

REPORT ON EXAMINATION

OF

KENDAL ON HUDSON

AS OF

DECEMBER 31, 2017

DATE OF REPORT

February 16, 2022

EXAMINER

HUSSEIN AGOUDA, CFE

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Department of Financial Services

KATHY HOCHUL
Governor

ADRIENNE HARRIS
Superintendent

February 16, 2022

Honorable Adrienne Harris
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 31803, dated August 1, 2018, 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, 2017, 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, 2014. This examination covered the three-year period January 1, 2015 through December 31, 2017. 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 August 3, 2018, pursuant to the requirements of 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, 2017, in accordance with generally accepted accounting principles ("GAAP"), as modified by the Department pursuant to Insurance Regulation 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, 2017, on a statutory actuarial basis, pursuant to Insurance Regulation 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, approved by the New York State Continuing Care Retirement Community Council, on July 11, 2002. The Community commenced operations on May 9, 2005.

Kendal on Hudson 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 222 independent living units, 47 assisted living units of which 13 are for memory care, and a 26 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.

In a letter dated May 29, 2017, to the Department of Health, the Community requested approval of a special incentive program targeted at its larger independent living units that were difficult to sell. The program involved twelve (12) units that became available for sale prior to May 31, 2016. All the units were two bedrooms or two bedrooms plus a den, with entrance fees

inclusive of the life care component that exceeded \$700,000 for a single person and \$785,000 or more for a couple.

Under the program residents would be provided a 10% rebate on the entrance fee, in the form of credits against their monthly fees, until fully paid. The program would begin as soon as approval was received. Other conditions of the program included that the unit must have become available for remarketing on or before May 31, 2016, the resident(s) would be required to qualify financially and medically no later than December 31, 2017 and contracts for eligible units must be signed and the required entry fee paid in full by January 31, 2018. The program was approved by the Department of Health on June 8, 2017.

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 one independent living unit, to use the living accommodations, and to utilize the services of the Community, each resident is required to pay an entrance fee and monthly service fee based on the size, type of living unit, and the number of occupants in the unit. The contract's entrance fee consists of a residential component and a healthcare component.

Kendal on Hudson offers residents contracts with both a refundable option and a non-refundable option. The refundable option can be either a minimum 50% refundable or 90% refundable on the residential component of the entrance fee. The entrance fee is refundable in its entirety during the initial 90-day probationary period for both the refundable and non-refundable options.

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

1. Lifecare Non-Refundable Contracts

The lifecare non-refundable contract provides for assisted living and nursing care at no additional charge. After 90 days the refund of the healthcare component of the entrance fee, upon death or withdrawal, reduces by 2% per month of occupancy, with no refund after 50 months. For a surviving spouse, a prorata refund of the healthcare component is paid based on the deceased members lifecare component. The refund for death or withdrawal on the residential portion of the entrance fee is reduced by 2% per month of occupancy, with no refund after 50 months.

2. Lifecare 50% Refundable Contracts

The lifecare 50% refundable contract has the same healthcare and refund provisions on the healthcare component of the entrance fee as the lifecare non-refundable contract. The refund for death or withdrawal on the residential portion of the entrance fee is reduced by 2% per month of occupancy, with a minimum refund of 50%. The refund is paid on the earlier of resale of the unit or one year after death or withdrawal and is payable on the death of the surviving spouse or move-out for a couple.

3. Lifecare 90% Refundable Contracts

The lifecare 90% refundable contract has the same healthcare and refund provisions on the healthcare component of the entrance fee as the lifecare non-refundable contract. The refund for death or withdrawal on the residential portion of the entry fee is reduced by 2% per month of occupancy, to a minimum refund of 90%. The refund is paid on the earlier of resale of the unit

or one year after death or withdrawal and is payable on the death of the surviving spouse or move-out for a couple.

There are three additional care options available for the non-refundable, 50% refundable and 90% refundable contracts. These are the modified one year, three year and five year care options. Under these options the first 100 days of nursing care are provided at no additional charge afterward nursing care is paid at the full per diem rate for one year, three years or five years depending on the option selected. After the expiration of the selected period, fees for nursing care revert back to the independent living monthly fee rate. The healthcare component of the entrance fee is reduced based on the reduced healthcare coverage under these options with the greater reduction for the longest period selected.

