September 24, 1997, received its Certificate of Authority on April 2, 2000 and commenced operations on April 29, 2002. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code, and is

operated by Hebrew Hospital Senior Housing, Inc., a New York State not-for-profit corporation located in Westchester County, New York.

The CCRC consists of one hundred twenty (120) independent living units; ten (10) enriched housing units and a twenty (20) bed skilled nursing facility.

A. Management and Controls

Pursuant to the Community's charter and by-laws, management of Westchester Meadows is to be vested in a board of directors consisting of not less than seven (7) nor more than thirteen (13) directors. During each calendar year, the board is required to hold quarterly meetings; one of which is to be an annual meeting. The board may hold special meetings as necessary upon prior notification. The board met twice in 2007 and at least quarterly during 2008, as required by its by-laws. As of December 31, 2008, the Community's board of directors was comprised of the following five (5) members as follows:

| <u>Name</u> | <u>Principal Business Affiliation</u> |
|--|--|
| Bertram Gelfand Bronx, NY | Director, Kurzman & Eisenberg |
| Charles Goldberger White Plains, NY | Vice President, McCullough, Goldberger & Staudt |

| <u>Name</u> | <u>Principal Business Affiliation</u> |
|------------------------------|---|
| Arnold Goldstein Rye, NY | Chairman, Samson Management |
| Michael Laub New York, NY | President, Realty Group |
| Alan Pearce Stamford, CT | Treasurer & Secretary, Bryan, Cave, Robinson and Silverman |

Article III, Section 2 of the Community's by-laws states in part:

“The Board of Directors shall be comprised of not less than seven (7) nor more than thirteen (13) directors...”

As noted above, the Community maintained five (5) directors on its board of directors throughout the examination period and as of December 31, 2008.

It is recommended that the Community comply with Article III, Section 2 of its by-laws and maintain not less than seven (7) nor more than thirteen (13) directors on its board.

At its board of directors meeting held on December 1, 2009, the Community appointed Marvin Lifson and Donna Jakobovitz to the board which brought the Community's board into compliance with the membership requirement of 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 directors attending at least one-half of the meetings they were eligible to attend.

The principal officers of Westchester Meadows as of December 31, 2008 were as follows:

| <u>Officers</u> | <u>Title</u> |
|----------------------|-------------------------------------|
| Mary Frances Barrett | President & Chief Executive Officer |
| Brian J. Perino | Chief Financial Officer |
| Alan Pearce | Secretary |

B. Administrative Services Agreement

Hebrew Hospital Corporate Services, Inc. ("HHCS"), is a not-for-profit corporation that is an affiliate of Hebrew Hospital Senior Housing, Inc. d/b.a Westchester Meadows, Hebrew Hospital Home of Westchester, a 160-bed skilled nursing facility in Westchester County, New York, HHH Home Care, Inc., a home care agency in the Bronx and Westchester County and, Hebrew Hospital Home Foundation, Inc., which raises contributions to support all of the aforementioned entities.

The Community currently receives administrative services, subject to the terms of an inter-company agreement with HHCS, effective October 1, 2006. HHCS provides financial, human resources, payroll, accounts payable, administration, supplies, facility construction, marketing, business development, and MIS services to Westchester Meadows., as well as to the other aforementioned entities. The costs for these services are allocated to Westchester

Meadows (and the other entities) and are booked as inter-company balances. These inter-company balances accrue on account until payment is made by the CCRC to HHCS. As of April 8, 2010, the agreement was revised to reflect that the CCRC receives services at cost with no mark-up.

C. Plan of Operation

The Community offers one type of residency contract – Type B. Type B is a modified contract providing sixty (60) cumulative lifetime days of nursing home care services and sixty (60) cumulative lifetime days of enriched housing services, if required, at the same monthly fee as the independent living monthly fee. In exchange for an entrance fee, Westchester Meadows provides a potential resident to enter into a Type B residency contract that covers lifetime residence in the Westchester Meadows Life Care Community. The entrance fee is refundable, subject to the terms of the residency agreement. A monthly maintenance fee is payable at the time that an applicant takes up residence in an independent living unit within the Community. Under the contract, a resident may be transferred to the Community's enriched housing or skilled nursing facility. The contract can be voluntarily terminated. In addition to being available for contract holders, the Community's enriched housing and skilled nursing facilities are also available on a per diem basis.

The CCRC had previously offered a Type A lifecare contract with a 90% refundable deposit option and 65% refundable deposit option. Effective January 1, 2006 and January 1, 2009 respectively, these contract options were no longer available. However, as of the time of this writing, most of the current residents are still covered under these refundable deposit options.

