

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES
SECOND AMENDMENT TO
11 NYCRR 350
(INSURANCE REGULATION 140)**

CONTINUING CARE RETIREMENT COMMUNITIES

I, Linda A. Lacewell, Superintendent of Financial Services, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 201, 301, and 1119 of the Insurance Law, and Sections 4604(4)(a), 4607 and 4611 of the Public Health Law, do hereby promulgate the following Second Amendment to Part 350 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 140), to take effect 30 days after the notice of adoption is published in the State Register.

(NEW MATTER UNDERLINED, DELETED MATTER IN BRACKETS)

Section 350.1 is amended to read as follows:

For purposes of this Part, unless the context indicates otherwise, the following definitions shall apply:

(a) Affiliate shall have the meaning ascribed by Insurance Law section 107(a)(4).

(b) Capital assets means those assets related to the continuing care retirement community as follows:

- (1) class 1-land;
- (2) class 2-building;
- (3) class 3-equipment, furnishings, refurbishments; and

(4) class 4-original startup costs actually incurred, which may include, if applicable, [but not be limited to] architect fees, legal fees, original marketing costs, development fees, sewer construction and financing costs involved with development, if not included above.

[(b)] (c) Capital expenses means those expenses related to capital assets (both original and replacements) associated with the continuing care retirement community. Capital expenses in any year shall consist of:

- (1) any expenses for insurance and taxes related to these capital items;
- (2) the excess, if any, of the cost to acquire a capital asset over the value of the capital asset for the year of acquisition;
- (3) the excess, if any, of the cost to repair or replace a capital asset over the increase in value of the capital asset for the year of repair or replacement; and

(4) the actual depreciation or amortization charged for capital assets for such year.

(d) Certificate of authority shall have the meaning ascribed by Public Health Law section 4601(1).

[(c)] (e) Commencement of operations for a continuing care retirement community shall be after the first living unit has been occupied.

[(d)] (f) Continuing care retirement community or community [means a facility operated pursuant to a certificate of authority as defined in article 46 of the] shall have the meaning ascribed by Public Health Law section 4601(2-b).

[(e)] (g) Continuing care retirement contract or continuing care at home contract shall have the meaning ascribed by Public Health Law section 4601(2-a) [means a single contract to provide a person services provided by the continuing care retirement community].

(h) Control, controlling, controlled by, and under common control with means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities or voting rights, by contract (except a commercial contract for goods or non-management services) or otherwise; but no person shall be deemed to control another person solely by reason of his or her being an officer or director of such other person.

(i) Derivative instrument shall have the meaning ascribed by Insurance Law section 1401(a)(7).

[(f)] (j) Earned surplus means the surplus less the paid in surplus.

[(g)] (k) Fiscal year means the January 1st through December 31st period. The superintendent may approve a different reporting year for a continuing care retirement community provided that the audited financial statement and the actuarial study are prepared in a manner consistent with the alternate fiscal year.

(l) Foreign domicile means any domicile outside of the United States.

[(h)] (m) The invested assets of a continuing care retirement community means assets meeting the requirements of section 350.6(a)(3) or [350.6(c)(1)-(4)] (c) of this Part.

(n) Institution shall have the meaning ascribed by Insurance Law section 107(a)(24).

(o) Market value means the price that would be received to sell an asset or the price that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date. The following shall be used in determining market value:

(1) for an obligation, market value shall be based on unadjusted quoted prices on a recognized national exchange in the United States, or if no quoted prices from a recognized national exchange in the United States are available, a value that reflects the price needed to yield the same as the average current yields on new investments of similar quality and maturity;

(2) for a common stock or a preferred stock, market value shall be based on unadjusted quoted prices on a recognized national stock exchange in the United States;

(3) for shares in an open-end investment company, market value shall be based on the net asset value; and

(4) for shares in an investment company that is an exchange traded fund, market value shall be based on unadjusted quoted prices on a recognized national stock exchange in the United States.

[(i)] (p) NRSRO means a “nationally recognized statistical rating organization” that has been [approved] recognized by the superintendent.

[(j)] (q) Net surplus means the surplus less the part 2 paid in surplus.

[(k)] (r) Non resident means a person living in a continuing care retirement community who has not entered into a continuing care retirement contract or a continuing care at home contract with that community.

(s) Obligations shall have the meaning ascribed in Insurance Law section 107(a)(33).

[(l)] (t) Operating expenses means those expenses, other than capital expenses and refund expenses, associated with the services to be provided pursuant to the continuing care retirement contracts and continuing care at home contracts, such as expenses for administration, food service, housekeeping, maintenance, utilities, nursing care, health services, resident services, leases, taxes, and insurance.

[(m)] (u) Operator means a legal entity operating a continuing care retirement community pursuant to a certificate of authority pursuant to Public Health Law article 46 [as defined in article 46 of the Public Health Law].

[(n)] (v) Paid in surplus means any stock or funds contributed to the continuing care retirement community by the operator, increased by credits allowed, including any credits appropriate from the date of contribution, and decreased by any distributions of paid in surplus to the operator, which shall be allocated as follows:

(1) part 1 paid in surplus corresponding to assets that at the time of contribution were eligible to support [reserves and] reserve liabilities under section 350.6 of this Part;

(2) part 2 paid in surplus corresponding to assets that at the time of contribution were not eligible to support [reserves and] reserve liabilities under section 350.6 of this Part.

(w) Parent corporation shall have the meaning ascribed by Insurance Law section 107(a)(40).

(x) Person means an individual or other entity, or any combination of the foregoing acting in concert.

[(o)] (y) Qualified consulting actuary means an individual who:

(1) is a member of the American Academy of Actuaries and has, based on the Academy's qualification standards, the necessary training and experience pertaining to continuing care retirement communities; or

(2) demonstrates to the satisfaction of the superintendent that based on the individual's knowledge, training and experience that the individual has the necessary knowledge pertaining to continuing care retirement communities.

[(p)] (z) Rating methodology means the methodology and detailed formulas developed pursuant to Public Health Law section 4604(4)(a)(ii) [of the Public Health Law].

[(q)] (aa) Refund expenses means the amount returned to a resident from either entrance fees or monthly fees upon termination of the continuing care retirement contract or continuing care at home contract because of the death of the resident or withdrawal or dismissal of the resident from the continuing care retirement community, or modification of the continuing care retirement contract or continuing care at home contract.

[(r)] (ab) Resident shall have the meaning ascribed by Public Health Law section 4601(15) [means an individual residing in a continuing care retirement community who has entered into a continuing care retirement contract with that community].