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) nor more than twenty (20) 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, 2017 were as follows:

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Bard Bunaes* Hasting-on-Hudson, NY	Retired
Marlene Calman Irvington, NY	Associate, Edwin I. Gorski, Esquire

<u>Name and Residence</u>	<u>Principal Affiliation</u>
Edward Doty ** New York, NY	Executive Director, Youth Service Opportunities Project
Elizabeth Enloe** White Plains, NY	Retired
Edward Hanin Sleepy Hollow, NY	Retired
Aubrey Hawes Sleepy Hollow, NY	Retired
Bernard J. Lillis Sleepy Hollow, NY	Retired
Kyle McGovern White Plains, NY	Partner, Lyons McGovern, LLP
Joanne Murray Tarrytown, NY	President, Allan M. Block Agency, Inc.
Bert Pepper** Sleepy Hollow, NY	Retired
Caroline Persell* Sleepy Hollow, NY	Retired
Howard Smith Tarrytown, NY	Retired
John Sorice* Greensboro, NC	Retired
Lynn Tepper Hastings-on-Hudson, NY	Clinical Professor, Columbia University
Lynn M. Wagner Briarcliff Manor, NY	Advisor, Merrill Lynch Wealth Management
Barry Whitcomb Greensboro, NC	Retired

* Kendal on Hudson's resident board member, as required by the Community's by-laws.

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

As per 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 committee members shall be held once each year. Unless the Trustee designates a different date, the annual meeting is to be held in the month of November of each year. Regular meetings of the Board may be held as determined by the Board but not less than four times a year. Special meetings of the Board may be called by the Chairman of the Board or by any three Trustees.

The Community's Board met at least four (4) times each year during the exam period, in compliance with its by-laws.

A review of the attendance records of the Board's 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, 2017 were as follows:

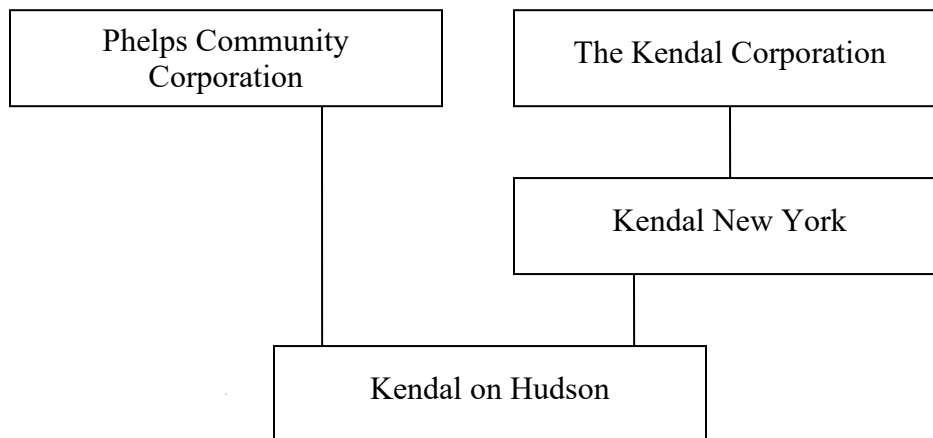
<u>Officers</u>	<u>Title</u>
Aubrey Hawes	Chairman of the Board
Patricia A. Doyle	Chief Executive Officer
Jean Eccleston	Chief Financial Officer
Joanne Murray	Secretary

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, 2017, was as follows:



The Community entered into an affiliation agreement (“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 to the Community and in return, Kendal on Hudson pays a system fee.

The following is a summary of the basic services that Kendal New York provides to the Community:

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 to prepare for, comply with and interpret state and federal regulations, (2) consultation on labor, refinancing, and healthcare 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.

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>2015</u>	<u>2016</u>	<u>2017</u>
Independent Living Units (ILU)	83%	85%	86%
Enriched Housing/Adult Care (EHU)	74%	56%	70.2%
Skilled Nursing Facility (SNF)	100%	84%	68.9%

It should be noted that in the Community's actuarial study, as of December 31, 2016 with a report date of October 25, 2017, it projects an Independent Living Units occupancy of 91% by year end 2018, and 94% by year end 2019. Also, the same actuarial study projects the assisted living utilization by contractholders is expected to range from 26 to 27 units per year during the 20-year projection period. Nursing care utilization by contractholders is projected to increase from 18 to 24 units per year at the end of the 20-year projection period.