Entrance Fee Requirement

When a person has been accepted to become a resident in the CCRC, the applicant is required to submit a deposit equal to 10% of the required entrance fee. The remainder of the entrance fee must be paid before the resident enters the CCRC. For the first 90 days after the resident pays the entrance fee, it is fully refundable. At the end of the 90 day period, the entrance fee to be refunded, will be reduced by a 4% administration fee, after which any entrance fee refund will be reduced by a 2% per month charge on the residential component of the fee. The residential component is fully amortized to the 65% level, where it remains, after 570 days. Refunds made under the terms of the residency agreement will occur no later than 30 days after a new resident pays the entrance fee for a unit being vacated, or within one year after termination of the residency agreement, whichever occurs first.

Monthly Fee Requirement

A monthly fee is charged to the resident who has assumed occupancy of an Independent Living Unit, and where applicable a second person fee, for the services and facilities made available to them. Monthly fees are due and payable when a resident moves into the Independent Living Unit, or 60 days after it is available for residency. Any monthly fee increases are subject to inflation limitations, determined from when the agreement was executed.

Contract

The residency agreement includes coverage for services including: residency at Westchester Meadows,, dining, utilities (except telephone) and basic television cable, apartment and common area maintenance, weekly flat linen service,, weekly housekeeping, transportation, use of exercise center, including an indoor swimming pool and fitness center and optional activities, and if needed, skilled nursing home services or assistance with the activities of daily living in an enriched housing apartment, access to contracted short-term and intermittent home health care and various administrative services.

Initial Disclosure Statement

The Initial Disclosure Statement is attached to and distributed with the residency agreement to an accepted applicant. The CCRC's disclosure statement, for the period under examination, contained all the necessary provisions required by Section 4606 of the New York Public Health Law (PHL).

D. Occupancy Levels

As of the year ending December 31, 2008, the Community maintained 116 occupied independent living units, 4 occupied enhanced housing units and 20 occupied skilled nursing care beds. The overall occupancy level for the year ending December 31, 2008 was ninety-three (93%) percent.

The following reflects the breakdown of occupancy at December 31, 2008 relative to the Community's independent living units, by type, and number of units:

| | |
|-------------------------|------------|
| Traditional | 24 |
| 1 Bedroom Deluxe | 32 |
| 2 Bedroom Traditional | 32 |
| 2 Bedroom Deluxe-M | 8 |
| 2 Bedroom Deluxe-Bay | 8 |
| 2 Bedroom Deluxe-Dining | 8 |
| 2 Bedroom with Den | <u>8</u> |
| Total Units | <u>120</u> |

The following reflects the occupancy rates at each year-end during the examination period and calendar year 2009 for the Community's Independent Living Units:

| Period | 2007 | 2008 | 2009 |
|------------------|-------------|-------------|-------------|
| Occupancy | 95% | 97% | 92% |

It should be noted that as of May 31, 2010, the latest period available at the time of the writing of this report, the Community's occupancy rate relative to its independent living units decreased from 92% at December 31, 2009 to 90.8%.

The following reflects the occupancy rates at each year-end during the examination period and 2009 for the Community's *Enriched Housing/Adult Care Units*:

| Period | 2007 | 2008 | 2009 |
|------------------|-------------|-------------|-------------|
| Occupancy | 100% | 40% | 10% |

The following reflects the occupancy rates at each year-end during the examination period and 2009 for the Community's *Skilled Nursing Facility*:

| Period | 2007 | 2008 | 2009 |
|------------------|-------------|-------------|-------------|
| Occupancy | 90% | 100% | 90% |

It is recommended that the Community continue to strive to increase its occupancy rates within its independent living units to industry norms.

E. Fees

The Type A contract was withdrawn from sale effective July 1, 2009, after the Type B contract was approved for sale. The Type B entrance fees were reduced for year 2010. The monthly maintenance fees for the independent living units increased by 4.25% to 6.5% for years 2008-2009, and by 4.25% to 6.25% for year 2010. The rate of increases varied based on the period that the residency agreement covered. Pursuant to the requirements of Section 4608(9) of the New York Public Health Law, sixty-day notices regarding such increases were provided to the residents and such rate increases were approved by the New York Insurance Department.

F. Disclosure Statements

The Community's current disclosure statements state in part:

“...Hebrew Hospital Senior Housing, Inc. (hereinafter “Sponsor”), located at 55 Grasslands Road, Valhalla, New York 10595... Hebrew Hospital Corporate Services, Inc. (HHCS), Inc. is a not-for-profit corporation that is the parent corporation of the following as well as Sponsor:...”

