

**REPORT ON EXAMINATION**

**OF**

**ACTIVE RETIREMENT COMMUNITY, INC.**

**D/B/A**

**JEFFERSON'S FERRY**

**AS OF**

**DECEMBER 31, 2014**

**DATE OF REPORT**

**APRIL 6, 2017**

**EXAMINER**

**HUSSEIN AGOUDA, CFE**

## **TABLE OF CONTENTS**

<b><u>ITEM NO.</u></b>		<b><u>PAGE NO.</u></b>
1.	Scope of the examination	2
2.	Description of the Community	3
	A. Corporate governance	6
	B. Corporate structure	7
	C. Disclosure statement	9
	D. Occupancy rates	10
3.	Financial statements	11
	A. Balance sheet	12
	B. Statement of revenue, expenses and actuarial surplus	13
4.	Compliance with prior report on examination	15
5.	Summary of comments and recommendations	17



NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

April 6, 2017

Honorable Maria T. Vullo  
Superintendent of Financial Services  
Albany, New York 12257

Madam:

Pursuant to the requirements of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 31479, dated May 3, 2016, annexed hereto, I have made an examination of Active Retirement Community, Inc. d/b/a Jefferson's Ferry, a not-for-profit continuing care retirement community certified pursuant to the provisions of Article 46 of the New York Public Health Law, as of December 31, 2014, and respectfully submit the following report thereon.

The examination was conducted at the home office of Active Retirement Community, Inc. d/b/a Jefferson's Ferry located at One Jefferson Ferry Drive, South Setauket, NY.

Wherever the designations the "Community" or "Jefferson's Ferry" appear herein, without qualification, they should be understood to indicate Active Retirement Community, Inc.

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

## 1. SCOPE OF THE EXAMINATION

The previous examination was conducted as of December 31, 2011. This examination covers the three-year period from January 1, 2012 through December 31, 2014. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the Department and the New York State Department of Health conducted a site survey of the Community's facility on April 27, 2016, pursuant to the requirements of Section 4614(1) of the New York Public Health Law.

The examiner 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, 2014 on a statutory actuarial basis, pursuant to Insurance 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' 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.

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. DESCRIPTION OF THE COMMUNITY**

Jefferson's Ferry is a continuing care retirement community, as defined in Section 4601.2-b of the New York State Public Health Law. The Community received a Certificate of Authority issued by the New York State Department of Health and approved by the New York State Continuing Care Retirement Community Council in May 2001. Jefferson's Ferry 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.

The Community's independent living units consist of 220 apartments and 28 cottages. There are also 60 enriched housing apartments and 60 skilled nursing rooms located in the health center portion of the facility.

In exchange for an entrance fee and monthly maintenance charges, the Community provides lifetime residence and varying benefits for nursing care. The amount of the entrance fee and monthly maintenance charges are dependent upon the contract selected and the size of the residence being occupied.

The Community offers two types of contracts, "The Traditional Declining Balance First and Second Person Entry Fee" (Traditional Continuing Care Residency Agreement), and the "90% Refundable First Person Entry Fee and Declining Balance Second Person Entry Fee" (90% Refundable Continuing Care Residency Agreement). The following is a description of the two contract options available to the Community's residents:

1. Traditional Continuing Care Residency Agreement

The Traditional Continuing Care Residency Agreement is a contract that requires an entrance fee for both the first person and the second person if the unit is to be occupied by two residents. The first and the second person entrance fees each have a declining balance and are refundable. The Community will provide a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month or fraction thereof since the resident occupied the unit through date of termination of the agreement; except if there were costs incurred by the Community at the specific request of the resident as set forth in an addendum to this agreement to the extent that those costs were not paid by the resident and any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement and damage to the living accommodation.

The Community will pay the resident a refund of the second person's entrance fee without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month or fraction thereof until the date of termination of this agreement.

Payment of a refund is made within thirty (30) days after a new resident pays the then applicable entrance fee for the living unit, but in no event more than one year after the previous resident terminates occupancy. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the contract.

