Rural Area Flexibility Analysis
The amendment will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas Insurers. Article 43 corporations and HMOs to which the amendment applies do business in every county of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13) Since the amendment applies to the health insurance market throughout New York, not only to rural areas, the same regulation will apply to regulated entities across the state Therefore, there is no adverse impact on rural areas as a result of this amendment
Job Impact Statement
The amendment to Regulation 62 will not adversely impact job or employment opportunities in New York. The proposed amendments are likely to have no measurable impact on jobs The notice is a one-time only requirement. Insurers and health maintenance organizations may need to delegate or reassign staffing responsibilities to prepare and distribute the notices; however, it is anticipated that such responsibilities will be handled by existing personnel

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Continuing Care Retirement Communities

I.D. No. INS-33-06-00003-RC

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following revised rule:

Revised action: Amendment of Part 350 (Regulation 140) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201. 301 and 1119; and Public Health Law, sections 4604(4)(a), 4607 and 4611

Subject: Continuing care retirement communities authorized pursuant to article 46 of the Public Health Law.

Purpose: To adopt revised standards pertaining to continuing care retirement communities authorized pursuant to article 46 of the Public Health Law.

Expiration date: February 17, 2008

Substance of revised rule: The title of this part is revised from Life Care Communities to Continuing Care Retirement Communities and conforming changes are made throughout Part 350 Section references are revised to reflect renumbering of several sections.

Section 350 5 is repealed and sections 350 1-350 4 are renumbered to be sections 350 2-350.5

A new section 350 1 is added, which consolidates the definitions used in this Part in one section. Definitions used in various sections are repealed and moved to this new section. Some new definitions are added to enhance the clarity of the regulation.

Subdivisions (a)-(c) of newly renumbered section 350.2 are repealed

Subdivision (d) of newly renumbered section 350.4 is amended to clarify that class 4 assets are amortized instead of depreciated

Subdivision (e) of newly renumbered section 350.4 is repealed and subdivisions (f)-(l) of newly renumbered section 350 4 are renumbered to be subdivisions (e)-(k)

Newly renumbered subdivision (g) of newly renumbered section 350 4 is amended to revise the criteria for the assumption as to the average monthly fees per resident for the initial year of a prospective reserve liability calculation

Newly renumbered subdivision (i) of newly renumbered section 350 4 is amended to delete a reference to a basis other than the closed group basis when calculating the prospective reserve liability

Subdivision (a) of newly renumbered section 350.5 is repealed and subdivision (b) of newly renumbered section 350 5 is renumbered accordingly. The content of the required demonstration to the superintendent has been clarified

Subdivision (a) of section 350 6 has been completely rewritten. The minimum liquid requirement has been restructured so that there are now two liquidity requirements The first is a debt reserve fund to cover the aggregate of all interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing of the community The second is an operating reserve fund equal to thirty five percent of the sum of certain operating expenses of the community during the next 12 months Assets used to meet these requirements must be in high quality fixed income securities. The current requirement that such securities have one year or less remaining to maturity has been eliminated. Each continuing care retirement community is required to test as of the end of each quarter that it meets the requirements of subdivision (a) of section 350 6, and if not. to notify the superintendent and submit a plan to achieve compliance

Section 350 6 is amended by adding a new subdivision (f), which requires that each continuing care retirement community develop formal investment guidelines and policies to be approved by its board of directors The responsibility for oversight of the investment program shall be retained by the community's board of directors All investment policies and guidelines and any subsequent changes must be submitted to the superintendent.

The unlettered paragraph of section 350 6 was moved to a new subdivision (g) of section 350 6

Subdivision (a) of section 350 7 is repealed and subdivisions (b)-(e) of section 350.7 are renumbered to be subdivisions (a)-(d). Newly renumbered subdivisions (b)-(d) of section 350 7 are amended to revise the conditions under which a distribution to an operator may be made

Section 350 8 is completely rewritten. If a continuing care retirement community is not in satisfactory actuarial balance. the operator shall develop a plan designed to achieve satisfactory actuarial balance, and submit the plan to the superintendent for approval. The allowable time period for such a plan to achieve compliance has been lengthened

Section 350.9 is renumbered to section 350 11 A new section 350 9 is added, which describes the minimum contents of the periodic actuarial study that is to be performed on behalf of the continuing care retirement community.

A new section 350 10 is added, which discusses the minimum content of fee schedule submissions.

Revised rule compared with proposed rule: Substantial revisions were made in sections 350 1, 350 6(f), 350 8(a)(2), 350 9 and 350 10.