The above statements appear to indicate that Hebrew Hospital Corporate Services, Inc. is the parent of the Sponsor which was previously defined in the Community's disclosure statements as Hebrew Hospital Senior Housing, Inc.

Inasmuch as Community management has indicated that Hebrew Hospital Corporate Services, Inc. is not the parent of Hebrew Hospital Senior Housing, Inc., in order to eliminate any possible misleading information to its residents and potential

residents, it is recommended that the Community's disclosure statements be revised to specifically indicate that Hebrew Hospital Corporate Services, Inc. is not the Parent of Hebrew Hospital Senior Housing, Inc. d/b/a Westchester Meadows.

4. FINANCIAL STATEMENTS

A. Balance Sheet

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

| <u>Assets</u> | <u>Examination</u> | <u>Community</u> |
|----------------------------------|----------------------|----------------------|
| Current assets | | |
| Cash and investments | \$ 4,998,264 | \$ 4,998,264 |
| Accounts receivable | <u>935,392</u> | <u>935,392</u> |
| Total current assets | <u>\$ 5,933,656</u> | <u>\$ 5,933,656</u> |
| Fixed assets less long term debt | | |
| Property plant and equipment | \$ <u>49,331,202</u> | \$ <u>49,331,202</u> |
| Total fixed assets | <u>\$ 49,331,202</u> | <u>\$ 49,331,202</u> |
| Other assets | | |
| Deferred finance costs | \$ 982,191 | \$ 982,191 |
| Deferred marketing costs | <u>932,783</u> | <u>932,783</u> |
| Total other assets | <u>\$ 1,914,974</u> | <u>\$ 1,914,974</u> |
| Total assets | <u>\$ 57,179,832</u> | <u>\$ 57,179,832</u> |

| <u>Liabilities</u> | <u>Examination</u> | <u>Community</u> |
|---|------------------------|------------------------|
| Long-term debt | \$ 14,670,000 | \$ 14,670,000 |
| Subordinated loans | 4,880,320 | 4,880,320 |
| Actuarial reserve liabilities | <u>54,308,843</u> | <u>54,308,843</u> |
| Total liabilities | <u>\$ 73,859,163</u> | <u>\$ 73,859,163</u> |
| <u>Net surplus</u> | | |
| Net actuarial surplus | \$ <u>(16,679,330)</u> | \$ <u>(16,679,330)</u> |
| Total liabilities and net actuarial surplus | <u>\$ 57,179,832</u> | <u>\$ 57,179,832</u> |

NOTES:

1. 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 using generally accepted accounting principles (GAAP basis).

2. As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was deficient in the amount of \$(16,679,330) as of December 31, 2008.

3. The Community is operating under a Plan of Restoration (Plan) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 12, 2010

B. Statement of Revenue and Expenses and Change in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis, as modified pursuant to Department Regulation No. 140, for the period January 1, 2007 through December 31, 2008 as follows:

Operating revenue

| | |
|-------------------------|----------------|
| Resident fees | \$ 13,361,165 |
| Other operating revenue | 344,522 |
| Earned entrance fees | 2,351,398 |
| Interest income | <u>697,905</u> |

Total operating revenue \$ 16,754,990

Operating expenses

| | |
|-----------------------------------|------------------|
| Health care services | \$ 4,074,464 |
| Dietary services | 3,468,504 |
| Administrative services | 5,487,311 |
| Maintenance and security | 2,780,207 |
| Housekeeping and laundry services | 1,334,452 |
| Depreciation and amortization | 2,878,073 |
| Interest expense | <u>1,996,213</u> |

Total operating expenses 22,019,224

Non-operating revenue

| | |
|--------------------------------------|--------------------|
| Loss on investments | \$ (487) |
| Loss on early extinguishment of debt | <u>(3,302,150)</u> |

Total non-operating revenue (3,302,637)

Net operating loss \$ (8,566,871)

Changes in Actuarial Surplus

Surplus decreased \$9,562,931 during the examination period, January 1, 2007 through December 31, 2008, detailed as follows:

| | | | |
|--|-------------------------|--------------------------|------------------------|
| Surplus per report on examination, as of December 31, 2007 | | | \$ (7,116,399) |
| | <u>Gains in Surplus</u> | <u>Losses in Surplus</u> | |
| GAAP basis net loss | \$ - 0- | \$(8,566,871) | |
| Statutory adjustment | | <u>(996,060)</u> | |
| Net decrease in surplus | | | <u>\$ (9,562,931)</u> |
| Surplus per report on examination, as of December 31, 2008 | | | <u>\$ (16,679,330)</u> |

5. CONCLUSION

As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was deficient in the amount of \$(16,679,330) as of December 31, 2008.