[(s)] (ac) Satisfactory actuarial balance means that the most recent actuarial study of the community that is satisfactory to the superintendent indicates all of the following conditions are met:

(1) the net surplus as of the current valuation (reporting) date is greater than or equal to zero as demonstrated by the actuarial balance sheet in the actuarial study;

(2) the current fee schedule for each continuing care retirement contract type and continuing care at home contract type offered to new residents to the community contains positive margins as demonstrated by the new resident cohort pricing analysis included in the actuarial study. Any reliance on [revenue] revenues or contributions from an endowment, foundation, parent corporation, affiliate, subsidiary or other external source that is used to satisfy this condition shall require justification satisfactory to the superintendent[;]. Any reliance on surplus that is used to satisfy this condition shall require justification satisfactory to the superintendent; and

(3) the invested assets of the community are greater than zero for each of the next ten projection years as demonstrated by the cash flow projection in the actuarial study.

(ad) Subsidiary shall have the meaning ascribed by Insurance Law section 107(a)(40).

[(t)] (ae) Surplus means the total assets less the total [reserves and] reserve liabilities of the continuing care retirement community as shown on the actuarial balance sheet included in the actuarial study.

(af) United States shall have the meaning ascribed by Insurance Law section 1401(a)(4).

Section 350.2 is amended to read as follows:

After release of funds held in escrow pursuant to [section 4610 of the] Public Health Law section 4610,

the operator of a [life] continuing care retirement community operating under a certificate of authority pursuant to [article 46 of the] Public Health Law article 46 shall maintain a reserve liability for amounts due and unpaid and a reserve liability for estimated future capital, operating and refund expenses provided for under the terms of the [life] continuing care retirement contracts and continuing care at home contracts.

Section 350.3 is amended to read as follows:

[(a)] At the end of each fiscal year, the sum of the actuarial reserve liabilities of a [life] continuing care retirement community shall be at least as great as the greatest of the following:

[(1)] (a) A retrospective reserve liability defined as an accumulation of not less than:

[(i)] (1) [a percentage of] the entrance fees received [where such percentage is not less than 95 percent and consistent with the calculation of the entrance fees]; plus

[(ii)] (2) [a percentage of] the monthly fees [where such percentage is not less than percentage of monthly fee used in the latest prospective valuation, including the initial actuarial study] received; plus

[(iii)] (3) revenues received from [non residents] nonresidents for services rendered (such as for health care); plus

[(iv)] (4) interest and dividend income received plus (minus) an adjustment for any difference between interest and dividend income accrued at the end and beginning of the year from [all interest bearing] assets eligible under section [350.6(c)(1)-(4)] 350.6(a)(3) and (c) of this Part; plus (minus)

[(v)] (5) an adjustment for capital gains [(losses)] or losses both realized and unrealized on [interest bearing] assets eligible under section [350.6(c)(1)-(4)] 350.6(a)(3) and (c) of this Part for supporting reserve liabilities; plus (minus)

[(vi)] (6) adjustment for capital gains [(losses)] or losses realized on sale or disposal of class 3 capital assets; plus

[(vii)] (7) capital gains both unrealized and realized on [classes] class 1 and class 2 capital assets; minus

[(viii)] (8) capital losses both unrealized and realized during the original assumed lifetime of [classes] class 1 and class 2 capital assets; minus

[(ix)] (9) the actual operating expenses, excluding any prepayment of expenses; minus

[(x)] (10) any refunds to residents of either entrance fees or monthly fees; minus

[(xi)] (11) the capital expenses; minus

[(xii)] (12) the interest payment on any loans, bonds or any other debt obligation, including the interest payments on the mortgage and any interest attributed to Part 1 paid in surplus; minus

[(xiii)] (13) [the percentage used in subparagraph (ii) of this paragraph applied to] the change in any unearned or advance payment liability; minus

[(xiv)] (14) the expenses for [non residents] nonresidents for services for which the revenues are included in [subparagraph (iii) of this] paragraph (3) of this subdivision; minus

[(xv)] (15) any releases of the excess of the retrospective reserve over the prospective reserve approved under the provisions of section 350.5 of this Part; plus or minus

[(xvi)] (16) any revenue or expense [which] that the operator can demonstrate as appropriate, subject to the approval of the superintendent[.]; minus

(17) any profit credited to part 1 paid in surplus pursuant to section 350.7(c) of this Part.

[(2)] (b) A prospective reserve liability consisting of the following:

[(i)] (1) amounts due and unpaid; plus

[(ii)] (2) the reserve for replacement as described in section 350.4(a)-(b) of this Part; plus

[(iii)] (3) the present value of future operating expenses for services covered by the [life] continuing care retirement contract and continuing care at home contract; plus

[(iv)] (4) the present value of the following expenses:

[(a)] (i) future depreciation charges on current and future capital (fixed) assets; and

[(b)] (ii) future imputed investment income to be credited each year to an amount equal to the depreciated value of the capital assets less any debt and less any part 1 paid-in surplus; and

[(c)] (iii) future interest payments, if not included in [subparagraph (iii) of this] paragraph (3) of this subdivision on loans, bonds or other debt obligations used to acquire capital (fixed) assets and on part 1 paid in surplus; and

[(d)] (iv) future insurance and taxes related to the capital (fixed) assets; and

[(e)] (v) future cost of replacements (other than that provided by [subparagraph (ii) of this] paragraph (2) of this subdivision) and repairs to the extent that such costs are not included in [clause (a) of this] subparagraph (i) of this paragraph; plus

[(f)] (vi) future refund expenses; minus

[(v)] (5) the present value of [not less than 95 percent nor more than 100 percent of] the future scheduled monthly fee payments; plus or minus

[~~(vi)~~] ~~(6)~~ the present value of any future expense or revenue item [~~which~~] that the operator can demonstrate as appropriate, subject to the approval of the superintendent.

[~~(3)~~] ~~(c)~~ The amount necessary to satisfy the requirements of section 350.6(a) of this Part.

[~~(b)~~ At any other time, the reserve liability shall be at least as great as the amount determined in accordance with paragraph ~~(a)~~(1) of this section.]

Section 350.5(b)(2) is amended to read as follows:

(2) the amount of any accelerated reduction in the value of class 4 capital assets pursuant to section [~~350.6(c)(5)(iv)~~] 350.6(e)(1)(iv) of this Part.

Section 350.6 is amended to read as follows:

(a) Once a continuing care retirement community has commenced operations and funds held in escrow are released pursuant to Public Health Law section 4610 [of the Public Health Law], the continuing care retirement community shall maintain a debt reserve fund as described in paragraph (1) of this subdivision and an operating reserve fund as described in paragraph (2) of this subdivision.