Text of revised proposed rule and any required statements and analyses may be obtained from: Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004. (212) 480-2285, e-mail: Amais@ins state ny us

Data, views or arguments may be submitted to: Gary Teitel, Insurance Department, 25 Beaver St , New York, NY 10004, (212) 480-7709, e-mail: gteitel@ins state ny us

Public comment will be received until: 30 days after publication of this notice.

Revised Regulatory Impact Statement

1. Statutory authority

The superintendent's authority for the amendment to Regulation 140 (11 NYCRR 350) is derived from sections 201, 301 and 1119 of the Insurance Law, and sections 4604(4)(a), 4607 and 4611 of the Public Health Law.

Sections 201 and 301 authorize the superintendent to effectuate any power granted to the superintendent under the Insurance Law and to prescribe regulations interpreting the provisions of the Insurance Law

Section 1119(a) authorizes the superintendent to prescribe regulations pertaining to organizations operating pursuant to Article 46 of the Public Health Law with respect to (1) the financial feasibility of the continuing care retirement community (CCRC), (2) the actuarial principles established relating to such communities, and (3) the approval of continuing care retirement contracts and the rates and rating system for such contracts

Section 1119(b) authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 46 of the Public Health Law.

Public Health Law Section 4604(4)(a) states that an operator may use a rating methodology approved by the superintendent to determine entrance fees, monthly care fees, and/or any separate charges for the housing component of the continuing care contract, and that any increase in any entrance fee or monthly care fee in excess of fees calculated pursuant to the approved rating methodology shall require approval of the superintendent

Public Health Law Section 4607 states that the annual statement is due within four months of the close of the operator's fiscal year and that an updated actuarial study is periodically required

Public Health Law Section 4611 authorizes the superintendent to promulgate a regulation setting forth the reserve requirements, the quantitative and qualitative standards for assets supporting the reserve requirements, the minimum level of liquid assets a CCRC must maintain, and the qualitative standards for such liquid assets

2. Legislative objectives

The legislative objectives are found in section 4600 of the Public Health Law as created by Chapter 689 of the laws of 1989 If carefully planned and monitored, CCRCs have the potential to provide a continuum of care for older people that will provide an attractive residential option for

such persons, while meeting their long term care needs. To ensure that the financial, consumer, and health care interest of individuals who enroll in such communities will be protected, CCRCs must be effectively managed and carefully overseen. The intent of the legislature is to allow for the prudent development of such communities.

The legislature was aware that numerous CCRCs failed during the 1980s; therefore, it authorized an actuarial based model for such communities and mandated that the Superintendent of Insurance develop reserve standards for such communities.

3. Needs and benefits

A CCRC is a residential facility for seniors that provides stated housekeeping, social, and health care services in return for some combination of advance fee, periodic fees, and additional fees. A CCRC is often designed to provide a full continuum of care as the health status of a resident deteriorates with age.

This amendment reduces the minimum liquid requirement amount and liberalizes the investments eligible to support the minimum liquid requirement, which should increase investment income to a CCRC. This amendment allows a longer period of time for a CCRC to achieve satisfactory actuarial balance, which should have a positive affect on the fees charged to residents.

This amendment is necessary to address various issues that have come to the attention of the Insurance Department, as well as to clarify and simplify certain sections of the regulation.

The first actuarial study for a CCRC after commencement of operations is prepared at the end of the third fiscal year of operation. This first actuarial study captures the differences between originally projected results and the actual results that have emerged. The Department has found that the current requirement to correct an emerging actuarial under-funding within the mandated three year time frame is often not practicable. A longer initial time period would provide the operator with more flexibility in how to achieve full actuarial funding.

The industry has requested some leeway in maintaining a full funding level. The seven year time frame established in the amendment enables a CCRC to smooth out any adverse year to year fluctuations among the various assumptions used in the actuarial study or due to operating expenses emerging higher than what was budgeted.

A CCRC is expected to maintain at all times at least the required minimum level of liquid funds to cover unexpected expenses or unexpected revenue shortfalls. Therefore, these funds are not to cover budgeted expenses. This amendment reduces the minimum liquid amount requirement to a level more in line with the investment community's "days cash on hand" benchmark for an entrance fee community. The "days cash on hand" benchmark is designed to provide sufficient funds to cover unexpected expenditures, provide refunds for unanticipated living unit turnover without an attendant new entrance fee, or meet other unbudgeted expenses.

