

EXAMINATION
OF
KENDAL AT ITHACA, INC.
AS OF
DECEMBER 31, 2000

DATE OF REPORT

SEPTEMBER 24, 2002

EXAMINER

JOSEPH S. KRUG

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STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Gregory V. Serio
Superintendent

September 24, 2002

Honorable Gregory Serio
Superintendent of Insurance
Albany, NY 12257

Sir:

Pursuant to the provisions of the New York Insurance Law and the New York Public Health Law and acting in accordance with the instructions contained in Appointment Number 21747, dated August 1, 2001 annexed hereto, I have made an examination into the condition and affairs of Kendal at Ithaca, Inc., a not-for-profit Continuing Care Retirement Community licensed pursuant to the provisions of Article 46 of the Public Health Law.

Wherever the designation "the Community" appears herein, without qualification, it should be understood to indicate Kendal at Ithaca, Inc.

The examination took place at the offices of the Community at 2230 North Triphammer Rd. Ithaca, NY.

The Community's minimum reserves as determined using generally accepted actuarial standards and applying statutory requirements resulted in a surplus of \$367,000.

1. SCOPE OF THE EXAMINATION

The Community was formed on December 26, 1995. This examination covered the period from January 1, 1996 through December 31, 2000. Transactions occurring subsequent to this period were reviewed where deemed appropriate by the examiner.

Representatives of the New York Insurance Department and the New York Department of Health conducted a site survey of the Community's facility on May 16, 2001 pursuant to Section 4610 of the New York Public Health Law. Items of concern that were noted in the facility review were reviewed during this examination.

The examination comprised a verification of the assets and liabilities of the Community as of December 31, 2000 in accordance with Generally Accepted Accounting Principles (GAAP), as modified by the New York Insurance Department pursuant to New York Insurance Department 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. A review was also made of the following items:

- Community documents
- Growth of the Community
- Financial documents
- Board of Trustees meeting minutes

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.

2. DESCRIPTION OF THE COMMUNITY

Kendal at Ithaca, Inc. is a Continuing Care Retirement Community as defined under Article 46 of the New York State Public Health Law, and has received a Certificate of Authority from the New York State Continuing Care Retirement Community Council. The Community is a New York not-for-profit organization which was formed to build, own, and operate a life care community which consists of two hundred fourteen (214) independent living units, a community center, and a seventy-one (71) bed health center consisting of thirty-six (36) adult home beds and thirty-five (35) nursing home beds. The Community is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.

During the year 2000, the Community completed construction of a facility expansion that provided an additional twenty-four (24) adult home beds. This expansion brought the total number of adult home beds to thirty-six (36) as noted above.

As of December 31, 2000, two hundred eight (208) independent living units were occupied. An additional six (6) residence and care agreements were signed as of said date. In addition, prospective residents have made three hundred thirty (330) refundable deposits.

In exchange for an entrance fee and monthly maintenance charges, the Community provides lifetime residence and varying benefits for nursing care. The amount of the entrance fee and monthly maintenance charges are dependent upon the size of the residence being occupied. The following is a description of the three different contract options available to residents:

Life care contract

The current life care contract (Contract 10) provides for personal care and unlimited nursing care at no additional charge other than meals. The refund for

death or withdrawal is one hundred percent (100%) of the entrance fee during the first three months of occupancy and is reduced by a four percent 4% processing fee plus thereafter, by a two percent (2%) per month occupancy reduction. A pro-rata refund is paid on the first death within a two-person occupancy arrangement.

Fifty percent refundable life care contract

The fifty percent (50%) refundable lifecare contract (Contract 50) has the same health care provisions as Contract 10. The refund for death or withdrawal is one hundred percent (100%) during the first three months of occupancy and is reduced by a four percent 4% processing fee plus thereafter, by a two percent (2%) per month of occupancy reduction to a minimum refund of fifty percent (50%).

Modified contract

The modified contract (Contract 11) provides for one hundred (100) days of nursing care at no additional charge other than meals. For the next three years of nursing care, residents pay full per diem rates. After one thousand ninety-five (1,095) days of paying the per diem rate for nursing care, residents pay the then current monthly fee associated with the last apartment or cottage occupied. The refund for death or withdrawal is one hundred (100%) during the first three (3) months of occupancy and is reduced by a 4% processing fee plus thereafter, by a two percent (2%) per month of occupancy. A pro-rata refund is paid on the first death within a two-person occupancy arrangement.