(1) A continuing care retirement community shall maintain liquid assets in an amount greater than or equal to the aggregate of all interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing of the community. Assets used to meet this requirement, which can include assets held in a debt service reserve fund established by or pursuant to a mortgage loan, bond indenture or other long term financing agreement, must be available to pay long term debt interest and principal payments should the operating revenues be insufficient for these purposes and must meet the eligibility requirements in paragraph (3) of this subdivision. Assets used to meet this requirement shall exclude assets used to meet the requirement in paragraph (2) of this subdivision.

(2)(i) A continuing care retirement community shall maintain liquid assets in an amount greater than or equal to 35 percent of the sum of the following amounts:

(a) the projected operating expenses of the community during the next 12 months, which shall include such comparable expenses related to providing services to [~~non residents~~] nonresidents of the community during the next 12 months;

(b) the projected aggregate of all taxes and insurance expenses that are related to the capital assets of the community and the responsibility of the community and due within the next 12 months;

(c) the projected debt interest payments of the community becoming due within the next 12 months, excluding debt interest payments included in paragraph (1) of this subdivision; [and]

(d) the projected [~~and/or~~] or actual refund expenses of the community becoming due within the next 12 months, except where [~~such~~] the refund is dependent on the resale of the unit[.]; and

(e) effective December 31, 2018, the projected or actual refund expenses of the community

becoming due within the next 12 months where the refund is dependent on the resale of the unit.

(ii) Assets used to meet the requirement in subparagraph (i) of this paragraph:

(a) shall exclude assets used to meet the requirement in paragraph (1) of this subdivision;

(b) can include assets, other than a debt service reserve fund, established by or pursuant to a mortgage loan, bond indenture or other long term financing agreement;

(c) must be available to pay operating expenses, refund expenses, and taxes and insurance expenses related to the capital assets of the community should the operating revenue be insufficient for these purposes; and

(d) shall meet the eligibility requirements in paragraph (3) of this subdivision.

(3) [Eligible liquid assets shall include all of the following:

(i) cash;

(ii) demand accounts at any solvent national or state chartered bank or savings and loan association and valued at surrender value;

(iii) commercial paper with an original maturity of 270 days or less and which is rated and monitored by at least one NRSRO and valued at market value. If the security is rated and monitored by one NRSRO it must be rated the equivalent of A-1+or A-1 by Standard and Poor's or P-1 by Moody's Investors Service. If the security is rated and monitored by more than one NRSRO it must be rated by at least two NRSROs the equivalent of A-1+or A-1 by Standard and Poor's or P-1 by Moody's Investors Service;

(iv) non negotiable certificates of deposit with a remaining maturity of one year or less or that are redeemable at any time prior to the scheduled maturity date and that meet the criteria of paragraph (c)(2) of this section and valued at the surrender value;

(v) publicly traded fixed income securities that meet the requirements of paragraph (c)(3) of this section and valued at market value; and

(vi) publicly traded fixed income securities other than commercial paper that are rated in one of the top three generic rating categories by either Standard and Poor's or by Moody's Investors Service and that meet the requirements of paragraph (c)(4) of this section and valued at market value.] Subject to the requirements of subdivision (b) of this section and the limitations and restrictions of subdivision (d) of this section, only the following shall be considered eligible liquid assets:

(i) cash in United States dollars;

(ii) demand accounts in United States dollars at any solvent national or state chartered bank or savings and loan association that are valued at the outstanding balance;

(iii) publicly traded commercial paper valued at market value that at all times meet the requirements of subdivision (c)(4) of this section;

(iv) certificates of deposit and similar instruments that at the time of investment met the criteria of subdivision (c)(5) of this section, provided that the bank or savings and loan is currently solvent and the contract has either a remaining maturity of one year or less or the contract is redeemable at any time prior to the scheduled maturity date, and is valued at the principal deposit amount;

(v) publicly traded obligations meeting the requirements of subdivision (c)(6) of this section that are valued at market value;

(vi) publicly traded obligations meeting the requirements of subdivision (c)(7) of this section that are valued at market value;

(vii) publicly traded obligations valued at market value that meet the requirements of subdivision (c)(8)(i) of this section, exclusive of any such securities issued by the continuing care retirement community or a parent corporation, subsidiary or affiliate of the continuing care retirement community; and

(viii) securities meeting the criteria of subdivision (c)(9) of this section that are valued at market value.

(4) A continuing care retirement community shall, within 30 days of the end of each fiscal quarter, test whether it meets the requirements of paragraphs (1) and (2) of this subdivision. Documentation of the testing and results shall be maintained with the community's business records. The continuing care retirement community shall immediately notify the superintendent if the requirements of paragraphs (1) and (2) of this subdivision are not met. Within 30 days following such notification, the continuing care retirement community shall submit to the superintendent a report setting forth in detail, the reasons for not meeting the requirements and the specific action steps to be adopted to achieve the requirements of paragraphs (1) and (2) of this subdivision.

(5) If a continuing care retirement community fails to meet the requirements of paragraph (1) of this subdivision because of a debt balloon payment maturing during the next 12 months, the calculation for paragraph (1) of this subdivision may be done excluding the debt balloon payment provided that a plan for refinancing the debt and/or repaying the debt with existing assets is submitted to the superintendent and is satisfactory to the superintendent.

(b) The amount and composition of assets [qualifying] held under [paragraph (c)(1)-(4)] subdivisions (a)(3) and (c) of this section shall be such that the scheduled maturities and interest and dividend payments are not less than the amount [which] that, together with the future revenues from [entry and] entrance, monthly and other fees from current and future residents and fees from [non residents] nonresidents as estimated under the open group method, is needed to meet the cash flow for operating expenses for both residents and nonresidents, refund expenses and debt payments, and capital cash expenditures, as tested as part of the actuarial review required by Public Health Law section 4607(2)(d) [of the Public Health Law], for the next [10] ten years or such longer period as required by the superintendent. If there is a scheduled major debt retirement consisting of at least the sum of regular payments of principal and interest for three years,

then the superintendent may require the cash flow projection for a period of at least five years beyond the scheduled major debt retirement.