2. Ninety Percent (90%) Refundable Continuing Care Residency Agreement

The Ninety Percent (90%) Refundable Continuing Care Residency Agreement is a contract that requires an entrance fee for both the first person and the second person if the unit is to be occupied by two residents. The Community will provide a refund of the first person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month or fraction thereof since the resident occupied the unit through the date of termination of the agreement, with the added provision that the refund shall not be less than 90% of the first person entrance fee; except if (i) there were any costs incurred by the Community at the specific request of the resident as set forth in an addendum to their agreement to the extent that those costs were not paid by the resident and (ii) there were any unpaid monthly service fees, and other charges as set forth on the monthly service fee statement, and damage to the living accommodation.

The Community will pay a refund of the second person's entrance fee paid by the resident, without interest, less a four percent (4%) administrative fee and less two percent (2%) for each month the resident occupied the unit through the date of termination of the agreement.

Payment of a refund is made within thirty (30) days after a new resident pays the applicable entrance fee for the living unit, but in no event more than one year after the previous resident terminates residency. When two residents contractually share a living accommodation, any refund of the entrance fee will only be paid at termination of the contract.

A. Corporate Governance

Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of directors consisting of not less than three (3) nor more than twelve (12) directors. As of the examination date, the board of directors was comprised of six (6) members.

The Community's board of directors at December 31, 2014 was as follows:

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Vincent Basilice St. James, NY	MD, Medical Director, The Ophthalmic Center, East Setauket, New York
James Danowski Wading River, NY	Certified Public Accountant Cullen & Danowski, LLP
Vivian Viloría-Fisher Setauket, NY	Former Legislator for 5 <sup>th</sup> District, Suffolk County, New York
George F. Rice Setauket, NY	Senior Partner, Spellman, Rice, Gibbons, Polizzi & Truncale, LLP
Wayne Shattes Miller Place, NY	Vice President of Administration, John T. Mather Memorial Hospital
John Sini Setauket, NY	Certified Public Accountant Sini & Reeves, LLP

According to the Community's by-laws, the board of directors shall hold a regular meeting at a date and time to be fixed from time to time by the board of directors. The board of directors may, from time to time, designate the Executive Committee to meet in lieu of the board of directors, with full power to exercise the authority of the board of directors in the supervision and control of the affairs of the Community subject to any prior limitation imposed by the board

and subject to the exceptions set forth in Article IV of the by-laws, as well as any other limitation set forth in the New York Not-for-Profit Corporation Law. Special meetings of the board of directors may be called by the Chair of the board at any time, or, in his/her absence or disability, by the Vice Chair of the board, and may also be called by the Secretary upon the written request of one-third (1/3) of the members of the board of directors.

The Community's board met at least four times each year during the exam period.

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.

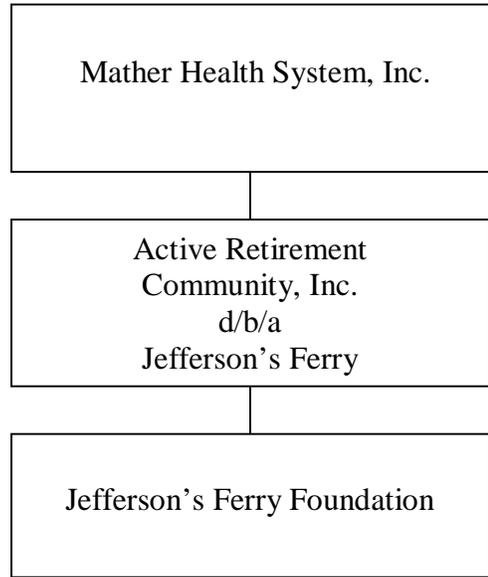
The principal officers of the Community as of December 31, 2014 were as follows:

<u>Officers</u>	<u>Title</u>
George F. Rice	Board Chair
Robert Caulfield	Chief Executive Officer
Brian Amtmann	Chief Financial Officer
Wayne Shattes	Secretary
John Sini	Treasurer

B. Corporate Structure

According to the Community's by-laws, the Community shall have one sole member, who shall be Mather Health System, Inc. (the "Member"). The Member shall have the right to elect the persons to serve as members of the board of directors.

The Community's holding company system as of December 31, 2014 was as follows:



Effective January 1, 2010, Mather Health System, Inc., New York became the sole parent of Jefferson's Ferry. Prior to January 1, 2010, the ultimate parents of the Community were St. Charles Hospital and Rehabilitation Center ("St. Charles") and John T. Mather Memorial Hospital ("Mather").