The Community is operating under a Plan of Restoration (Plan) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 12, 2010.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

ITEM

PAGE NO.

Actuarial Surplus

- | | | |
|----|---|-----------|
| 1. | As of December 31, 2006, the Community's required actuarial surplus, as determined using generally accepted actuarial standards and applying statutory requirements, was impaired in the amount of \$7,116,399. | 2,4,15,17 |
|----|---|-----------|

It is recommended that the Community continue to operate under the Plan of Restoration, accepted by the New York Insurance Department on August 7, 2006, in order to bring its required surplus to an adequate level.

At the time of this writing, the Community was operating under a revised plan to achieve satisfactory actuarial balance which was approved by the New York Insurance Department on March 12, 2010.

Management

- | | | |
|----|--|---|
| 2. | It is recommended that the Community fill the member vacancies on its board in order to comply with the required number of board members specified by its by-laws. | 6 |
|----|--|---|

The Community has complied with this recommendation.

Holding Company

- | | | |
|----|--|---|
| 3. | It is recommended that Westchester Meadows update its corporate services agreement to reflect the practice of receiving the services disclosed in the agreement with HHCS at cost. | 7 |
|----|--|---|

The Community has complied with this recommendation.

ITEM**PAGE NO.****Internal Controls**

4. It is recommended that the Community develop an internal control procedure that ensures only approved expenses are entered into the account payable system and only approved expenses are disbursed. 11

The Community has indicated that it has internal control procedures in place to ensure that appropriate expenses are posted and paid.

5. It is recommended that the Corporate Compliance Officer initiates reviews and or audits of the administrative operations that impact Westchester Meadows, including applicable key areas and issue written audit reports thereon. 12

The Community has indicated that it has complied with this recommendation.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

| <u>ITEM</u> | <u>PAGE NO.</u> |
|--|-----------------|
| A. <u>Actuarial Surplus</u> | |
| As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was deficient in the amount of \$(16,679,330) as of December 31, 2008. | 2, 4, 15,17 |
| The Community is operating under a Plan of Restoration (Plan) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on March 12, 2010. | |
| B. <u>Management and Controls</u> | |
| It is recommended that the Community comply with Article III, Section 2 of its by-laws and maintain not less than seven (7) nor more than thirteen (13) directors on its board. | 6 |
| At its board of directors meeting held on December 1, 2009, the Community appointed Marvin Lifson and Donna Jakubovitz to the board which brought the Community's board into compliance with the membership requirement of its by-laws. | |
| C. <u>Occupancy rates</u> | |
| It is recommended that the Community continue to strive to increase its occupancy rates within its independent living units to industry norms. | 12 |

ITEM**PAGE NO.**D. Disclosure statements

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It is recommended that the Community's disclosure statements be revised to specifically indicate that Hebrew Hospital Corporate Services, Inc. is not the Parent of Hebrew Hospital Senior Housing, Inc. d/b/a Westchester Meadows.

Respectfully submitted,

Victor Estrada

Victor Estrada
Senior Insurance Examiner

STATE OF NEW YORK)
) SS.
)
COUNTY OF NEW YORK)

Victor Estrada, being duly sworn, deposes and says that the foregoing report submitted by him is true to the best of his knowledge and belief.

Victor Estrada

Victor Estrada

Subscribed and sworn to before me
this 3rd day of August 2010 (sd)

Sylvia D. Lawson

SYLVIA D. LAWSON
NOTARY PUBLIC, STATE OF NEW YORK
NO. 81LA086782
QUALIFIED IN QUEENS COUNTY
CERTIFICATE FILED IN NEW YORK COUNTY
COMMISSION EXPIRES 3/26/2015

Appointment No. 30387

**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:

Victor Estrada

as a proper person to examine into the affairs of the

**Hebrew Hospital Senior Housing, Inc.
DBA Westchester Meadows**

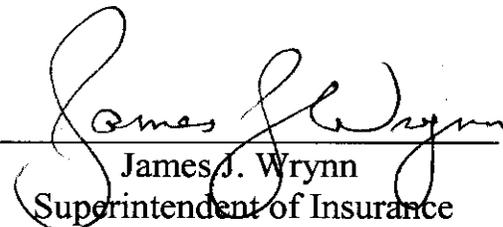
and to make a report to me in writing of the condition of the said

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 8th day of October, 2009


James J. Wrynn
Superintendent of Insurance