(c) After satisfying the requirements of [subdivisions] subdivision (a) [and] of this section, and subject to the requirements of subdivision (b) of this section [, assets supporting reserve liabilities may be invested in any of the following:

(1) common or preferred stock, provided that any such investment shall be limited to no more than five percent of the market value of total assets supporting reserve liabilities, and to no more than 25 percent of any assets in excess of those supporting reserve liabilities, exclusive of assets not supporting reserve liabilities but encumbered by loan. No such investment shall exceed five percent of the securities of any one issuer at any one time. No more than 10 percent of the maximum hereunder shall be invested in the securities of any one issuer at any one time. Market value of common stocks shall be based on values assigned by a recognized national stock exchange;

(2) certificates of deposit issued by any national or State-chartered bank or savings and loan association; and valued at the surrender value;

(3) United States government or Canadian government-issued or guaranteed bonds, bills, or notes, or United States government money market funds, and valued at market;

(4) other fixed income assets, provided that at least 90 percent of the market value thereof shall consist of publicly traded obligations rated among the top four generic rating categories by either Standard and Poor or by Moody's rating services and valued at market. Any obligations rated lower shall be valued at 90 percent their market value. No more than 10 percent of the assets supporting reserve liabilities shall be invested into the fixed income securities of any one issuer at any one time and no more than five percent of the securities of any one issuer shall be included among the assets supporting reserve liabilities. Market values of fixed income securities shall be based on a recognized national exchange or if no such value is available, a value that reflects the price needed to yield the same as the average current yields on new investments of similar quality and maturity;

(5) capital (fixed) assets--with all values reduced by any outstanding loans:

(i) class 1 assets--up to the market value thereof;

(ii) class 2 assets--up to the market value thereof;

(iii) class 3--up to the original cost less depreciation charge;

(iv) class 4--up to the unamortized or depreciated cost, less any amount included in any other class;

(v) the market value of the class 1 and 2 assets shall be determined at least once every three years through an affidavit updating their value fixed by the operator, unless, if requested by the superintendent, by an independent real estate appraiser.

(6) the unearned portion of any prepaid operating expenses, covering periods not in excess of three years from the date of valuation;

(7) accounts receivable subject to the restrictions that they are expected to be paid and not more than:

(i) 90 days overdue when the payor is not a government agency; and

(ii) 12 months overdue when the payor is a government agency;

(8) any other asset which the operator can demonstrate as appropriate, subject to the approval of the superintendent.] and the limitations and restrictions of subdivision (d) of this section, a continuing care retirement community may invest additional assets supporting reserve liabilities in:

(1) common stocks and American depository receipts publicly traded on a recognized national stock exchange in the United States and not restricted as to transferability that are valued at market value;

(2) preferred stocks publicly traded on a recognized national stock exchange in the United States and not restricted as to transferability that are valued at market value;

(3) demand accounts in United States dollars at any national or state chartered bank or savings and loan association that are valued at the outstanding balance, provided that at the time the account was opened the bank or savings and loan association is solvent;

(4) publicly traded United States dollars denominated commercial paper with an original maturity of 270 days or less that at the time of investment is rated and monitored by at least one NRSRO and valued at market value. If the security is rated and monitored by one NRSRO, it must be rated at the time of investment the equivalent of A-1+ or A-1 by Standard and Poor's or P-1 by Moody's Investors Service. If the security is rated and monitored by more than one NRSRO, it must be rated by at least two NRSROs at the time of investment the equivalent of A-1+ or A-1 by Standard and Poor's or P-1 by Moody's Investors Service;

(5) certificates of deposit and similar instruments denominated in United States dollars issued by any national or state chartered bank or savings and loan association where the financial institution guarantees to return the principal amount deposited on a specified date along with a specified rate of return, provided that the minimum rate of return is at least zero percent and at the time of investment the bank or savings and loan association is solvent and the contract has a maturity of ten years or less, with an early redemption penalty of no more than six months interest, and the foregoing instrument(s) is valued at the principal deposit amount;

(6) United States government-issued obligations, or obligations of any United States agency thereof, provided that the obligations are:

(i) guaranteed as to principal and interest by the United States government;

(ii) publicly traded and not restricted as to transferability; and

(iii) valued at market value;

(7) publicly traded obligations directly issued by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association that are not restricted as to transferability and are valued at market value;

(8) publicly traded United States dollar denominated fixed income obligations issued by any American or foreign institution, any foreign country or political subdivision or agency thereof, or any political subdivision or agency of the United States, other than those securities specified in paragraphs (4), (6) and (7) of this subdivision, that are not restricted as to transferability and consisting of:

(i) a security rated and monitored by at least one NRSRO and is valued at market value, provided that:

(a) if the security is rated and monitored by one NRSRO, the security is rated the equivalent of one of the top three generic rating categories by Standard and Poor's or by Moody's Investors Service; or

(b) if the security is rated and monitored by more than one NRSRO, the security is rated by at least two NRSROs the equivalent of one of the top three generic rating categories by Standard and Poor's or by Moody's Investors Service;

(ii) a security rated and monitored by at least one NRSRO that does not meet the criteria of subparagraph (i) of this paragraph and is valued at market value, provided that:

(a) if the security is rated and monitored by one NRSRO, the security is rated the equivalent of one of the top four generic rating categories by Standard and Poor's or by Moody's Investors Service; or

(b) if the security is rated and monitored by more than one NRSRO, the security is rated by at least two NRSROs the equivalent of one of the top four generic rating categories by Standard and Poor's or by Moody's Investors Service; or

(iii) any other publicly traded United States dollar denominated obligation valued at 90 percent or more of par value;

(9) shares of a money market investment company registered pursuant to the federal Investment Company Act of 1940, 15 U.S.C. section 80a-1 et seq., provided that the investment company:

(i) seeks to maintain a constant net asset value of one dollar at all times; and

(ii) allows a maximum of seven day redemption of proceeds;

(10) shares of a non-money market investment company registered pursuant to the federal Investment Company Act of 1940, 15 U.S.C. section 80-a et seq., provided that:

(i) the investment company is an open-end investment company or an exchange traded fund;

(ii) the shares are not restricted as to transferability and are either publicly traded on a national stock exchange in the United States or are redeemable at net asset value by the investment company; and

(iii) the shares are valued at market value.

(d) Limitations and restrictions on investments

(1) A continuing care retirement community shall not invest in:

(i) obligations, shares, investment contracts or other securities of any entity that is insolvent at the time of investment or where the security is in default as to interest or principal at the time of investment;

(ii) obligations, shares, investment contracts or other securities issued by a parent corporation, subsidiary or affiliate, or that will be a parent corporation, subsidiary or affiliate after direct or indirect acquisition of the continuing care retirement community in excess of the percentage specified in section 350.1(f)(1) of this Part, without the superintendent's prior approval of the transaction;

(iii) any publicly traded United States dollar denominated fixed income obligation that at the time of investment is valued less than 90 percent of par value;

(iv) derivative instruments; or

(v) exchange traded notes.

(2) In determining whether an investment company meets the criteria of subdivision (c)(10) of this section at any point in time, a published list of holdings shall be used provided that the list of holdings is not more than six months old. The rating of one NRSRO may be used to test whether the underlying obligations held by the investment company meet the criteria of subdivision (a)(3)(iii), (a)(3)(v)-(vii), (c)(4) or (c)(8) of this section.

