

REPORT ON EXAMINATION

OF

KENDAL ON HUDSON

AS OF

DECEMBER 31, 2014

DATE OF REPORT

JANUARY 18, 2017

EXAMINER

HUSSEIN AGOUDA, CFE

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NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

January 18, 2017

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 31417, dated January 29, 2016, attached hereto, I have made an examination of Kendal on Hudson, 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 Kendal on Hudson, located at 1010 Kendal Way, Sleepy Hollow, New York.

Wherever the designation the “Community” appears herein, without qualification, it should be understood to indicate Kendal on Hudson.

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, 2010. This examination covered the period from January 1, 2011 through December 31, 2014. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the Department and the New York State Department of Health conducted a site survey of the Community's facility on February 8, 2016, pursuant to the requirements of Section 4614(1) of the New York Public Health Law.

The examination 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 Insurance 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
- Minutes of Board of Trustees' 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. **DESCRIPTION OF THE COMMUNITY**

The Community was formed on March 19, 1992 as a continuing care retirement community (“CCRC”), as defined in Article 4601 of the New York Public Health Law. The Community received a Certificate of Authority issued by the New York State Department of Health and approved by the New York State Continuing Care Retirement Community Council on July 11, 2002. The Community commenced operations on May 9, 2005. Kendal is a New York State not-for-profit organization and is a tax-exempt organization per Section 501(c)(3) of the Internal Revenue Code.

The Community consists of two hundred twenty-two (222) independent living units, twenty-four (24) enriched housing/adult care units and a forty-two (42) bed skilled nursing facility. In addition, the Community also contains a community center, which includes dining rooms, a library, an auditorium, lounges and other public gathering spaces, as well as administrative offices.

Subsequent to the examination date, the Community went through a reconfiguration of its assisted living and skilled nursing facilities, which was still underway at the completion of the on-site examination. The reconfiguration reduced the skilled nursing beds from forty-two (42) to twenty-six (26), and increased the assisted living units from twenty-four (24) to forty-seven (47), with thirteen (13) of the new units being devoted to memory care.

Kendal on Hudson 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 service fee based on the size and type of living unit and the number of occupants in the unit.

Kendal on Hudson offers residents two refundable entry fee plans that consist of a residential component and a life care contract. The residential components are either 50% or 90% refundable after resale of the residential unit, not to exceed one year from contract termination. The residential and life care components of the entry fees are subject to refund provisions. Refunds on the life care component are reduced by 2% per month of occupancy, with no refund payable after 50 months. For a surviving spouse, a pro rata refund is provided based on the deceased member's life care component. Refunds for the residential component of the entry fee are based on the refund option selected, and are reduced by 2% per month of occupancy to a minimum refund of either 50% or 90% of the entry fee. The non-refundable portion of all entry fees is amortized into operating revenue over the actuarially determined life expectancy of each resident or couple. The refundable portion of the residential component is not amortized into operating revenue. For both components, upon death of a sole surviving resident, any remaining unamortized portion of the nonrefundable portion of the deferred entry fee is recognized as operating revenue.

On September 29, 2014 the Department and the New York State Department of Health approved the Community's application to add a non-refundable Type A contract option to the Community's existing refundable Type A contracts. The non-refundable Type A contract is the same as the refundable Type A contract, except that the non-refundable contract does not provide

a refund of the residential component of the contract after a fifty-month period. The Community concluded this option will provide a lower price point, thereby enabling the Community to serve a broader segment of the market.

The following is a description of the two contract options available to residents:

Residence and Care Agreement for Life Care

This contract provides lifetime coverage of nursing care in private rooms and personal care services in the adult care facility; available with a non-refundable, a 50% refundable and a 90% refundable residential component of the entry fee.

Residence and Care Agreement for Modified Continuing Care

This contract provides for 100 prepaid days of nursing care, excluding any Medicare-covered period. There are three self-payment choices: *Contract 51* provides for a one-year self-payment period for nursing care once the 100 prepaid day period has lapsed. *Contract 53* provides for a three-year self-payment period, while *Contract 55* provides for a five-year self-payment period. Subsequent to the self-payment period, lifetime nursing care coverage is provided by the Community at the independent living monthly fee rate. Personal care services in the adult care facility are covered, available with a 50% refundable or a 90% refundable residential component of the entry fee.

