

REPORT ON EXAMINATION

OF

HEBREW HOSPITAL SENIOR HOUSING, INC.

d/b/a WESTCHESTER MEADOWS

AS OF

DECEMBER 31, 2010

DATE OF REPORT

JUNE 14, 2013

EXAMINER

VICTOR ESTRADA

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawsky
Superintendent

June 14, 2013

Honorable Benjamin M. Lawsky
Superintendent of Financial Services
Albany, New York 12257

Sir:

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 30845, dated April 27, 2012, attached hereto, I have made an examination of Hebrew Hospital Senior Housing, Inc., d/b/a Westchester Meadows, a not-for-profit Continuing Care Retirement Community authorized pursuant to the provisions of Article 46 of the New York Public Health Law, as of December 31, 2010, and respectfully submit the following report thereon.

The examination was conducted at the home office of Hebrew Hospital Senior Housing, Inc., d/b/a Westchester Meadows, located at 55 Grasslands Road, Valhalla, NY.

Wherever the designations the "Community" or "CCRC" appear herein, without qualification, they should be understood to indicate Hebrew Hospital Senior Housing, Inc., d/b/a Westchester Meadows.

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

As of December 31, 2010, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(11,000,120), as of December 31, 2010.

Based on the actuarial report submitted as of December 31, 2010, dated May 31, 2011, a Restoration Plan (the "Plan") was submitted to correct the impairment and achieve satisfactory actuarial balance. This Plan was rejected by the Department. A revised Plan was submitted to the Department and accepted on August 13, 2012. It is expected that with the new Restoration Plan, the Community will achieve satisfactory actuarial balance within seven years from the December 1, 2010 valuation date as required by Department Regulation No. 140 (11 NYCRR 350.8).

1. SCOPE OF THE EXAMINATION

The previous examination of the Community was conducted as of December 31, 2008. This examination covers the two-year period from January 1, 2009 through December 31, 2010. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

The examination comprised a verification of assets and liabilities of the Community as of December 31, 2010, in accordance with generally accepted accounting principles (“GAAP”), as modified by the Department pursuant to Department 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. It is noted that the balance sheet included herein was reported as of December 31, 2010 on a statutory actuarial basis, pursuant to Department Regulation No. 140 (11 NYCRR 350).

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 May 3, 2012, pursuant to Section 4614(1) of the New York Public Health Law. A review was also made of the following items:

- Community documents
- Compliance with by-laws
- Occupancy levels
- Financial documents
- Board of Directors’ minutes of meetings

This report on examination is confined to financial statements and comments on those matters which involve departures from laws, regulations or rules, or which are deemed to require explanation or description.

A review was also made to ascertain what actions were taken by the Community with regard to comments and recommendations contained in the prior report on examination.

2. EXECUTIVE SUMMARY

The results of this examination revealed the following significant operational deficiency:

As of December 31, 2010, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(11,000,120), as of December 31, 2010.

Based on the actuarial report submitted as of December 31, 2010, dated May 31, 2011, a Restoration Plan (the "Plan") was submitted to correct the impairment and achieve satisfactory actuarial balance. This Plan was rejected by the Department. A revised Plan was submitted to the Department and accepted on August 13, 2012. It is expected that with the new Restoration

Plan, the Community will achieve satisfactory actuarial balance within seven years from the December 1, 2010 valuation date.

3. DESCRIPTION OF THE COMMUNITY

The Community was formed on September 24, 1997, as a Continuing Care Retirement Community (“CCRC”), as such item is defined under Article 46 of the New York Public Health Law. The Community received a Certificate of Authority from the New York State Department of Health, effective April 2, 2000 and commenced operations on April 29, 2002.

Westchester Meadows is a New York not-for-profit organization and is tax exempt pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code. The Community includes one hundred twenty (120) independent living units, ten (10) enriched housing/adult care units and a twenty (20) bed skilled nursing facility. In addition, the Community also contains a community center, which includes dining rooms, administrative offices, a library, an auditorium, lounges and other public gathering spaces.