(3) A continuing care retirement community shall not make an investment pursuant to subdivision (c)(1)-(2), (c)(8)(ii) or (c)(10) of this section unless the continuing care retirement community has been in operation at least 60 months and the occupancy rate of the independent living units in the continuing care retirement community has exceeded 90 percent for six consecutive months at the time of the investment.

(4) A continuing care retirement community that is not in compliance with subdivision (i) of this section shall not invest in the following:

(i) an investment pursuant to subdivision(a)(3)(v)-(vii) or (c)(6)-(8) of this section that has more than five years remaining to maturity at the time of the investment; or

(ii) an investment pursuant to subdivision (c)(1)-(2), (c)(8)(ii)-(iii), or (c)(10) of this section.

(5) As of the end of each fiscal year, or upon the acquisition of a new investment pursuant to subdivision (c)(1) of this section, the aggregate market value of all investments held pursuant to subdivision (c)(1) of this section issued by one institution shall not exceed:

(i) two percent of the invested assets of the continuing care retirement community; or

(ii) five percent of the total market value of all such securities issued by that institution.

(6) As of the end of each fiscal quarter, or upon the acquisition of a new investment pursuant to subdivision (c)(2) of this section, the aggregate market value of all investments held pursuant to subdivision (c)(2) of this section issued by one institution shall not exceed:

(i) two percent of the invested assets of the continuing care retirement community; or

(ii) five percent of the total market value of all such securities issued by that institution.

(7) As of the end of each fiscal quarter, or upon the acquisition of a new investment pursuant to subdivision (a)(3)(iii), (a)(3)(vi)-(viii), (c)(1)-(2), (c)(4), or (c)(7)-(8) of this section, the aggregate asset value of all assets held pursuant to subdivision (a)(3)(iii), (a)(3)(vi)-(viii), (c)(1)-(2), (c)(4), and (c)(7)-(8) of this section issued by one issuer or institution shall not exceed ten percent of the invested assets of the continuing care retirement community.

(8) As of the end of each fiscal year, or upon the acquisition of a new investment pursuant to subdivision (a)(3)(iii), (a)(3)(vi)-(viii), (c)(4) or (c)(7)-(8) of this section, the aggregate asset value of all assets held pursuant to subdivisions (a)(3)(iii), (a)(3)(vi)-(viii), (c)(4) and (c)(7)-(8) of this section issued by one issuer or institution shall not exceed five percent of the total asset value of all such securities issued by that issuer or institution.

(9) As of the end of each fiscal year, or upon acquisition of a new investment pursuant to subdivision (c)(9) and (c)(10) of this section, the aggregate asset value held in one investment company pursuant to subdivision (c)(9) and (c)(10) of this section shall not exceed five percent of the total net asset value of the investment company.

(10) As of the end of each fiscal year, or upon the acquisition of a new investment pursuant to subdivision (c)(9) and (c)(10) of this section, the aggregate asset value of all assets held pursuant to subdivision (c)(9) and (c)(10) of this section issued by one institution or by one investment company shall not exceed ten percent of the invested assets of the continuing care retirement community.

(11) As of the end of each fiscal year, or upon the acquisition of a new investment pursuant to subdivision (a)(3)(iii), (a)(3)(vi)-(vii), (c)(4) or (c)(7)-(8) of this section, the aggregate asset value of all assets held in asset backed securities pursuant to subdivisions (a)(3)(iii), (a)(3)(vi)-(vii), (c)(4), and (c)(7)-(8) of this section shall not exceed ten percent of the invested assets of the continuing care retirement community.

(12) A continuing care retirement community shall not make a new investment in a foreign domiciled entity pursuant to:

(i) subdivision (c)(1) of this section if the cost of the new investment when added to the aggregate asset value of investments then held in foreign domiciled entities pursuant to subdivision (c)(1) of this section exceeds two percent of the invested assets of the continuing care retirement community;

(ii) subdivision (c)(2) of this section if the cost of the new investment when added to the aggregate asset value of investments then held in foreign domiciled entities pursuant to subdivision (c)(2) of this section exceeds five percent of the invested assets of the continuing care retirement community; and

(iii) subdivision (a)(3)(iii), (a)(3)(vii), (c)(4) or (c)(8) of this section if the cost of the new investment when added to the aggregate asset value of investments then held in foreign domiciled entities pursuant to subdivisions (a)(3)(iii), (a)(3)(vii), (c)(4) and (c)(8) of this section exceeds five percent of the invested assets of the continuing care retirement community.

(13) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(1) of this section in a security that has not paid a dividend during the prior 12 months or a new investment pursuant to subdivision (c)(10) of this section in an investment company that has not made a dividend distribution during the prior 12 months if the cost of the new investment when added to the aggregate asset value of investments then held pursuant to subdivision (c)(1) and (c)(10) of this section that have not paid a dividend during the prior 12 months exceeds five percent of the invested assets of the continuing care retirement community.

(14) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(6)-(8) of this section in a non-interest bearing obligation or a new investment pursuant to subdivision (c)(9) of this section in an investment company that has not made a dividend distribution during the prior 12 months if the cost of the new investment, when added to the aggregate asset value of investments then held pursuant to subdivision (c)(6)-(8) of this section that are non-interest bearing and subdivision (c)(9) of this section that have not paid a dividend during the prior 12 months, exceeds five percent of the invested assets of the continuing care retirement community.

(15) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(1) or (c)(10) of this section if the cost of the new investment when added to the aggregate asset value of investments then held pursuant to subdivision (c)(1) and (c)(10) of this section exceeds 30 percent of the invested assets of the continuing care retirement community. Investments pursuant to subdivision (c)(10) satisfying the following criteria shall be excluded from the 30% aggregate asset value limitation on investments held pursuant to subparagraph (c)(1) and (c)(10):

(i) the investment company holds only United States dollar denominated cash or unlevered United States dollar denominated fixed income securities;

(ii) the investment company employs no leverage;

(iii) the investment company solely employs an indexing investment approach, designed to track the performance of a broad, highly diversified, market-weighted investment grade bond index; and

(iv) the investment company expense ratio does not exceed a maximum of 0.25% annually.

(16) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(2) of this section unless at the time of investment the security: (i) paid a dividend during the prior 12 months, and (ii) is rated and monitored by at least one NRSRO. If the security is rated and monitored by only one NRSRO, it must be rated the equivalent of one of the top three generic rating

categories by Standard and Poor's or by Moody's Investors Service. If the security is rated and monitored by more than one NRSRO, it must be rated by at least two NRSROs the equivalent of one of the top three generic rating categories by Standard and Poor's or by Moody's Investors Service.