The Jefferson's Ferry Foundation (the "Foundation") is a wholly-owned subsidiary of Jefferson's Ferry. The Foundation was incorporated on June 8, 2006, and is a tax exempt organization. The purpose of the Foundation is to enhance services for residents and staff of the Community and to respond to the needs of the community's residents through solicitation of donations and contributions from staff, residents, and the surrounding community at large that will support the capital needs and comprehensive services and programs of the Community. The Foundation is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code and state income taxes.

C. Disclosure Statement

During the review of the Community's disclosure statement and its by-laws, it was noted that Mather Health System, Inc. is identified as the parent corporation, which also is called a "Member" or "Sponsor". It was also noted that the primary activities of the parent is stated in the disclosure statement as required, however, the interest of the Sponsor or parent in the Community, and the extent to which the Sponsor will be responsible for the financial and contractual obligations of the Community is not stated, as required by Section 4606.9 of the New York Public Health Law.

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

"Prior to the execution of a contract, or before the transfer of any money, other than a refundable priority reservation agreement application fee, to an operator or on behalf of a prospective resident, whichever comes first the operator shall deliver to the person with whom the contract is to be entered into or the person's legal representative the most recent annual statement as required by section forty-six hundred seven of this article, and an initial disclosure statement which contains the following:...

(9) If the applicant is a subsidiary corporation or the affiliate of another corporation, a statement identifying the parent corporation or the other affiliate corporation, the primary activities of such parent, or other affiliate corporation, the interest in the applicant held by such parent or other affiliate corporation, and the extent to which the parent corporation will be responsible for the financial and contractual obligations of the subsidiary;..."

It is recommended that the Community amend its disclosure statement to include the provision required by Section 4606.9 of New York Public Health Law.

D. 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>2012</u>	<u>2013</u>	<u>2014</u>
Independent Living Units	95%	92%	93%
Enriched Housing/Adult Care	88%	88%	85%
Skilled Nursing Facility	97%	98%	96%

Subsequent to the examination date, as of year-end 2015, the Community experienced an increase in occupancy relative to its Independent Living Units to a 96% occupancy rate; in its Enriched Housing/Adult Care facility to a 98% occupancy rate; and a slight increase to a 96.6% occupancy rate in its Skilled Nursing Facility.

### **3. FINANCIAL STATEMENTS**

The following statements show the assets, liabilities and actuarial surplus as of December 31, 2014 as contained in the Community's 2014 filed annual statement presented on a statutory actuarial basis pursuant to Insurance Regulation No. 140 (11 NYCRR 350), a condensed summary of operations and a reconciliation of the actuarial surplus account for the years under review.

#### Independent Accountants

The firm of Baker Tilly Virchow Krause, LLP ("Baker Tilly"), formerly known as ParenteBeard LLC, was retained by the Community to audit Jefferson's Ferry and Jefferson's Ferry Foundation's consolidated financial statements of financial position for calendar years 2012, 2013 and 2014, and the related consolidated statements of operations and cash flows for such years.

Baker Tilly concluded that the consolidated financial statements present fairly, in all material respects, the financial position of the Community at the respective audit dates. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

A. Balance SheetAssets

Cash and investable assets	\$ 38,632,289
Property and equipment related to the Community	133,490,445
Deferred financing costs	<u>1,327,355</u>
Total assets	\$ <u>173,450,089</u>

Liabilities

Loan payable	\$ 42,596,767
Actuarial reserve	<u>124,091,235</u>
Total liabilities	\$ <u>166,688,002</u>

Net surplus

Net actuarial surplus	\$ <u>6,762,087</u>
Total liabilities and net actuarial surplus	\$ <u>173,450,089</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 statutory modified GAAP basis for the three-year examination period January 1, 2012 through December 31, 2014.