Westchester Meadows 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 a monthly maintenance fee based on the size and type of living unit and the number of occupants.

Westchester Meadows offers one type of contract – Type B. Under the Type B contract, and in exchange for an entrance fee and a monthly maintenance fee, Westchester Meadows provides applicants with lifetime residence in an independent living unit within the Westchester Meadows Life Care Community. If needed, a resident may be transferred to the Community's enriched housing or skilled nursing facility for the same monthly maintenance fee, although both are restricted to sixty (60) day cumulative lifetime maximums. Thereafter, the resident will pay the then private pay rate for the applicable facility. The contract can be voluntarily terminated by the occupant. In addition to being available for contract holders, the Community's enriched housing and skilled nursing facilities are available on a per diem basis.

The CCRC had previously offered a Type A lifecare contract with a 90% refundable deposit option and 65% refundable deposit option. Effective January 1, 2006 and January 1, 2009 respectively, these contract options were no longer available. There are still numerous residents under the previous contract. As of December 31, 2010, seven residents had executed a Type B Agreement, which had been the only contract offered since December 31, 2008. Effective June 8, 2012, the Community was approved to market a new "Traditional" Type B contract.

Entrance Fee Requirement

When a person has been accepted to become a resident in the CCRC, the applicant is required to submit a deposit equal to 10% of the required entrance fee, which is due upon signing the residency agreement. The remainder of the entrance fee must be paid upon the resident's occupancy date, which is defined as the earlier of the actual date the resident assumes residency, or sixty (60) days from the date the Community executes the agreement; but no earlier than the date that the resident's independent living unit is ready for occupancy. For the first 90 days after the resident pays the entrance fee, it is fully refundable. At the end of the 90 day period, the entrance fee to be refunded will be reduced by a 4% administration fee, and thereafter by a 2% per month charge on the residential component of the fee. The residential component is fully amortized at the 65% level, where it remains. Refunds made under the terms of the residency agreement will occur no later than 30 days after a new resident pays the entrance fee for a unit being vacated, or within one year after termination of the residency agreement, whichever occurs first.

Monthly Fee Requirement

A monthly fee is charged to the resident who has assumed occupancy of an Independent Living Unit, and where applicable a second person fee, for the services and facilities made available to them. Monthly fees are due and payable when a resident moves into the Independent Living Unit, or 60 days after it is available for residency. Any monthly fee increases are subject to inflation limitations, determined from when the agreement was executed.

Contract

The residency agreement includes coverage for services including: residency at Westchester Meadows, dining, utilities (except telephone) and basic television cable, apartment and common area maintenance, weekly flat linen service, weekly housekeeping, transportation, use of the exercise center, including an indoor swimming pool and fitness center and optional activities, and if needed, skilled nursing home services or assistance with the activities of daily living in an enriched housing apartment, access to contracted short-term and intermittent home health care and various administrative services.

A. Management

Pursuant to the Community's charter and by-laws, management of the Community is vested in a board of directors consisting of not less than seven (7), nor more than thirteen (13) directors. As of the examination date, the board of directors was comprised of seven (7) members.

The Community's directors at December 31, 2010 were as follows:

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Bertram Gelfand Bronx, NY	Director, Kurzman & Eisenberg
Charles Goldberger White Plains, NY	Vice President, McCullough, Goldberger & Staudt
Arnold Goldstein Rye, NY	Chairman, Samson Management
Donna Jakubovitz New York, NY	Vice President, Joremi Enterprises, Inc.

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Michael Laub New York, NY	President, Realty Group
Marvin Lifson Eastchester, NY	Retired
Alan Pearce Stamford, CT	Treasurer & Secretary, Bryan, Cave, Robinson and Silverman

The Community's board met at least once each quarter during the exam period, in compliance with its by-laws.

A review of the attendance records of the board of directors' meetings held during the period under examination revealed that the meetings were generally well attended, with all members attending at least 50% of the meetings they were eligible to attend.