It should be noted that at December 31, 2000, there were three hundred twelve (312) residents with Contract 10; five (5) residents with Contract 50; and zero (0) residents with Contract 11.

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 fewer than ten (10) nor more than twenty (20) members. As of the examination date, the board of trustees was comprised of sixteen (16) members. The board is required, at minimum, to meet on a quarterly basis and for an annual general meeting which is open to all Community residents. The Community may hold other special meetings as deemed necessary. The trustees as of December 31, 2000 were as follows:

Board of Trustees

<u>Name</u>	<u>Position</u>
Roger M. Batisella Ithaca, NY	Professor of Health Policy and Management in the Sloan Graduate Program in Health Services Administration in the College of Human Ecology at Cornell University
Mary G. Call Ithaca, NY	Retired
Caroline B. Cope Berkshire, NY	Department Head of the Special Education Department, DeWitt Middle School
Francille M. Firebaugh Ithaca, NY	Retired
Joseph W. Fitzgerald Ithaca, NY	Vice President, Cayuga Medical Center
David R. Hauser Elmira, NY	Retired
Margaret J. Hill Ithaca, NY	Retired, Community Resident
Marguerite J. Johnson Ithaca, NY	Retired
Robert W. Kirk Ithaca, NY	Retired, Community Resident

<u>Name</u>	<u>Position</u>
Susan Landis Ithaca, NY	Personal Financial Planner
Michael S. Levy Ithaca, NY	Partner and Director of Practice Management, Sciarabba Walker
Allyn B. Ley Ithaca, NY	Retired
Robert A. Metz Kennett Square, PA	Retired
Clark Moeller Towanda, PA	Retired
Robert A. Nafis Ithaca, NY	Retired, Community Resident
Martha A. Turnbull Ithaca, NY	Director of Personnel Services, Ithaca College

As of December 31, 2000, Robert A. Metz was serving on the Kendal at Ithaca Board and was also a member of the Kendal Corporation Board.

The minutes of all meetings of the Board of Trustees were reviewed. All such meetings were well attended. However, it was noted that one trustee failed to attend at least one-half of the meetings he was eligible to attend. These absences were not excused.

Members of the board have a fiduciary responsibility and must evince an ongoing interest in the affairs of the Community. It is essential that board members attend meetings consistently and set forth their views on relevant matters so that the board may

reach appropriate decisions. Individuals who fail to attend at least one-half of the regular meetings do not fulfill such criteria.

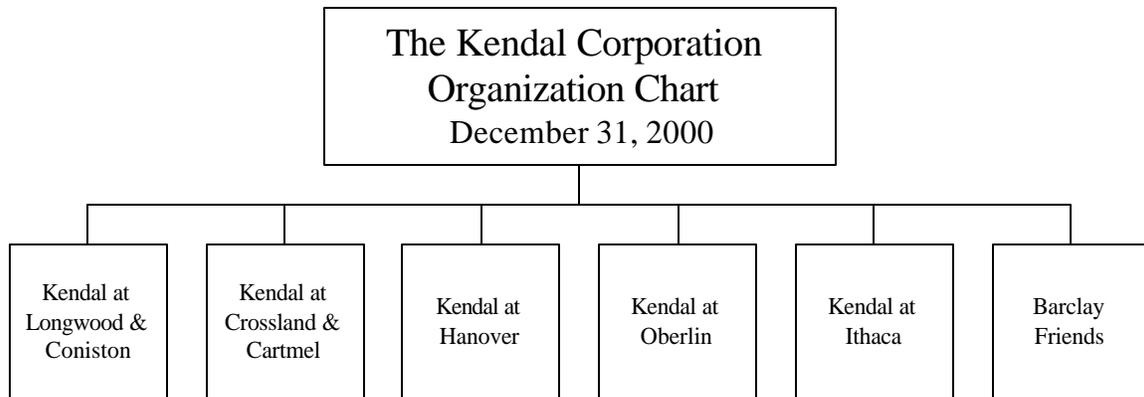
It is recommended that the members of the board of trustees attend at least one-half of the regular board meetings. Board members who are unable or unwilling to attend meetings consistently, should resign or be replaced.

