

REPORT ON EXAMINATION

OF

EPISCOPAL CHURCH HOME AND AFFILIATES

LIFE CARE COMMUNITY, INC.

D/B/A

CANTERBURY WOODS

AS OF

DECEMBER 31, 2014

DATE OF REPORT

SEPTEMBER 1, 2016

EXAMINER

EDOUARD MEDINA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

September 1, 2016

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 31348, dated May 7, 2015, attached hereto, I have made an examination of the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods, 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 the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods located at 705 Renaissance Drive, Williamsville, New York.

Wherever the designations the “Community” or “Canterbury Woods” appear herein, without qualification, they should be understood to indicate the Episcopal Church Home and Affiliates Life Care Community, Inc. d/b/a Canterbury Woods.

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, 2009. This examination covered the five-year period from January 1, 2010 through December 31, 2014. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York State Department of Financial Services and the New York State Department of Health conducted a site survey of the Community's facility on November 21, 2013, pursuant to Section 4614(1) of the New York Public Health Law.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2014, in accordance with generally accepted accounting principles ("GAAP"), as modified by the Department pursuant to Insurance Regulation No. 140 (11 NYCRR 350), a review of income and disbursements deemed necessary to accomplish such verification, and utilized, to the extent considered appropriate, work performed by the Community's independent certified public accountants 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 Department 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 the comments and recommendations contained in the prior report on examination.

2. DESCRIPTION OF THE COMMUNITY

The Community was formed on December 26, 1995, and began operating on June 1, 1999. Canterbury Woods is a Continuing Care Retirement Community (“CCRC”) as defined in Article 46 of the New York Public Health Law. The Community received a Certificate of Authority from the New York State Continuing Care Retirement Community Council and commenced operations on June 1, 1999.

The Community is a New York State not-for-profit organization which was formed to build, own and operate a continuing care retirement community. The Community currently consists of two hundred forty-three (243) independent living units and an eighty (80) bed health center consisting of thirty-two (32) enriched housing units and forty-eight (48) skilled nursing beds. Within the 243 independent living units, there are forty (40) individual cottage-style homes called Lexington Village. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

The Community provides residents with a continuum of services, including: independent living, enriched housing and skilled nursing home care. As a condition

precedent to providing these services, the Community enters into a lifecare contract with each prospective resident that sets forth the responsibilities of both parties. For the right to occupy, use the living accommodations and utilize the services of the Community, each resident is required to pay an entrance fee and monthly service fee based on the size and type of living unit and the number of occupants.

Entrance fees are due in two installments. Ten percent of the entrance fee is due when the lifecare contract is signed, while the remainder is to be paid upon the earlier of: (1) the date the resident occupies the facility; or (2) 60 days from the date the contract is executed.

Entrance fees include a residential component and a lifecare component. During the first 90 days after the resident pays the entrance fee in full, all amounts collected by the Community are fully refundable if the resident terminates the contract for any reason. After the 90-day period, the entrance fee refund will be reduced by a 4% processing fee. For each of the next three months, the refund will be reduced by 2% per month. After the first six months, the remaining 90% of the residential component of the entrance fee will be refundable for the duration of the contract term. The refund of the lifecare component will be further reduced by 2% per month for each additional month of residency until the 51st month, after which there will be no refund.

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 comprised of no less than seven (7) and no more than sixteen (16) members. As of December 31, 2014, the Community's Board of Directors was comprised of twelve (12) members, as follows:

<u>Name</u>	<u>Principal Affiliation</u>
Amy Bard Buffalo, New York	Vice President, M&T Bank
Barry W. Brandon Clarence, New York	Managing Director, FTI Consulting
Rev. R. William Franklin* Tonawanda, NY	Retired Bishop, Episcopal Diocese of Western New York
Charles E. Kopp E. Amherst, New York	Retired
Christopher Lane Williamsville, New York	Treasurer, Millard Fillmore Suburban Hospital
Thomas D. Lunt Orchard Park, New York	Vice Chairman of the Board, Episcopal Church Home and Affiliates LifeCare Community, Inc. d/b/a Canterbury Woods
Charles R. Maloney Buffalo, New York	Board Chairman, Episcopal Church Home and Affiliates LifeCare Community, Inc. d/b/a Canterbury Woods
Joan Mangano* Buffalo, New York	Retired
Laurie Menzies Buffalo, New York	Senior Partner, Pfalzgraf, Beinhauer & Menzies, LLP
Harry L. Metcalf, M.D. Williamsville, New York	Retired
Sandra Moore* Williamsville, New York	Resident of Canterbury Woods, President of Canterbury Woods Resident Council
Joseph A. Speth Amherst, New York	Interim Superintendent of Highways, Amherst Highway Department

Note: * designates ex-officio (non-voting) board member.

The Community's officers as of as of December 31, 2014, were as follows:

<u>Name</u>	<u>Title</u>
Robert L. Wallace	Chief Executive Officer
James J. Juliano	Chief Financial Officer
Charles R. Maloney	Board Chair
Christopher Lane	Treasurer
Joseph A. Speth	Secretary

The Community reported in its filed 2014 annual statement two board members whose terms began in 2015.

It is recommended that the Community report in its filed annual statements only those board members who are actually on the Board of Directors as of the date of the annual statements, which is, in this case, December 31, 2014.

A similar recommendation was made in the two previous reports on examination.

A review of the Community's conflict of interest policy indicates that there are two board members who did not complete and sign a conflict of interest statement in 2015. Therefore, the Community was not in compliance with Section 715-a(c) of the New York Not-For Profit Corporation Law.

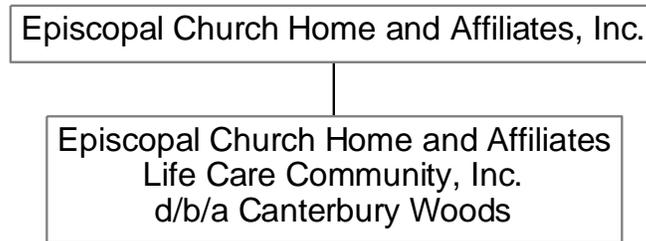
Section 715-a(c) of the New York Not-For-Profit Corporation Law states:

"(c) The conflict of interest policy shall require that prior to the initial election of any director, and annually thereafter, such director shall complete, sign and submit to the secretary of the corporation a written statement identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the corporation has a relationship, and any transaction in which the corporation is a participant and in which the director might have a conflicting interest. The policy shall require that each director annually resubmit such written statement. The secretary of the corporation shall provide a copy of all completed statements to the chair of the audit committee or, if there is no audit committee, to the chair of the board."

It is recommended that the Community comply with Section 715-a(c) of the New York Not-For-Profit Corporation Law by requiring that its board members complete and sign a conflict of interest statement before the initial election of the board member and annually thereafter.

B. Holding Company System

The structure of the Community’s holding company system as of the examination date is as follows:



The Community is affiliated through common directors and /or shared economic interests with the following entities:

- Episcopal Church Home & Affiliates, Inc. (ECH&A)
- Episcopal Church Home of Western New York
- Episcopal Community Healthcare, Inc.
- Episcopal Community Housing, Inc.
- Episcopal Residential Health Care Facility, Inc.
- Brent Manor, Inc.
- Episcopal Community Housing Development Organization, Inc. (CHODO)
- Episcopal Church Home Foundation of Western New York, Inc.

The Community is a Type B corporation as defined by Sections 201 and 601(a) of the New York Not-for-Profit Corporation Law. The sole member of the Community is Episcopal Church Home and Affiliates, Inc. (“ECH&A”). The Community is controlled

by ECH&A through By-Law requirements. ECH&A must approve any amendment to the Community's By-Laws or Articles of Incorporation.