The principal officers of the Community at December 31, 2010 were as follows:

<u>Officers</u>	<u>Title</u>
Mary Frances Barrett	President & Chief Executive Officer
Brian J. Perino	Chief Financial Officer
Alan Pearce	Secretary

B. Corporate Structure

Hebrew Hospital Senior Housing, Inc., (d/b/a Westchester Meadows) has five affiliates: Hebrew Hospital Corporate Services, Inc. ("HHCS"), which provides administrative services for the various affiliates; Hebrew Hospital Home of Westchester, a 160-bed skilled nursing facility in Westchester County, New York; HHH Home Care, Inc., a home care agency operating in the

Bronx and Westchester Counties, NY; Hebrew Hospital Home Foundation, Inc., a company which raises contributions to support all of the affiliated entities; and HHH Choices Health Plan, LLC, a long-term managed care program, operating in the Bronx, NY

The Community has received administrative services from HHCS since October 1, 2006, subject to the terms of an inter-company agreement. HHCS provides financial, human resources, payroll, accounts payable, administration, supplies, facility construction, marketing, business development, and management information system services to Westchester Meadows, as well as to the other affiliated entities. The costs for these services are allocated to Westchester Meadows (and the other entities) and are booked as inter-company balances. These inter-company balances accrue on account until payment is made by the CCRC to HHCS. This agreement was revised as of April 8, 2010, to reflect that the CCRC receives services at cost with no mark-up. Other than actual costs, there are no fees assessed by HHCS to the Community for the administration of these services.

The Community incurred \$1,740,671 and \$2,128,045 for administration expenses in 2009 and 2010, respectively. As of December 31, 2010, the Community reported \$11,440,389 due to parent, subsidiaries and affiliates.

C. Occupancy Rates

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

	<u>2009</u>	<u>2010</u>	<u>2011</u>
Independent living units	91.6%	85.8%	75.0%
Enriched housing/ Adult care	10.0%	40.0%	70.0%
Skilled Nursing facility	90.0%	75.0%	85.2%

Subsequent to the exam, as of February 13, 2013, the occupancy level for the independent living units decreased to 68%.

It is recommended that the Community continue to strive to increase its occupancy rates within its independent living units to industry norms. A similar recommendation was included in the prior report on examination.

D. Disaster Recovery/Business Continuity Plans

As of December 31, 2010, 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.

E. Entrance Fees

Type B entrance fees were reduced for the year 2010. The monthly maintenance fees for the independent living units were increased by 4.25% to 6.25% for the year 2010 and by 4.25% to 5.75% for the year 2011. The rate of increases varied based on the period covered by the residency agreement. Pursuant to Section 4608(9) of the New York Public Health Law, the Community is required to provide residents advance notice, within sixty-day (60) of any changes

in fees or changes or scope of care or services. The examiner reviewed the Community's compliance with Section 4608(9) of the Public Health Law. No exceptions were noted.

F. Initial Disclosure Statements

The Initial Disclosure Statement is attached to the residency agreement and distributed to accepted applicants. Section 4606(2) of the New York Public Health Law states the following:

“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... an initial disclosure statement which contains the following:

2. The information required in... subparagraph... (ii)... of paragraph j of subdivision two of section forty-six hundred four of this article; [which states...]

(ii) a list of continuing care retirement communities, adult care retirement communities, adult care facilities and health care facilities owned or operated by the applicant, by any controlling persons of the applicant, or by entities with which the members of the applicant's board are affiliated; the address of each such facility; and the dates of ownership or operation of each such facility

The Community's Initial Disclosure Statement states in part:

“Hebrew Hospital Corporate Services, Inc. is a not-for-profit corporation that is the parent corporation of the following as well as Sponsor:.. Hebrew Hospital Senior Housing, Inc”

Inasmuch as HHCS is not the parent of the Hebrew Hospital Senior Housing, Inc., it is recommended that the Community comply with Section 4602(2) of the Public Health Law and revise its Initial Disclosure Statement to accurately describe its affiliated relationships.