The principal officers of the Community, as of December 31, 2000, were as follows:

<u>Name</u>	<u>Title</u>
Joseph Fitzgerald	Chair
Margaret J. Hill	Secretary/Treasurer
Martha Turnbull	Vice Chair

B. Holding Company System

The structure of the Holding Company, as of the examination date, is as follows:



The Community is controlled by The Kendal Corporation through bylaw requirements. The Kendal Corporation must approve the election of board members of

the Community and any amendments to the bylaws or articles of incorporation. Furthermore, The Kendal Corporation 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 bylaws also specify that the Community and The Kendal Corporation shall have certain board members in common, and that the President of The Kendal Corporation, or his/her designee, shall be invited to attend the Community’s Board meetings.

On September 1, 1998, an agreement was entered into between The Kendal Corporation and Kendal at Ithaca, Inc., entitled “Mutual Expectations, System Services, and Financial Understanding. Under the terms of this agreement, The Kendal Corporation will provide Basic Services and in return Kendal at Ithaca, Inc., shall pay a System Fee.

The following is a summary of the Basic Services that The Kendal Corporation 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.
 - c. Research and Planning –technical assistance/consultation regarding planning issues.
2. Finance:
 - a. General Finance – comparison financial reports and analysis, technical assistance with actuarial studies and projections, as well as consulting on long-term debt management.
 - b. Information Services – set 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 at Ithaca, Inc., in 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 of 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 at Ithaca, Inc., pays the Kendal Corporation a System Fee consisting of the following four components:

- a. Affiliation fee - 2% of annual budgeted operating expenses.
- b. Basic Service Fee - 2% of budgeted operating expenses initially then decreased by 0.25% each subsequent year to 1.00%.
- c. Contingency Reserve -0.25% of annual budgeted operating expenses until the target of 6.5% is met.
- d. System Growth Fund -0.25% of annual budgeted operating expenses until the target of 4% is met.

C. Occupancy rates

The following reflects the occupancy rates at each year-end from 1996 to 2000 for the independent living units:

Period	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Occupancy	70.0%	74.3%	85.5%	91.1%	97.2%

There are applications pending for the six vacant independent living units, and a wait list of 330 prospective applicants.

The following reflects the occupancy rates at each year-end from 1996 to 2000 for the skilled nursing facility:

Period	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>
Occupancy	82.9%	91.4%	88.6%	97.1%	91.4%

3. FINANCIAL STATEMENTS

A. Balance sheet

The following shows the assets, liabilities and surplus as determined by this examination as of December 31, 2000. It is the same as the revised actuarial balance sheet filed by the Community in December 2001, presented on a Statutory Accounting basis, pursuant to New York Insurance Department Regulation 140 (11 NYCRR350) (See item 4, herein for further explanation):

Assets:

Current assets

Short term investments	\$ 8,008,000
Long term investments	4,198,000
Accounts receivable	971,000
Prepaid expenses	<u>658,000</u>

Total current assets \$ 13,835,000

Fixed assets less long term debt

Land	\$ 2,572,000
Building	41,664,000
Less: Long term debt	(26,670,000)
Furniture and equipment	4,280,000
Less: accumulated depreciation	<u>(4,042,000)</u>

Total fixed assets and long term debt \$ 17,805,000

Other assets

Deferred marketing	\$ 1,361,000
Deferred financing costs	<u>2,038,000</u>

Total other assets \$ 3,400,000

Total assets \$ 35,039,000

Liabilities:

Accounts payable and accrued expenses	\$ 619,000
Advance billing for resident care	<u>707,000</u>
Total current liabilities	\$ 1,326,000
Minimum Liquid Reserve	\$ 8,008,000
End of year Prospective reserve	33,346,000
End of year Retrospective reserve	33,346,000
Reserve liability (greater of Prospective and Retrospective)	<u>33,346,000</u>
Total liabilities	\$ <u>34,672,000</u>
Net surplus	\$ 367,000
Total liabilities and surplus	<u>\$ 35,039,000</u>

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. Also, there is an immaterial difference due to rounding.

B. Statement of revenue, expenses and surplus

The statement of revenue and expenses is presented on a GAAP basis for the period January 1, 1996 through December 31, 2000.