Residents pay an entry fee composed of a life care component and a residential component. The residential component is based upon the size of the unit.

A. Management

Pursuant to the Community's charter and by-laws, management of the Community is to be vested in a board of trustees consisting of not less than ten (10) or more than twenty trustees. As of the examination date, the board of trustees was comprised of sixteen (16) members.

The Community's trustees and their principal affiliations as of December 31, 2014 were as follows:

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Leonard Andrew Sleepy Hollow, NY	Retired
Harrison Bloom Hasting on Hudson, NY	Private, Independent Physician, Health care consultant
Bard Bunaes* Irvington, NY	Retired
Edward Doty ** New York, NY	Executive Director, Youth Service Opportunities Project
Norma Ellis White Plains, NY	Retired
Elizabeth Enloe ** New York, NY	Private independent consultant (Education)
Francine Goldstein Pleasantville, NY	Private financial consultant and coach
Edward Hanin* Sleepy Hollow, NY	Retired
Aubrey Hawes Sleepy Hollow, NY	Retired

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Kyle McGovern White Plains, NY	Attorney, Partner Lyons McGovern
Barry Morris Irvington, NY	Founder, Morris Capital Markets Communications LLC
Mary Nichols Scarborough, NY	Retired
Joan Oltman ** Sleepy Hollow, NY	Resident, Kendal on Hudson
Claire Pierson Sleepy Hollow, NY	Retired
Howard Smith Tarrytown, NY	Private Independent Consultant, Education
James Wood ** Sleepy Hollow, NY	Resident, Kendal on Hudson

* Kendal NY and Phelps Community Corporation board members as required by the Community's by-law.

** Religious Society of Friends or Quaker as required by the Community's by-laws.

According to the Community's By-Laws, a meeting of the Board of Trustees for the purpose of selecting Trustees and officers, and for the appointment of committees shall be held once each year. Unless the Board designates a different date, the annual meeting is to be held in the month of November of each year. Regular meetings of the Board of Trustees may be held as determined by the Trustees but no less often than four times a year. Special meetings of the Board of Trustees may be called by the Chairman of the Board or by any three (3) trustees.

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

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

The principal officers of the Community as of December 31, 2014 were as follows:

<u>Officers</u>	<u>Title</u>
Edward Hanin	Chairman of the Board
Patricia A. Doyle	Chief Executive Officer
Jennifer Anderson	Chief Financial Officer
Joan Oltman	Secretary

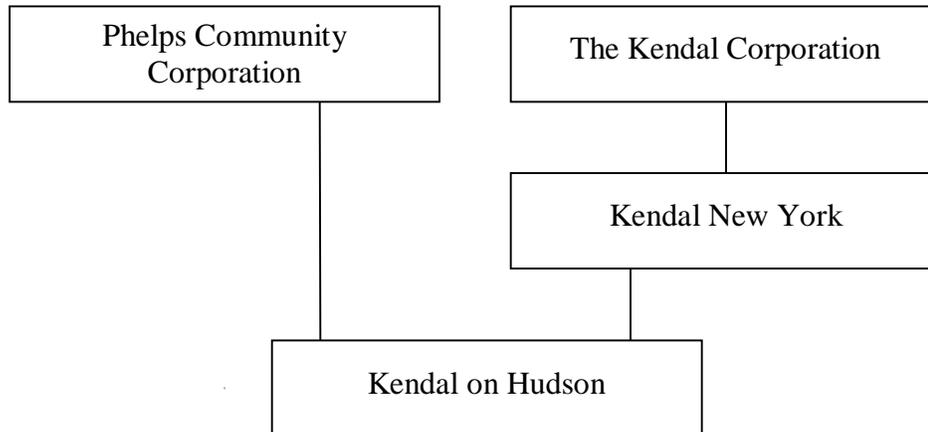
B. Holding Company System

The Community is an affiliate of The Kendal Corporation, a Pennsylvania non-profit corporation which is associated with a system of entities providing services to aged populations. The Kendal Corporation, Kendal New York and affiliates, including Kendal on Hudson, comprise the Kendal System.