Revenues

Monthly maintenance fees	\$51,288,906	
Other Revenue from Residents	7,707,692	
Earned Entrance Fees (net of refunds)	9,772,476	
Patient Revenues from Nonresidents	0	
Interest and Dividend Income	<u>2,414,899</u>	
Total Revenues		\$71,183,973

Expenses

Net change in Obligation for Future Services	\$1,842,000	
Interest Expense	6,899,117	
Facility and Dining Expenses	24,229,562	
Health Expenses	17,128,301	
Administration Expenses	11,910,945	
Depreciation and Amortization Charges	13,631,749	
Change in Provision for Uncollectable Accounts	(20,984)	
Real Estate Taxes and PILOT	2,028,035	
NYS Health Facilities Assessment	<u>-0-</u>	
Total Expenses		<u>77,648,725</u>
Net Gain (Loss)		<u><u>(\$6,464,752)</u></u>

Changes in Actuarial Surplus

Actuarial surplus increased \$1,949,634 during the three-year examination period, January 1, 2012 through December 31, 2014, detailed as follows:

Actuarial surplus, per report on examination, as of December 31, 2011			\$4,812,453
	<u>Gains in Actuarial Surplus</u>	<u>Losses in Actuarial Surplus</u>	
Net Loss		\$6,464,752	
Net realized and unrealized capital gain	\$956,265		
Aggregate write-ins		2,928,002	
Statutory adjustment	<u>10,386,123</u>	_____	
Net increase in actuarial surplus			<u>1,949,634</u>
Actuarial surplus, per report on examination, as of December 31, 2014			<u>\$6,762,087</u>

#### 4. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained eight comments and recommendations as follows (page numbers refer to the prior report):

<u>ITEM NO</u>		<u>PAGE NO.</u>
	<u>Management and Controls</u>	
1.	It is recommended that the Community comply with the requirements of Sections 4607 and 4604 of the New York Public Health Law by providing the Department with information regarding any changes made to its by-laws.	6
	<i>The Community has complied with this recommendation.</i>	
	<u>Holding Company System</u>	
2.	It is recommended that the Community comply with the provisions of Section 901.10(d) of the Administrative Rules and Regulations of the New York Department of Health by submitting all of its administrative services agreements to the New York Department of Health.	9
	<i>The Community has complied with this recommendation.</i>	
3.	It is recommended that the Community comply with the requirements of Section 4606.9 of the New York Public Health Law by including the requisite mention of its administrative services agreements within its disclosure statement.	9
	<i>The Community has complied with this recommendation.</i>	
	<i>However, the Community violated this section again relative to its disclosure statement and thus a similar recommendation regarding compliance with Section 4606.9 is included in the report.</i>	
	<u>Global Computer System</u>	
4.	It is recommended that the Community establish a formal computer service agreement with Global Computer Systems.	11
	<i>The Community has complied with this recommendation.</i>	

**ITEM NO****PAGE NO**Residents' Health Coverage

5. It is recommended that the Community monitor the residents' required insurance coverages more frequently than annually to ensure that such coverages are in force at all times. 12

*The Community has complied with this recommendation.*

Investments

6. It is once again recommended that the Community comply with the annual statement instructions, by classifying securities with maturity dates greater than one year as long-term investments in its financial statements filed with the Department. 13

*The Community has complied with this recommendation.*

Accounts and Records

7. It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Insurance Regulation No. 140 by not reporting in its actuarial balance sheet, as admitted assets, government receivables that are overdue more than 12 months and non-government receivables that are overdue more than 90 days. 13

*The Community has complied with this recommendation.*

8. It is recommended that the Community exercise greater care when preparing its filed annual statement. 14

*The Community has complied with this recommendation.*

**5. SUMMARY OF COMMENTS AND RECOMMENDATIONS**

**ITEM NO**

**PAGE NO.**

A. Disclosure Statement

It is recommended that the Community amend its disclosure statement to include the provision required by Section 4606.9 of the New York Public Health Law.

9

Respectfully submitted,

\_\_\_\_\_  
Hussein Agouda  
Insurance Examiner, CFE

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

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

\_\_\_\_\_  
Hussein Agouda, CFE

Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 2017.

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, Acting 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:

**Hussein Agouda**

as a proper person to examine the affairs of

**Active Retirement Community, Inc. dba Jefferson's Ferry**

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

**CCRC**

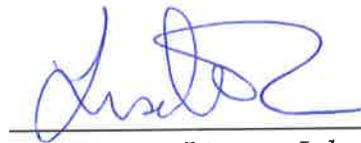
with such other information as he shall deem requisite.

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

this 5th day of May, 2016

MARIA T. VULLO  
Acting Superintendent of Financial  
Services

By:



Lisette Johnson  
Bureau Chief  
Health Bureau