Revenue and other support:	
Resident fees - (apartments, cottages)	\$ 28,021,278
Health services:	
Resident fees	1,623,459
Medicare and other insurance	2,070,096
Per diem residents	3,858,563
Investment income	2,917,112
Amortization of deferred entry fee revenue	13,749,241
Other revenue	350,881
Net assets released from restrictions used for operations	<u>42,224</u>
Total revenues	\$ 52,632,854
Expenses:	
General and administrative	\$ 6,720,904
Facility services	7,097,116
Food service	5,908,486
Health service	9,028,487
Shared services allocation	2,123,777
Depreciation and amortization	9,486,550
Interest	11,177,265
Real estate taxes	<u>5,001,225</u>
Total expenses	<u>56,543,810</u>
Income or loss from operations	\$ (3,910,956)
Non-operating gains:	
Unrestricted gifts and bequests	\$ 32,544
Realized gain or (loss) on investments	<u>53,243</u>
Total non-operating gains	<u>85,787</u>
Income or (loss) from operations and non-operating gains	\$ (3,825,169)
Net unrealized gain on investments	\$ 31,782
Net assets released from restriction	<u>83,130</u>
Sub-total	<u>114,912</u>
Change in unrestricted net assets before cumulative effect item	\$ (3,710,257)
Cumulative effect of change in accounting principles	<u>(154,600)</u>
Change in unrestricted net assets	<u><u>\$ (3,864,857)</u></u>

C. Changes in actuarial surplus

Reserves and surplus increased \$367,000 during the examination period, January 1, 1996 through December 31, 2000, detailed as follows:

Surplus as of January 1, 1996			\$ 0
	<u>Gains in</u> <u>Net Worth</u>	<u>Losses in</u> <u>Net Worth</u>	
GAAP basis net income/(loss)			\$ (3,864,857)
Statutory adjustment	\$ 3,444,857		
Release excess of Retrospective over Prospective Reserve	787,000		
Surplus per examination as of December 31, 2000			<u>\$367,000</u>

4. BALANCE SHEET VALUATION

The Insurance Department reviewed the values of assets and liabilities as presented by the Community's actuary and included in the Community's original reserve certification for year-end 2000, that was submitted in April 2001. Such review incorporated the requirements contained in Insurance Dept. Regulation 140 {11NYCRR350}. Subsequent to this review by the Department's actuary, changes were made to certain asset and liability values and the Community made a revised submission in December 2001. The financial statements presented herein under item 3 reflect the changes incorporated in the December 2001 revised submission.

Also during the examination, New York Insurance Department appraisers reviewed the value of the land and improvements and the buildings. The value of those items, as compared to the Community's valuations, were deemed to be as follows:

	<u>Community</u>	<u>Department</u>
Land and improvements	\$9,489,960	\$9,489,960
Buildings	<u>32,174,010</u>	<u>26,672,000</u>
Total	<u>\$41,664,000</u>	<u>\$36,161,960</u>

The Insurance Department's valuation, as shown above, was made on a market value basis consistent with the provisions of New York Insurance Department Regulation 140 (11 NYCRR 350). The Community's valuation was based upon depreciated cost. The difference in the building valuation is mainly the result of the assumptions used with regard to expected occupancy and alternate market uses. The Insurance Department's valuation was not incorporated into the financial statement shown herein, under item three (3). If the Insurance Department's valuations had been used in the Community's balance sheet, the Community's net surplus would have decreased by \$5,502,040 to \$5,135,040 as of December 31, 2000.

5. **MARKET CONDUCT REVIEW**

As part of the examination, a market conduct review was conducted and there were no adverse findings.

6. SUMMARY OF COMMENTS AND RECOMMENDATIONS

<u>ITEM</u>	<u>PAGE NO.</u>
A. It is recommended that the members of the board of trustees 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.	7

Appointment No. 21747

STATE OF NEW YORK^{RR}
INSURANCE DEPARTMENT

I, GREGORY V. SERIO, Superintendent of Insurance of the State of New York,
pursuant to the provisions of the Insurance Law, do hereby appoint:

Joseph Krug

as a proper person to examine into the affairs of the

KENDAL AT ITHACA

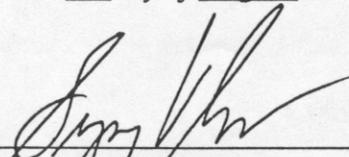
and to make a report to me in writing of the said

Company

with such information as he shall deem requisite.

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

this 1st day of August 2001



Gregory V. Serio
Superintendent of Insurance