The by-laws of the Community state that it shall have two members: Phelps Community Corporation, a New York not-for-profit corporation, and Kendal New York, a New York not-for-profit corporation, whose only rights and responsibilities as members shall be those set forth in the by-laws. While control of the Community is shared between the two members, Kendal New York has the right to affirm any amendments to the articles of incorporation or certain sections of the by-laws before they are implemented. Furthermore, Kendal New York must approve changes in corporate purpose, incurring of debt, use of the name "Kendal", the substance of residence contracts, and the purchase, sale, lease or other disposition of any real estate or improvements thereon. The by-laws also specify that the Community shall have certain board

members in common with Kendal New York and Phelps Community Corporation (or a staff member of Phelps Memorial Hospital).

The Community's corporate structure at December 31, 2014 was as follows:



The Community entered into an affiliation agreement with Kendal New York on January 7, 2003. This Agreement was revised on November 5, 2009, with the approval of the New York State Department of Health. Under this Agreement, Kendal New York provides basic services and in return, Kendal on Hudson pays a system fee.

The following is a summary of the basic services that Kendal New York provides, as well as a brief description of each:

1. Governance and Administration:

- a. Board – templates for board manuals, profiles minutes, committee descriptions and policies.
- b. Public Policy – information to staff and boards on subjects of interest.

2. Finance:

- a. General Finance – comparison of financial reports and analyses, technical assistance with actuarial studies and projections, as well as consulting on long-term debt management.

- b. Information Technology – establish standards for system-wide hardware and software. Evaluate new hardware and software.
3. Marketing, Public Relations and Admissions:
- a. Consultation on the design and production of admission materials.
 - b. Guidelines and standards for Marketing/ Public Relations /Admission Programs.
4. Human Resources:
- a. Consultation on job description and performance appraisal systems as well as Human Resources' Policies.
 - b. Resources for employee orientation, education and supervisors' training.
5. Operations:
- a. General – (1) assist Kendal on Hudson preparing for and complying with and interpreting state and federal regulations, (2) consultation on labor, refinancing, healthcare and other regulations.
 - b. Dining Services – assist with program and menu development/diet system.
 - c. Health Services – share information on current research and innovations in health facility design, service provision, care techniques, and other developments in health care.
 - d. Housekeeping, Laundry and Maintenance Services – review capital project plans and budgets for capital projects.

In return for providing the above-mentioned basic services, Kendal on Hudson pays

Kendal New York a System Fee consisting of the following four components:

1. A fee for affiliation and oversight of the health care program and service in the amount of \$9,750 per month.
2. A Base System Fee, calculated based on budgeted expenses (not including the health care program and service or the System Fee itself), with a minimum fee payment for expenses less than \$5 million, and percentages for expenses between \$5 and \$15 million (3%), \$15-\$25 million (2.8%), and over \$25 million (2.5%).
3. Contingency Reserve - 0.25% of annual budgeted operating expenses until the target of 6.5% of first full year operating expense, excluding affiliation fee and health center fee, is met.
4. System Growth Fund – 0.25% of annual budgeted operating expenses until the target of 4% of operating expenses in first full year following stabilization is met.

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>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Independent Living Units	98%	97%	90%	84%
Enriched Housing/ Adult Care	90%	75%	66%	50%
Skilled Nursing Facility	61%	84%	86%	90%

The drop in the Enriched Housing Unit was the result of a construction project, which motivated residents to find temporary alternatives to the Unit. Since the construction has been completed, occupancy has returned to normal levels.

Subsequent to the examination date, and as of year-end 2015, the Community experienced a decline in its Independent Living Units occupancy, which was at 83% from the previous year-end's 84%.

It is recommended that the Community strive to maintain an occupancy level in its Independent Living Units of at least 95%.

It is noted that as of December 31, 2016, the community had an occupancy rate of 85% in its Independent Living units with ten units closed at year end, with scheduled occupancy dates in the first 90 days of 2017.

D. 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. It should be noted that this plan was not reviewed for best practices.

3. FINANCIAL STATEMENTS

The following statements show the assets, liabilities and actuarial surplus as of December 31, 2013 as contained in the Community's filed annual statement presented on a statutory actuarial basis pursuant to Insurance Regulation No. 140 (11 NYCRR 350), a condensed summary of operations and a reconciliation of the actuarial surplus account for the years under review.