4. FINANCIAL STATEMENTS

A. Balance Sheet

The following shows the assets, liabilities and actuarial surplus as determined by this examination as of December 31, 2010. It is the same as the actuarial balance sheet filed by the Community, presented on a statutory actuarial basis, pursuant to Section 350 of Department Regulation No. 140 (11 NYCRR 350):

<u>Assets</u>	<u>Examination</u>	<u>Community</u>
Current assets		
Cash and investments	\$ 4,072,458	\$ 4,072,458
Other current assets	<u>1,332,415</u>	<u>1,332,415</u>
Total current assets	\$ <u>5,404,873</u>	\$ <u>5,404,873</u>
Fixed assets less long term debt		
Property plant and equipment	\$ <u>51,298,060</u>	\$ <u>51,298,060</u>
Total fixed assets	\$ <u>51,298,060</u>	\$ <u>51,298,060</u>
Other assets		
Deferred finance costs	\$ 670,373	\$ 670,373
Deferred marketing costs	<u>593,195</u>	<u>593,195</u>
Total other assets	\$ <u>1,263,568</u>	\$ <u>1,263,568</u>
Total assets	\$ <u>57,966,501</u>	\$ <u>57,966,501</u>

<u>Liabilities</u>	<u>Examination</u>	<u>Community</u>
Long-term debt	\$ 14,425,000	\$ 14,425,000
Subordinated loans	11,440,389	11,440,389
Actuarial reserve liabilities	<u>43,101,232</u>	<u>43,101,232</u>
Total liabilities	\$ <u>68,966,621</u>	\$ <u>68,966,621</u>
<u>Net surplus</u>		
Net actuarial surplus	\$ <u>(11,000,120)</u>	\$ <u>(11,000,120)</u>
Total liabilities and net actuarial surplus	\$ <u>57,966,501</u>	\$ <u>57,966,501</u>

Note 1: It should be noted that the net asset values herein are reported on a statutory/actuarial basis. As such, the values differ from the certified financial statements prepared by the Community's certified public accountants using generally accepted accounting principles (GAAP basis).

Note 2: As of December 31, 2010, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(11,000,120), as of December 31, 2010.

Based on the actuarial report submitted as of December 31, 2010, dated May 31, 2011, a Restoration Plan (the "Plan") was submitted to correct the impairment and achieve satisfactory actuarial balance. This Plan was rejected by the Department. A revised Plan was submitted to the Department and was accepted on August 13, 2012. It is expected that with the new Restoration Plan, the Community will achieve satisfactory actuarial balance within seven years from the December 1, 2010 valuation date.

B. Statement of Revenue and Expenses and Changes in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis, as modified pursuant to Department Regulation No. 140, for the period January 1, 2009 through December 31, 2010 as follows:

Operating revenue

Resident fees	\$ 13,502,504	
Earned entrance fees	2,350,551	
Interest income	<u>453,237</u>	
Total operating revenue		\$ 16,306,292

Operating expenses

Health care services	\$ 3,987,746	
Dietary services	3,251,655	
Administrative services	5,804,529	
Maintenance and security	2,977,401	
Housekeeping and laundry services	1,196,129	
Interest expense	<u>1,141,089</u>	
Total operating expenses		18,358,549

Non-operating revenue and expenses

Investment income	\$ 64,093	
Gain on investments	10,899	
Depreciation and amortization	<u>(2,897,091)</u>	
Total non-operating revenue		<u>(2,822,099)</u>
Net operating loss		<u><u>\$(4,874,356)</u></u>

Changes in Actuarial Surplus

Actuarial surplus increased \$5,679,210 during the examination period, January 1, 2008 through December 31, 2010, detailed as follows:

Actuarial surplus, per report on examination, as of December 31, 2008			\$ (16,679,330)
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
GAAP basis net loss		\$4,874,356	
Statutory adjustment	<u>\$10,553,566</u>	<u> </u>	
Net increase in actuarial surplus			<u>\$ 5,679,210</u>
Actuarial surplus, per report on examination, as of December 31, 2010			<u>\$ (11,000,120)</u>

5. CONCLUSION

As of December 31, 2010, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(11,000,120), as of December 31, 2010.