C. Occupancy Rates

The following reflects the occupancy rates at each year-end of the examination period for each of the facilities within the Community:

	2010	2011	2012	2013	2014
Independent living units	93.8%	89.7%	94.2%	95.1%	92.6%
Enriched housing/Adult care units	93.8%	96.9%	96.9%	93.8%	87.5%
Skilled nursing facility	89.6%	87.5%	93.8%	85.4%	91.7%

D. Disclosure Statement

The Community does not list a contact person in its standard information sheet within its Disclosure Statement and therefore, is not in compliance with Section 4606(14)(b) of the New York Public Health Law.

Section 4606 of the New York Public Health Law states:

“Initial disclosure statement. Prior to the execution of a contract, or before the transfer of any money, other than a refundable priority reservation fee or non-refundable priority reservation agreement application fee, to an operator by or on behalf of a prospective resident, whichever occurs 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:...

14. In accordance with regulations promulgated by the council, the operator shall prepare a standard information sheet for each approved continuing care retirement community, which must be approved by the department of health, distributed with the community's marketing materials and attached to the initial disclosure statement prepared in accordance with this section. The standard information sheet shall be prepared in plain language and in twelve point type and shall include but shall not be limited to the following information:...

b. the name, address, and telephone number of the operator and a contact person employed by the operator;”

It is recommended that the Community comply with Section 4606(14)(b) of the New York Public Health Law by listing a contact person within the standard information sheet of its disclosure statement.

This recommendation was included in the previous report on examination.

E. Disaster Recovery / Business Continuity Plans

As of December 31, 2014, the Community maintained a disaster recovery plan which provides for the essential maintenance of services to the Community's residents in the event of a disaster. Also, the Community maintained a business continuity plan which is essential to the maintenance of continuity of services to the Community's residents in the event of a disaster.

F. Accounts Receivable

The Community reported on its actuarial balance sheet amounts receivable from private payors which were overdue more than 90 days. This valuation is not in compliance with Part 350.6(c)(7) of Insurance Regulation No. 140.

Part 350.6(c)(7) states:

“...assets supporting reserve liabilities may be invested in any of the following:

(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;”

It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Insurance Regulation No. 140 by reporting on its actuarial balance sheet, as admitted assets, government agency receivables that are not overdue more than 365

days and non-government agency receivables that are not overdue more than 90 days from the valuation date.

G. Information System Controls

Relative to the Security Standards for the Protection of Electronic Protected Health Information adopted to implement provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the following relates to workstation security.

45 CFR Section 164.310 of the Federal HIPAA rule states the following in part:

“A covered entity must, in accordance with Section 164.306:

(a)(1) *Standard: Access Control*. Implement technical policies and procedures for electronic information systems to allow access only to those persons or software programs that have been granted access rights...

(2) Implementation specifications:...

(iii) Automatic logoff (Addressable). Implement electronic procedures that terminate an electronic session after a predetermined time of activity.”

The Community maintains an access control policy which requires that all workstations have password protected screen savers, set to activate automatically after 60 minutes of inactivity. Automatic log-off after 60 minutes of inactivity is too long and does not provide sufficient protection of electronic protected health information and other sensitive data. This access control policy does not protect the Community’s business from the impact of operational information security vulnerabilities and incidents.

It is suggested that the Community change its control procedures to provide for the automatic log-off of the Community’s workstations from the current 60 minutes of inactivity to a significantly less period of time of inactivity. It is further suggested that such change be included within the Community’s access controls policy.

3. FINANCIAL STATEMENTS

A. Balance Sheet

The following statements show the assets, liabilities and net surplus as of December 31, 2014, as contained in the Community's 2014 filed annual statement, a condensed summary of operations and a reconciliation of the net surplus account for each of the years under review. The examiner's review of a sample of transactions did not reveal any differences which materially affected the Community's financial condition as presented in its financial statements contained in the December 31, 2014 filed annual statement.

