

Regulatory Impact Statement for the Second Amendment to 11 NYCRR 350 (Insurance Regulation 140).

1. Statutory authority: The authority of the Superintendent of Financial Services (“Superintendent”) to promulgate the Second Amendment to Insurance Regulation 140 derives from Financial Services Law Sections 202 and 302; Insurance Law Sections 201, 301, and 1119; and Public Health Law Sections 4604(4)(a), 4607 and 4611.

Financial Services Law Section 202 establishes the office of the Superintendent.

Financial Services Law Section 302 and Insurance Law Sections 201 and 301 authorize the Superintendent to effectuate any power accorded by the Financial Services Law, Banking Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law Section 1119 authorizes the Superintendent to permit a continuing care retirement community (“CCRC”) subject to Public Health Law article 46 to operate without being licensed under the Insurance Law.

Public Health Law Section 4604(4)(a) authorizes the Superintendent to review and approve the actuarial principles of the proposed CCRC project, the financial feasibility of the proposed CCRC project, and the form and content of the proposed contracts to be entered into with residents prior to the Department of Health’s approval of the CCRC’s certificate of authority.

Public Health Law Section 4607 authorizes the Superintendent to review and approve a CCRC’s annual statement.

Public Health Law Section 4611 provides the Superintendent with the authority to monitor and review the reserves and supporting assets of a CCRC.

2. Legislative objectives: This amendment adds a new section specifying parameters for transactions between a CCRC and its parent, affiliate or subsidiary. The section, modeled after Insurance Law Article 15 regarding insurer holding companies, requires, among other things, transactions between a CCRC and an

affiliated entity to be fair and equitable; clearly and accurately disclosed; and subject to written agreements. The amendment also: (i) requires that a CCRC to obtain the Superintendent's prior approval before entering into certain transactions with its parent corporation or any affiliate or subsidiary; (ii) requires that a CCRC notify the Superintendent, in writing, at least 30 days prior to entering into certain transactions with its parent corporation or any affiliate or subsidiary, and that the Superintendent has not disapproved the transaction within that period; (iii) bars a CCRC from guaranteeing the obligations of its parent corporation or any affiliate or subsidiary; (iv) requires a CCRC to submit a copy of any report submitted to a trustee pursuant to a mortgage loan, bond indenture or other long-term financing agreement to the Department of Financial Services ("Department"); and (v) adds a requirement that a CCRC notify the Department at least 30 days prior to the sale or transfer to another entity of a class 1 or class 2 capital asset worth more than \$250,000. The amendment also broadens the range of investments a CCRC may hold, such as mutual funds and exchange traded funds, which previously were not permitted investments, subject to a purchase limit of 30 percent of total investable assets. The amendment also adds a requirement that a CCRC be in operation for at least 60 months and that the occupancy rate of the independent living units in the CCRC has exceeded 90 percent for six consecutive months prior to making certain types of investments.

3. Needs and benefits: The current regulation has not been amended since 2007 and prescribes a rather outdated framework for the financial oversight of CCRCs. This amendment modernizes the parameters of that framework to better fit the needs of both CCRCs and the Department by broadening the range of permitted investments for CCRCs, clarifying the oversight of numerous financial transactions between CCRCs and affiliated entities, adding an annual financial reporting requirement related to the transfer or sale of capital assets, and adding a reference to the new type of optional contract, the continuing care at home contract.

4. Costs: CCRCs should not incur any significant costs associated with the implementation of this amendment, because CCRCs already have existing personnel available to administer the minimal additional

annual financial reporting required by this rulemaking. Also, because the amendment does not require, but makes elective, the adoption of the new continuing care at home contract, a CCRC will not be subject to additional costs unless it opts to adopt the new contract. The Department will not incur any costs associated with the implementation of this amendment. Local governments are not affected by this rulemaking and thus will not incur any costs.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: There will be minimal additional paperwork caused by the amendment, which imposes a minor amount of additional annual financial reporting.

7. Duplication: Changes to CCRC oversight made by this amendment do not duplicate or conflict with any existing federal or state requirements.

8. Alternatives: This amendment accommodates the desire of CCRCs to expand the range of permitted investments, clarifies the existing oversight of financial transactions, adds an additional minimal annual financial reporting requirement, and adds a new type of optional contract, the continuing care at home contract. The Department believes that there are no viable alternatives to accomplish the objectives of this amendment.

9. Federal standards: This amendment will not affect compliance with any federal standard in any manner.

10. Compliance schedule: The rule will take effect 30 days after publication in the State Register.

Statement setting forth the basis for the finding that the Second Amendment to 11 NYCRR 350 (Insurance Regulation 140) will not impose an adverse economic impact or compliance requirements on small businesses or local governments.

1. Small businesses: The Department of Financial Services (“Department”) finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that the amendment is directed at Continuing Care Retirement Communities (“CCRCs”), none of which falls within the definition of a “small business” as defined by State Administrative Procedure Act section 102(8). The Department reviewed filed reports on examination and annual statements of these entities and believes that there are none that are both independently owned and employ fewer than 100 persons.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at CCRCs, which are not local governments.

Statement setting forth the basis for the finding that the Second Amendment to 11 NYCRR 350 (Insurance Regulation 140) will not impose adverse economic impact or compliance requirements on rural areas.

The Department of Financial Services finds that this rule does not impose any additional burden on persons located in rural areas and that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement for the Second Amendment to 11 NYCRR 350 (Insurance Regulation 140).

This amendment will not adversely impact job or employment opportunities in New York. The amendment broadens the range of permitted investments for Continuing Care Retirement Communities (“CCRCs”), clarifies the oversight of numerous financial transactions between CCRCs and affiliated entities, adds an annual financial reporting requirement related to the transfer or sale of capital assets, and adds a new type of optional contract, the continuing care at home contract.