(17) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(2) of this section if the cost of the new investment when added to the aggregate asset value of investments then held pursuant to subdivision (c)(2) of this section exceeds ten percent of the invested assets of the continuing care retirement community.

(18) A continuing care retirement community shall not make a new investment pursuant to subdivision (c)(8)(ii) of this section if the cost of the new investment, when added to the aggregate asset value of investments then held pursuant to subdivision (c)(8)(ii)-(iii) of this section, exceeds ten percent of the invested assets of the continuing care retirement community.

(19) Notwithstanding any other provision of this subdivision, a continuing care retirement community may:

(i) exercise an option to convert an obligation or preferred stock into common stock;

(ii) reinvest a dividend or capital gain distribution by an investment company in that same investment company;

(iii) invest in interest-bearing obligations that meet the requirements of subdivision (c)(6) of this section;

(iv) purchase its own previously issued bonds on the open market outside of the normal redemption process provided that:

(a) the purchased bonds shall be presented to the bond trustee for cancellation;

(b) the continuing care retirement community shall meet all covenants, if any, included in any bond issue, short term financing agreement, or long term financing agreement immediately after such purchase;

(c) the continuing care retirement community shall meet the requirements of subdivision (a) of this section immediately after such purchase; and

(d) the amount of bonds so purchased in any one fiscal year shall not exceed ten percent of the continuing care retirement community's invested assets as of the beginning of such fiscal year without the prior approval of the superintendent; and

(v) with the prior approval of the superintendent, convert part of its fixed rate debt to variable rate debt or convert part of its variable rate debt to fixed rate debt. To request the superintendent's review and approval, the continuing care retirement community shall submit a proposal to the superintendent that demonstrates that the proposal will not cause financial harm to the continuing care retirement community.

(e) A continuing care retirement community may also use the following to support the reserve liabilities:

(1) capital (fixed) assets, where the total capital asset value is reduced for any debt outstanding as follows:

(i) class 1 assets-up to the market value thereof as determined pursuant to subdivision (f) of this section;

(ii) class 2 assets-up to the market value thereof as determined pursuant to subdivision (f) of this section;

(iii) class 3 assets-up to the original cost less depreciation charge;

(iv) class 4 assets-up to the unamortized or depreciated cost less any amount included in any other class;

(2) the unearned portion of any prepaid operating expenses covering periods not in excess of three years from the date of valuation; or

(3) accounts receivable provided that they are expected to be paid and not more than:

(i) 90 days overdue when the payor is not a government agency; and

(ii) 12 months overdue when the payor is a government agency.

(f) The operator, at least once every three years, shall submit a letter to the superintendent on the continuing care retirement community's stationery that is signed by an appropriate officer of the continuing care retirement community specifying the current market value of class 1 and class 2 assets allowed pursuant to subdivision (e)(1) of this section. The value shall be fixed by the operator based on an independent real estate appraisal of the continuing care retirement community or based on the assessed value of the continuing care retirement community for property taxes or an equivalent tax or assessment. Alternatively, the value may be fixed based on the values assigned by the actuarial consultant in the most recently submitted and accepted actuarial study provided that the actuarial consultant develops these values pursuant to the depreciated asset methodology of section 350.4(d) of this Part. If the value is based on an independent real estate appraisal, a copy of the appraiser's report shall be submitted to the superintendent. If the value is based on the assessed value for property taxes or an equivalent tax or assessment, appropriate documentation shall be submitted to the superintendent. If the superintendent requests an independent real estate appraisal of the market value of the continuing care retirement community, the operator shall provide the appraisal within 90 days of the request.

[[d]] (g) Nothing herein shall preclude an operator, subject to the approval of the superintendent, from reporting the present value of future fees as an asset, provided the operator reports the present value of future operating, refund, and capital expenses and the excess, if any, of the retrospective reserve liability over the prospective reserve liability as liabilities.

[(e)] (h) Nothing herein shall preclude an operator from reporting the full value of capital assets as assets, provided the operator also reports the values of outstanding loans against such assets as liabilities.

[(f)] (i) [A] Unless a continuing care retirement community [shall develop] develops formal [vestment] investment guidelines and policies[, to be] approved by its board of directors, [in order to invest in any of the assets described in subdivision (c)(1)-(4) of this section] the investments of the continuing care retirement community shall be restricted pursuant to subdivision (d)(4) of this section. Investment guidelines and policies shall include broad statements about cash management, fixed income investment [policies] approaches detailing duration and credit quality, [stock] equity investment [policies] approaches, and details as to how the community's investments are managed, including a statement as to whether the community's investment function is managed by an outside firm. The investment guideline and policy statement shall clearly specify prohibited investments. Notwithstanding any delegation, the responsibility for oversight of the investment program shall be retained by the community's board of directors. All investment policies and guidelines and any subsequent changes shall be submitted to the superintendent within 30 days of the board of directors adopting such policies and guidelines; provided, however, that a continuing care retirement community that has [commenced operations prior to January 1, 2008,] previously submitted an investment policy and guideline statement shall submit to the superintendent an updated investment policy and guideline statement approved by its board of directors [within 90 days of January 1, 2008] no later than December 31, 2018.

(j) A continuing care retirement community shall not make any investment unless authorized or approved by its board of directors or a committee thereof responsible for supervising or making such investment. The committee's minutes of such authorization or approval shall be recorded and a report of such investment activity submitted to the board of directors at its next meeting for ratification.

[(g)] (k) Assets supporting reserve liabilities on the actuarial balance sheet included in the actuarial study shall consist of the assets specified in subdivisions (a), [and] (c) and (e) of this section, except that the aggregate value of these assets need not exceed the minimum reserve [liabilities] liability determined pursuant to section 350.3 of this Part. Assets held pursuant to subdivisions (a) and (c) of this section that do not meet the limitations and restrictions of subdivision (d) of this section shall not be included in the assets supporting reserve liabilities on the actuarial balance sheet and the failure to meet the requirements of subdivision (d) of this section shall not cause these assets to be transferred to part 2 paid in surplus.

(l) A continuing care retirement community shall not convert an asset that is eligible to support reserve liabilities into an asset that at the time of investment is not eligible to support reserve liabilities except pursuant to section 350.7(d) of this Part.

(m) Notwithstanding any other provision of this section, a continuing care retirement community may retain, and need not divest itself of, an investment that was permissible under this Part as of December 31, 2017 and the asset shall be eligible to support the reserve liabilities on the actuarial balance sheet of the actuarial study.

