

Summary of Second Amendment to 11 NYCRR 350 (Insurance Regulation 140).

Section 350.1 adds definitions necessitated by the addition of new language in the regulation and revises current definitions to provide greater clarity.

Section 350.2 is amended to replace the term “life care community” with “continuing care retirement community” (“CCRC”) for consistency and to add reference to the new continuing care at home contract type.

Section 350.3 is amended to replace the term “life care community” with “continuing care retirement community” for consistency and to clarify the calculation requirements for actuarial reserve liabilities.

Section 350.5 corrects the reference to section 350.6(c)(5)(iv) to read section 350.6(e)(1)(iv).

Section 350.6 is amended to broaden 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. Section 350.6 is also amended to add 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 have exceeded 90 percent for six consecutive months prior to making certain types of investments.

Section 350.7 is amended to clarify when distributions of paid in surplus/capital may be made. Specifically, the amendment requires these types of distributions to be documented in writing, strengthens the criteria for allowing returns of paid in capital, and subjects certain distributions to review and approval by the Superintendent of Financial Services (“Superintendent”).

Section 350.9 is amended to add references to the new continuing care at home contract type.

Section 350.10 is amended to add references to the new continuing care at home contract type and to add an annual exhibit regarding population flow projections in the actuarial study.

Section 350.11 adds a new section specifying parameters for transactions between a CCRC and its parent corporation, affiliate or subsidiary. The current rule contains no parameters regarding those transactions. 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. Section 350.11 is also amended to add a requirement that a CCRC must obtain the Superintendent's prior approval before entering into certain transactions with its parent corporation or any affiliate or subsidiary. It also adds a requirement that a CCRC notify the Superintendent, in writing, at least 30 days prior to entering into certain other transactions with its parent corporation or any affiliate or subsidiary, and that the Superintendent has not disapproved the transaction within that period. Further, this section bars a CCRC from guaranteeing the obligations of its parent corporation or any affiliate or subsidiary.

Section 350.12 is amended to add a requirement that a CCRC 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 Superintendent. It also adds a requirement that a CCRC notify the Superintendent 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.