Based on the actuarial report submitted as of December 31, 2010, dated May 31, 2011, a Restoration Plan (the "Plan") was submitted to correct the impairment and achieve satisfactory

actuarial balance. This Plan was rejected by the Department. A revised Plan was submitted to the Department and accepted on August 13, 2012. It is expected that with the new Restoration Plan, the Community will achieve satisfactory actuarial balance within seven years from the December 1, 2010 valuation date.

6. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination as of December 31, 2008 contained the following three (3) comments and recommendations as follows (page numbers refer to the prior report):

<u>ITEM NO</u>	<u>PAGE NO.</u>
<u>Actuarial Surplus</u>	
1. As of December 31, 2008, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying statutory requirements, was deficient in the amount of \$(16,679,330) as of December 31, 2008.	2, 4, 15,17
<i>The Community is operating under a Plan of Restoration (The Plan) to achieve satisfactory actuarial balance. The Plan was accepted by the Department on August 13, 2012.</i>	
<u>Management and Controls</u>	
2. It is recommended that the Community comply with Article III, Section 2 of its by-laws and maintain not less than seven (7) nor more than thirteen (13) directors on its board.	6
<i>At its board of directors meeting held on December 1, 2009, the Community appointed Marvin Lifson and Donna Jakubovitz to the board which brought the Community's board into compliance with its by-laws.</i>	

ITEM NO.**PAGE NO.**Occupancy rates

3. It is recommended that the Community continue to strive to increase its occupancy rates within its independent living units to industry norms. 12

A similar recommendation is included in this report on examination.

4. It is recommended that the Community's disclosure statements be revised to specifically indicate that Hebrew Hospital Corporate Services, Inc. is not the Parent of Hebrew Hospital Senior Housing, Inc. d/b/a Westchester Meadows. 14

A similar recommendation is included in this report on examination.

7. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
<p>A. <u>Actuarial Surplus</u></p> <p>As of December 31, 2010, the Community was not in satisfactory actuarial balance as determined using generally accepted actuarial standards and applying the statutory requirements defined in Part 350.1(s) of Department Regulation No. 140 (11 NYCRR 350.1(s)). The Community's minimum actuarial surplus requirement, as determined using generally accepted actuarial standards and applying the aforementioned statutory requirements, was deficient in the amount of \$(11,000,120), as of December 31, 2010.</p> <p>Based on the actuarial report submitted as of December 31, 2010, dated May 31, 2011, a Restoration Plan (the "Plan") was submitted to correct the impairment and achieve satisfactory actuarial balance. This Plan was rejected by the Department. A revised Plan was submitted to the Department and accepted on August 13, 2012. It is expected that with the new Restoration Plan, the Community will achieve satisfactory actuarial balance within seven years from the December 1, 2010 valuation date.</p>	<p>2, 4, 14, 16</p>
<p>B. <u>Occupancy Rates</u></p> <p>It is recommended that the Community continue to strive to increase its occupancy rates within its independent living units to industry norms.</p> <p><i>A similar recommendation was included in the prior report on examination.</i></p>	<p>11</p>
<p>C. <u>Description of the Community</u></p> <p>it is recommended that the Community comply with Section 4602(2) of the Public Health Law and revise its Initial Disclosure Statement to accurately describe its affiliated relationships.</p> <p><i>A similar recommendation was included in the prior report on examination.</i></p>	<p>12</p>

Respectfully submitted,

_____/S/_____
Victor Estrada,
Senior Insurance Examiner

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

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

_____/S/_____
Victor Estrada

Subscribed and sworn to before me
this ____ day of _____ 2013.

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:

Victor Estrada

as a proper person to examine the affairs of the

*Hebrew Hospital Senior Housing, Inc. d/b/a Westchester Meadows
and to make a report to me in writing of the condition of said*

CCRC

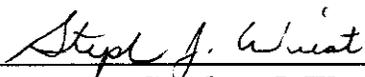
with such other information as he shall deem requisite.

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

this 27th day of April, 2012

BENJAMIN M. LAWSKY
Superintendent of Financial Services

By:



Stephen J. Wiest
Deputy Bureau Chief
Health Bureau