Subsequent to the examination date, the Community reported that, as of September 30, 2018, the independent living units had an occupancy of 87.4%, a slight improvement of 1.4% from year end 2017. The assisted living non-memory care occupancy was 70.6%, and the memory care unit had an occupancy of 61.5% for a combined assisted living / memory care occupancy of 68% which was a 2.2% decrease from year end 2017. The skilled nursing occupancy of 61.5% was a decrease of 7.4% from year-end 2017.

It is recommended that the Community strive to reach the ILU occupancy assumptions / targets in its latest actuarial study. A similar comment was contained in the prior report on examination.

It is further recommended that the Community strive to reach the EHU, and the SNF occupancies assumptions / targets in its latest actuarial study.

3. **FINANCIAL STATEMENTS**

The following statements show the assets, liabilities and actuarial surplus as of December 31, 2017 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 2015 through 2017.

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	\$ 44,281,000
Accounts receivable and prepaid expenses	2,904,000
Property, plant and equipment	155,560,000
Furniture fixtures and equipment	11,674,000
Accumulated depreciation	(24,504,000)
Deferred financing costs	<u>1,607,000</u>
Total assets	\$ <u>191,522,000</u>

Liabilities

Loan payable	\$ 76,665,000
Actuarial reserve	<u>111,962,000</u>
Total liabilities	\$ 188,627,000

Net surplus

Net actuarial surplus	\$ <u>2,895,000</u>
Total liabilities and net actuarial surplus	\$ <u>191,522,000</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, and Expenses and Changes 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 three year period January 1, 2015 through December 31, 2017.

Revenue

Monthly maintenance fees	\$ 48,600,894	
Other revenue from residents	3,676,578	
Earned entrance fees (net of refunds)	18,729,636	
Patient revenues from nonresidents	6,830,165	
Interest and dividend income	<u>2,063,932</u>	
Total revenue		\$ <u>79,901,205</u>

Expenses

Interest expense	8,331,711	
Facility and dining expenses	21,789,161	
Health expenses	14,431,152	
Administration expenses	12,649,692	
Depreciation and amortization charges	15,354,810	
Change in provision for uncollectable accounts	306,127	
Real estate taxes and PILOT	3,027,185	
NYS health facilities assessment	269,571	
Aggregate write-ins for other operating expenses	<u>6,817,616</u>	
Total expenses		\$ <u>82,977,025</u>
Net loss before income taxes		\$ <u>(3,075,820)</u>

Changes in Actuarial Surplus

Actuarial surplus decreased \$6,635,000 during the four-year period January 1, 2014 through December 31, 2016, detailed as follows:

Surplus, per report on examination, as of December 31, 2013.			\$ 9,530,000
	<u>Gains in Surplus</u>	<u>Losses in Surplus</u>	
Net loss		\$ 2,514,491	
Net realized and unrealized capital losses		30,565	
Aggregate write-ins	\$ 1,643,002		
Statutory adjustment*	<u> </u>	<u>5,732,946</u>	
Net decrease in surplus			<u>(6,635,000)</u>
Surplus, per report on examination, as of December 31, 2016			<u>\$ 2,895,000</u>

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

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</u>	<u>PAGE NO.</u>
<u>Annual Statement</u>	
It is recommended that the Community strive to maintain an occupancy level in its Independent Living Units of at least 95%.	10
<i>The Plan has not complied with this recommendation. A similar comment is contained in this report on examination.</i>	

5. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. <u>Occupancy Rates</u>	
i. It is recommended that the Community strive to reach the ILU occupancy assumptions/targets in the latest actuarial study of at least 91% at year-end 2018, and 94% at year-end 2019.	12
ii. It is further recommended that the Community strive to reach the EHU, and the SNF occupancies assumptions/targets in the latest actuarial study.	12

NEW YORK STATE

DEPARTMENT OF FINANCIAL SERVICES

I, MARIA T. VULLO, 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

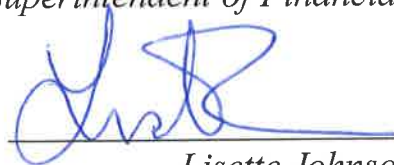
with such other information as he shall deem requisite.

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

this 1st day of August, 2018

MARIA T. VULLO
Superintendent of Financial Services

By:



Lisette Johnson
Bureau Chief
Health Bureau