Subdivisions (a)-(c) of section 350.7 are repealed, new subdivisions (a)-(d) are added, and subdivision (d) is re-lettered as subdivision (e) and amended to read as follows:

(a)(1) All part 1 paid in surplus contributions to a continuing care retirement community shall be

documented in a written agreement between the continuing care retirement community and the person making the part 1 paid in surplus contribution. The agreement shall state whether the paid in surplus is expected to earn an investment return, and, if so, the agreement shall state the terms of the annual investment return that is subject to the restrictions in subdivision (b) of this section. A copy of each such agreement shall be submitted to the superintendent for review at least 30 days in advance of it being finalized. A copy of each signed agreement shall be submitted to the superintendent within ten business days of the agreement being signed.

(2) All part 2 paid in surplus contributions to a continuing care retirement community shall be documented in a written agreement between the continuing care retirement community and the person making the part 2 surplus contribution. Investment return on part 2 paid in surplus shall be made only as permitted pursuant to subdivision (e) of this section. A copy of each such agreement shall be submitted to the superintendent for review at least 30 days in advance of it being finalized. A copy of each signed agreement shall be submitted to the superintendent within ten business days of the agreement being signed.

(3) A paid in surplus contribution may be implemented using a subordinated loan agreement provided that the terms of the agreement comply with the provisions of this subdivision and the subordinated loan agreement contains a provision stating that no portion of the loan and interest thereon may be repaid without the prior written approval of the superintendent. A copy of each such agreement shall be submitted to the superintendent for review at least 30 days in advance of it being finalized. A copy of each signed agreement shall be submitted to the superintendent within ten business days of the agreement being signed.

(b)(1) Part 1 paid in surplus may be increased by credits based upon the application of a rate of return to the surplus, and shall be reduced by any payments or distributions of the surplus.

(2) The annualized rate of return applied to the part 1 paid in surplus in a given fiscal year pursuant to paragraph (1) of this subdivision shall not be greater than the greatest of:

(i) the aggregate average mortgage interest rate or other long term financing rate applicable for the year;

(ii) the average total rate of return over the current 12-month period on the invested assets of the continuing care retirement community based on the sum of investment income and capital gains or losses on the assets;

(iii) the prime rate as published in the *Wall Street Journal* as of the first business day of each month increased by 100 basis points and compounded monthly. If the prime rate published in the *Wall Street Journal* is a range, the prime rate will be the average (*i.e.*, arithmetic mean) of the highest and lowest prime rates in the range, otherwise, the prime rate will be the single prime rate published; and

(iv) if the continuing care retirement community is a for profit corporation, an annualized rate of return of ten percent.

(3) If during a fiscal year there has been any increases or decreases to the part 1 paid in surplus amount, then within 120 days of the end of the fiscal year the operator shall submit to the superintendent a part 1 paid in surplus accounting showing:

(i) the amount of part 1 paid in surplus as of the beginning of the fiscal year just ended;

(ii) the amount of additions to part 1 paid in surplus contributed during the fiscal year just ended;

(iii) the amount of withdrawals from part 1 paid in surplus during the fiscal year just ended;

(iv) the amount of investment earnings credited to part 1 paid in surplus for the fiscal year just ended and detailed documentation of how the investment earnings amount was determined; and

(v) the amount of part 1 paid in surplus as of the end of the fiscal year just ended.

(c)(1) Once a continuing care retirement community has commenced operations and funds held in escrow are released pursuant to Public Health Law section 4610, a for profit operator may designate as profit up to five percent of all entrance fees and monthly and other fees received from, or on behalf of, residents and nonresidents during the fiscal year just ended, and all such amounts shall be retained and credited to part 1 paid in surplus and only distributed pursuant to subdivision (d) of this section.

(2) Any profit designated pursuant to paragraph (1) of this subdivision shall be documented by a written agreement between the continuing care retirement community and the operator or owner of the continuing care retirement community. The agreement shall state whether the paid in surplus is expected to earn an investment return, and, if so, the agreement shall state the terms of the annual investment return that is subject to the restrictions in subdivision (b) of this section. A draft copy of the agreement and a calculation of how the profit amount was determined shall be submitted to the superintendent for review and approval, and upon approval, a copy of the final signed agreement shall be submitted to the superintendent within ten business days of the agreement being signed.

(d) Distribution of part 1 paid in surplus or conversion of part 1 paid in surplus to part 2 paid in surplus.

(1) An operator may request the superintendent's approval to repay all or part of part 1 paid in surplus, or to convert all or part of part 1 paid in surplus to part 2 paid in surplus, provided that:

(i) as of the end of the fiscal year just ended the continuing care retirement community has been in operation for at least 36 months;

(ii) the average independent living unit occupancy rate for the fiscal year just ended was at least 90 percent and the independent living unit occupancy rate for each of the most recent six months was at least 90 percent;

(iii) all bond, loan, and letter of credit document covenants, if any, are currently being met;

(iv) part 1 paid in surplus is positive;

(v) the continuing care retirement community is in satisfactory actuarial balance; and

(vi) the operator has submitted a demonstration, satisfactory to the superintendent, that:

(a) is based on the assumption that increases in future scheduled entrance fees, resident monthly fees, and nonresident fees do not exceed the assumption for increases in future operating expenses on a percentage basis;

(b) uses 105 percent of the components of the prospective reserve calculated pursuant to section 350.3(b)(4) of this Part each projection year; and

(c) shows that after the requested distribution or conversion of part 1 paid in surplus has taken place:

(1) the requirements of sections 350.6(a) and 350.6(b) of this Part will be met for each of the next ten projection years;

(2) the requirements of section 350.6(d) of this Part will be met immediately after the requested distribution or conversion has taken place;

(3) the net surplus of the continuing care retirement community will be greater than or equal to zero for each of the next ten projection years; and

(4) all bond, loan, and letter of credit document covenants, if any, will continue to be met.

(2) The operator shall indicate the amount of repayment or conversion that is applicable to each of the outstanding paid in capital agreements, as applicable.

[(d)] (e) All assets [not eligible to support reserves and liabilities under section 350.6 of this Part shall be] allocated to part 2 paid in surplus [and] shall be accounted for separately, with all investment income and realized and unrealized capital gains [(losses)] or losses of such assets assigned thereto. No investment income on assets [eligible to support reserves and liabilities under section 350.6 of this Part] not allocated to part 2 paid in surplus shall be assigned to part 2 paid in surplus. Such part 2 paid in surplus shall be disregarded in determining sufficiency of assets to support [reserves and] reserve liabilities. Distribution or payment of part 2 paid in surplus is not subject to the approval of the superintendent provided that the requirements of section 350.6(a) of this Part are currently satisfied and the continuing care retirement community has demonstrated to the superintendent's satisfaction during the prior 12 months that the community is in satisfactory actuarial balance.