The firm of Grant Thornton LLP was retained by the Community to audit the Community's financial statements of financial position and the related statements of operations and cash flows for calendar years 2012 through 2014.

Grant Thornton LLP concluded that the financial statements present fairly, in all material respects, the financial position of the Community at the respective audit date. Balances reported in these audited financial statements were reconciled to the corresponding years' annual statements with no discrepancies noted.

A. Balance SheetAssets

Cash and investable assets	\$ 44,587,000
Accounts receivable and prepaid expenses	2,679,000
Property, plant and equipment	131,270,000
Furniture fixtures and equipment	9,689,000
Accumulated depreciation	(15,689,000)
Deferred financing costs	1,319,000
Deferred marketing costs	<u>809,000</u>
Total assets	\$ <u>174,664,000</u>

Liabilities

Loan payable	\$ 64,330,000
Actuarial reserve	<u>100,804,000</u>
Total liabilities	\$ 165,134,000

Net surplus

Net actuarial surplus	\$ <u>9,530,000</u>
Total liabilities and net actuarial surplus	\$ <u>174,664,000</u>

Note: 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 (GAAP basis).

B. Statement of Revenue, Expenses and Change in Actuarial Surplus

The statement of revenue and expenses is presented on a GAAP basis, as modified pursuant to Insurance Regulation No. 140 (11 NYCRR 350), for the examination period January 1, 2011 through December 31, 2014.

Revenues

Monthly Maintenance Fees	\$	60,525,657	
Other Revenue from Residents		6,118,252	
Earned Entrance Fees (net of refunds)		23,615,391	
Patient Revenues from Nonresidents		16,433,319	
Interest and Dividend Income		<u>6,018,509</u>	
Total Revenues	\$		<u>112,711,128</u>

Expenses

Interest Expense	\$	10,172,873	
Facility and Dining Expenses		25,747,855	
Health Expenses		20,650,419	
Administration Expenses		15,118,974	
Depreciation and Amortization Charges		18,991,756	
Change in Provision for Uncollectable Accounts		799,886	
Real Estate Taxes and PILOT		3,587,688	
NYS Health Facilities Assessment		620,506	
Employee benefits		<u>10,450,782</u>	
Total Expenses	\$		<u>106,140,739</u>
Net Gain (Loss) Before Income Taxes	\$		<u><u>6,570,389</u></u>

Change in Actuarial Surplus

Actuarial surplus increased \$7,487,000 during the period of operation January 1, 2010 through December 31, 2013, detailed as follows:

Surplus, per report on examination, as of December 31, 2012			\$ 2,043,000
	<u>Gains in</u> <u>Surplus</u>	<u>Losses in</u> <u>Surplus</u>	
Net income	\$6,570,389		
Aggregate write-ins		(835,873)	
Statutory adjustment	1,752,484		
Net increase in surplus			<u>7,487,000</u>
Surplus, per report on examination, as of December 31, 2013			\$ <u>9,530,000</u>

4. COMPLIANCE WITH PRIOR REPORT ON EXAMINATION

The prior report on examination contained the following recommendation. (The page number included in the table below refers to the prior report on examination).

<u>ITEM NO.</u>	<u>PAGE NO.</u>
<u>Annual Statement</u>	
1.	11
It is recommended that the Community complies with Public Health Law 4607 and file its annual statement within the required time limitation, or request an extension as permitted by that law.	
<i>The Plan has complied with this recommendation.</i>	

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A.	10
<u>Occupancy Rates</u>	
It is recommended that the Community strive to maintain an occupancy level in its Independent Living Units of at least 95%.	

Respectfully submitted,

Hussein Agouda
Insurance Examiner, CFE

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

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

Hussein Agouda, CFE

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

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, SHIRIN EMAMI, Acting 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:

Hussein Agouda

as a proper person to examine the affairs of

Kendal on Hudson

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

CCRC

with such other information as he shall deem requisite.

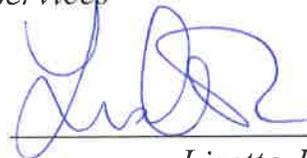
*In Witness Whereof, I have hereunto subscribed my name
and affixed the official Seal of the Department
at the City of New York*

this 29th day of January, 2016

SHIRIN EMAMI

Acting Superintendent of Financial
Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