The firm of Freed Maxick & Battaglia, CPAs, P.C. was retained by the Community to audit the Community's combined financial statements of financial position for calendar years 2010 through 2013 and the related consolidated statements of operations and cash flows for the years then ended. The Community retained the firm of Bonadio & Co., LLP to audit the Community's combined statement of financial position and related consolidated statements of operations and cash flows for the year ended December 31, 2014.

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

Assets

Cash and invested assets	\$ 32,878,454
Accounts receivable and prepaid expenses	2,547,739
Land	4,882,040
Land improvements	0
Building	55,509,742
Furniture, fixtures and equipment	6,452,970
Deferred financing costs	1,961,507
Deferred marketing costs	<u>133,240</u>
Total assets	\$ <u>104,365,692</u>

Liabilities

IDA bonds	\$ 4,155,000
Financial institutions	0
Actuarial reserve	<u>99,044,293</u>
Total liabilities	\$ 103,199,293
Total net surplus	\$ 1,166,399
Total liabilities and net surplus	\$ <u>104,365,692</u>

Note: It should be noted that the 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 Change in Actuarial Surplus

The statement of revenue and expenses is presented on a statutory modified GAAP basis for the five-year examination period January 1, 2010 through December 31, 2014.

Revenue

Monthly maintenance fess	\$ 62,163,851	
Revenue from related organizations	224,063	
Earned entrance fees (net of refunds)	9,103,727	
Patient revenue from nonresidents	9,627,052	
Interest and dividend income	2,323,644	
Aggregate write-ins for other operating revenue	<u>1,482,635</u>	
Total revenue		\$ 84,924,972

Expenses

Interest expense	\$ 3,099,215	
Facility and dining expenses	28,685,778	
Health expenses	15,555,356	
Administration expenses	14,227,416	
Depreciation and amortization charges	14,712,866	
Change in provision for uncollectible accounts	31,786	
Real estate taxes	3,973,195	
NYS health facilities assessment	794,182	
Aggregate write-ins for other operating expenses	<u>317,821</u>	
Total expenses		\$ <u>81,397,615</u>
Net income		\$ <u>3,527,357</u>

Change in Actuarial Surplus

The Community's actuarial surplus decreased \$794,207 during the examination period January 1, 2010 through December 31, 2014 detailed as follows:

Actuarial surplus, per report on examination, as of December 31, 2009			\$ 1,960,606
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net income	\$ 3,527,357		
Statutory adjustment as per examination*		\$ <u>4,321,564</u>	
Net increase in surplus			\$ <u>(794,207)</u>
Actuarial surplus, per report on examination, as of December 31, 2014			\$ <u>1,166,399</u>

*Note: This adjustment represents the difference between the net income pertaining to the statutory modified GAAP basis of accounting and the actuarial surplus.

4. SUBSEQUENT EVENTS

Canterbury Woods entered into a purchase agreement on March 31, 2015 with Gates Circle Holdings LLC to purchase approximately 1.4 acres of the former Millard Fillmore Hospital site at Gates Circle, Buffalo, New York for the purpose of building a "satellite" senior-living facility.

Episcopal Church Home & Affiliates, the Parent of Canterbury Woods has hired Lecesse Construction of Rochester to build and outfit the 85,000-square-foot facility, which will be an extension of the Community's current campus located in Williamsville, New York.

The satellite Buffalo, New York campus is expected to consist of 53 independent living apartments and 5 assisted living apartments. There are no plans to include any skilled nursing beds at the Buffalo satellite campus.

On December 22, 2015, the New York State Department of Health granted programmatic approval of the Community's reconfiguration of its existing Certificate of Authority application and the New York State Department of Financial Services stated no objections to such reconfiguration application.

5. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

<u>ITEM</u>	<u>PAGE NO.</u>
<u>Management</u>	
1.	7
<p>It is recommended that the Community designate an annual Board of Directors' meeting to comply with Article IV, paragraph 1 of the Community's By-Laws.</p> <p><i>The Community has complied with this recommendation.</i></p>	
2.	7
<p>It is recommended that the Community report in its filed annual statements only those Board members who are actually on the Board of Directors as of the filing date of the annual statement.</p> <p><i>The Community has not complied with this recommendation.</i></p>	
3.	8
<p>It is recommended that the members of the Board of Directors attend at least one-half of the regular Board meetings. Board members who are unable or unwilling to attend meetings consistently should resign or be replaced.</p> <p><i>The Community has complied with this recommendation.</i></p>	
<u>Investments</u>	
4.	12
<p>It is recommended that, with regard to the Community's investments that are not held pursuant to a bond indenture with the Industrial Development Agency, the Community establish custodial agreements with the financial institutions holding its investments and include the enumerated protective covenants and provisions in those agreements.</p> <p><i>The Community has not complied with this recommendation.</i></p>	
<u>Disclosure Statement</u>	
5.	13
<p>It is recommended that the Community list a contact person in its standard information sheet, as required by Section 4606(14)(b) of the New York Public Health Law.</p> <p><i>The Community has not complied with this recommendation.</i></p>	

ITEM**PAGE NO.**Disclosure Statement (Cont'd)

- | | | |
|----|---|----|
| 6. | It is recommended that a copy of the most recent audited and certified financial statement, which includes the balance sheet and the last two income statements, be included as an addendum to the Community's disclosure statement, as stated in the Community's disclosure statement and as required by Section 4606(10) of the New York Public Health Law. | 14 |
|----|---|----|

The Community has complied with this recommendation.

Information System Controls

- | | | |
|----|--|----|
| 7. | It is recommended that the Community change its controls procedures to provide for the automatic log-off of the Community's workstations from the current 60 minutes of inactivity to 5 minutes or less of inactivity. It is further recommended that such change be included within the Community's access controls policy. | 15 |
|----|--|----|

The Community has not complied with this recommendation.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Corporate Governance</u>	
i It is recommended that the Community report in its filed annual statements only those board members who are actually on the Board of Directors as of the date of the annual statements, which is, in this case, December 31, 2014.	6
ii It is recommended that the Community comply with Section 715-a(c) of the New York Not-For-Profit Corporation Law by requiring that its board members complete and sign a conflict of interest statement before the initial election and annually thereafter.	7
B. <u>Disclosure Statement</u>	
It is recommended that the Community comply with Section 4606(14)(b) by listing a contact person within the standard information sheet of its disclosure statement.	9
C. <u>Accounts Receivable</u>	
It is recommended that the Community comply with the requirements of Part 350.6(c)(7) of Insurance Regulation No. 140 by reporting on its actuarial balance sheet, as admitted assets, government agency receivables that are not overdue more than 365 days and non-government agency receivables that are not overdue more than 90 days from the valuation date.	9
D. <u>Information System Controls</u>	
It is suggested that the Community change its controls procedures to provide for the automatic log-off of the Community's workstations from the current 60 minutes of inactivity to a significantly less period of time of inactivity. It is further suggested that such change be included within the Community's access controls policy.	10

Respectfully submitted,

Edouard Medina
Associate Insurance Examiner

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

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

Edouard Medina

Subscribed and sworn to before me
This ____ day of _____ 2016.

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, BENJAMIN M. LAWSKY, 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:

Edouard Medina

as a proper person to examine the affairs of

Episcopal Church Home & Affiliates Life Care Community, Inc. d/b/a Canterbury Woods

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

Community

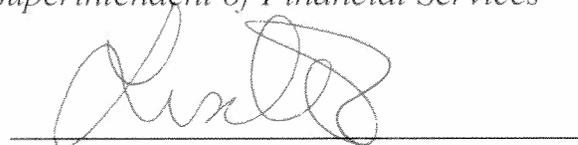
with such other information as he shall deem requisite.

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

this 7th day of May, 2015

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