Section 350.9(c)(4)(i)(d) is amended to read as follows:

(d) the adequacy of the fee schedule for each type of continuing care retirement contract and continuing care at home contract available to new residents to the community; and

Section 350.9(c)(5)(vii) is amended to read as follows:

(vii) the different continuing care retirement contract types and different continuing care at home contract types that apply to current and new residents of the community and the methodology used to composite these different contract types in the projected data;

Section 350.9(c)(8) is amended to read as follows:

(8) a new resident cohort pricing analysis for each continuing care retirement contract type and each continuing care at home contract type available to new residents to the community;

Section 350.9(c)(12) is amended to read as follows:

(12) an exhibit summarizing the distribution of residents as of the beginning of the first projection year by type of continuing care retirement contract and type of continuing care at home contract, by gender, by single versus joint occupancy status, and by level of care;

Section 350.9(c)(13) is amended to read as follows:

(13) an exhibit summarizing the expected distribution of new residents to the community by age and gender, by single versus joint occupancy status, and by type of continuing care retirement contract and continuing care at home contract;

Section 350.10(c)(1) and (2) is amended to read as follows:

(1) for each continuing care retirement contract type and continuing care at home contract type an exhibit showing the current fee, the revised fee, and the percentage change in the fee. Entrance fees and monthly care fees shall be shown separately. Entrance fees shall be shown separately for the residential component and the health care component, if applicable. Per diem health care fees shall also be shown separately, if applicable;

(2) for each continuing care retirement contract type and each continuing care at home contract type an exhibit showing the overall weighted average current entrance fee and overall weighted average revised entrance fee, separately for first persons and second persons, or single occupancies and joint occupancies, and the percentage change in each of the overall weighted average entrance fees;

Section 350.10(c)(10) is amended to read as follows:

(10) the open group population flow projection by level of care for each projection year shown on the cash flow page of the actuarial study, including any projected use of offsite facilities. This shall include information sufficient to determine the number of independent living units occupied in total, the number of independent living units occupied by more than one person and the number of continuing care at home contracts, if applicable;

Section 350.11 is repealed, and a new section 350.11 is added to read as follows:

Section 350.11 Transactions between a continuing care retirement community and its parent corporation, affiliates and subsidiaries.

(a) In any transactions between a continuing care retirement community and its parent corporation or any affiliate or subsidiary:

(1) the terms of the financial transactions shall be fair and equitable to the continuing care retirement community at the time of the transaction;

(2) charges or fees for services performed shall be reasonable; and

(3) expenses incurred and payments received shall be allocated to the continuing care retirement community on an equitable basis in conformity with customary accounting practices consistently applied.

(b) The books, accounts and records of each person to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including accounting information as is necessary to support the reasonableness of the charges or fees to the respective persons.

(c) Services to be provided to or by a continuing care retirement community by or to its parent corporation, or any affiliate or subsidiary shall be set forth in a services agreement signed by the contracting persons.

(d) The records, reports and accounts of each continuing care retirement community shall be maintained separately from those of its parent corporation, affiliates and subsidiaries.

(e) A continuing care retirement community shall not guarantee the obligations of its parent corporation or any affiliate or subsidiary.

(f)(1) A continuing care retirement community shall not enter into any of the following transactions with its parent corporation or any affiliate or subsidiary unless it has obtained the superintendent's prior approval of the transaction: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the continuing care retirement community's total assets, in excess of capital assets, as defined herein, at last year-end.

(2) A continuing care retirement community shall not enter into any of the following transactions with its parent corporation or any affiliate or subsidiary unless the continuing care retirement community has notified the superintendent in writing of its intention to enter into any such transaction at least 30 days prior to entering into the transaction and the superintendent has not disapproved it within that period:

(i) sales, purchases, exchanges, loans or extensions of credit, or investments involving less than five percent of the continuing care retirement community's total assets, in excess of capital assets, as defined herein, at last year-end;

(ii) rendering of services on a regular or systematic basis;

(iii) any management agreements, tax allocation agreements, service contracts, or cost sharing arrangements; or

(iv) any lease of real or personal property that does not provide for the rendering of services on a regular and systematic basis.

(3) Nothing in this subdivision shall be deemed to authorize or permit any transaction that would be otherwise contrary to law.

(4) The superintendent, in reviewing any transaction described in paragraphs (1) or (2) of this subdivision will consider whether the transaction complies with the standards set forth in subdivisions (a) through (d) of this section and whether it may adversely affect the interests of residents of that continuing care retirement community.

(5) Any series of transactions designed to evade the provisions of this subdivision shall be subject to the filing requirements described in paragraphs (1) or (2) of this subdivision.

A new Section 350.12 is added to read as follows:

Section 350.12 Financial reports and information requests.

(a) A continuing care retirement community shall submit to the superintendent an annual statement pursuant to Public Health Law section 4607.

(b) A continuing care retirement community shall submit to the superintendent a copy of any report submitted to a trustee pursuant to a mortgage loan, bond indenture or other long-term financing agreement within seven business days of submitting the report to the trustee. The continuing care retirement community may submit an electronic copy of the report in a form and manner acceptable to the superintendent. If the report is available for downloading from a publicly accessible internet location, the continuing care retirement community may utilize the report upon notification to the superintendent, if the report is in a form acceptable to the superintendent.

(c) The continuing care retirement community shall 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, unless the superintendent permits a shorter notification period when the date of sale or transfer is uncertain.

(d) The continuing care retirement community shall notify the superintendent at least 30 days prior to the acquisition of a class 1 or class 2 capital asset worth more than \$250,000 or the signing of a lease for a building to be used to provide services to residents, unless the superintendent permits a shorter notification period when the date of acquisition or lease signing is uncertain.

(e) The continuing care retirement community shall promptly provide any additional information that the superintendent may require.



Department of Financial Services

ANDREW M. CUOMO
Governor

LINDA A. LACEWELL
Superintendent

I, Linda A. Lacewell, Superintendent of Financial Services, do hereby certify that the foregoing is the Second Amendment to Part 350 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Insurance Regulation 140), signed by me on November 7, 2019, pursuant to the authority granted by Sections 202 and 302 of the Financial Services Law, Sections 201, 301, and 1119 of the Insurance Law, and Sections 4604(4)(a), 4607 and 4611 of the Public Health Law, to take effect upon publication in the New York State Register.

Pursuant to Section 202(6) of the State Administrative Procedure Act, prior notice of the proposed rule was published in the New York State Register on May 22, 2019. No other publication or prior notice is required by statute.

Linda A. Lacewell
Superintendent of Financial Services

Dated: November 7, 2019