The current requirement for funds supporting the minimum liquid requirement is that these funds be in fixed income securities with one year or less remaining to maturity. Normally the annual net cash flow for a CCRC is positive and the minimum liquid funds would only be needed should there be unexpected expenses or unexpected revenue shortfalls. Therefore, since the minimum liquid funds would normally not be spent, the Department has concluded that it is appropriate for these funds to be in high quality and readily marketable fixed income securities. This amendment revises the requirement so that funds supporting the minimum liquid requirement must be in high quality fixed income securities and eliminates the one year maturity restriction.

Concerns were expressed about the use of the term "impaired" for a CCRC that is actuarially under-funded. This amendment introduces the concept of a CCRC being in satisfactory actuarial balance, which is the criteria actuaries customarily use in analyzing a CCRC's financial condition.

A new section outlining the minimum requirements for the periodic actuarial study codifies current guidelines in order to clarify what should be included in an actuarial study submission.

The new section outlining the fee submission requirements codifies the material that the Department currently asks for to support a fee schedule increase submission. The Department has found that operators often do not know what documentation should be included in a fee schedule submission. This section also provides guidance for developing a rating methodology.

4. Costs

The additional cost to a CCRC of complying with this amendment should be minimal since reserve standards for CCRCs already exist in this regulation.

The cost of complying with the new requirement to notify the Department and develop a plan for correcting any minimum liquid deficiency should be minimal. The cost of complying with the new requirement to develop a formal statement of investment guidelines and policies should be minimal.

The additional reporting requirements noted above should not require the CCRC to hire additional staff or engage outside experts not currently employed. The current financial staff and/or management company of the CCRC would monitor compliance with the minimum liquid requirement, and would notify the superintendent if the CCRC was not in compliance and develop the plan for achieving compliance. The board of directors and management staff of the CCRC would develop the investment guideline and policy statements for the CCRC.

The cost to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

The increased flexibility a CCRC will have in achieving satisfactory actuarial balance and in investing the minimum liquid required amount should offset any additional administrative costs that might be imposed by this amendment.

5. Local government mandates

The amendment imposes no new programs, services, duties or responsibilities on any county, town, village, school district, fire district or other special district.

6. Paperwork

This amendment requires that any CCRC that fails to meet the minimum liquid requirement level notify the Department and then submit a plan for correcting the deficiency.

This amendment requires that each CCRC develop formal investment guidelines and policies. No required format is specified. The investment guidelines and policies, and all subsequent changes, are to be submitted to the superintendent. It is good business practice for a Board of Directors to oversee the general investment policy of the CCRC.

This amendment requires that an operator submit a plan to achieve satisfactory actuarial balance if the actuarial study submitted shows that the CCRC is not in satisfactory actuarial balance. A similar paperwork requirement is included in the current regulation.

7. Duplication

Department of Health Regulations (10 NYCRR Parts 900-903) apply to CCRCs. Sections 901.5 and 901.9(e) address rate increases. Section 901.7 addresses reserves and supporting assets. Section 901.8 addresses the annual statement submission and the periodic actuarial study.

Pursuant to Article 46 of the Public Health Law, both the Insurance Department and Department of Health regulations complement each other.

8. Alternatives

During the past two years the Department has had many conversations with actuaries and other interested parties involved with CCRCs. The Department attended a forum sponsored by the Department of Health in which interested parties discussed the current regulatory environment regarding CCRCs. The Department also received input from the residents' council of one CCRC. The Department also met with the Department of Health and representatives from the industry s umbrella organization to discuss concerns and the regulatory intent of the Department.

Having heard the various concerns, the Department concluded that an amendment to the regulation was warranted. The changes reflected in this amendment address the concerns raised while still maintaining the actuarial basis for monitoring a CCRC as intended by the Legislature and required by Article 46 of the Public Health Law.

This amendment addresses the following key concerns that were expressed: (a) lower the minimum liquid requirement to a more reasonable level, (b) allow more investment flexibility for funds supporting the minimum liquid requirement, and (c) allow a longer time period for a CCRC to reach satisfactory actuarial balance.

Not including the new section describing the actuarial study might lead to needed information being omitted from the study, which would delay such reviews.

Not including the new section describing fee submission requirements might lead to required documentation being omitted, which would delay the review of the submission and could cause the proposed effective date of the fee increase to be delayed.

After publication of the proposed rule, in the August 16, 2006 State Register, the Department received comments from an industry organization representing, among others, operators of CCRCs. Based upon a review of the comments, the Department concluded that revisions to the proposed rule were warranted. Clarifying language, including a definition, was added regarding rating methodologies that may be utilized by CCRCs

The Department will continue to listen to issues raised by interested parties for consideration in a future amendment

9. Federal standards

There are no federal standards in this subject area.

10 Compliance schedule

This rulemaking will be effective upon publication in the State Register after adoption Since the requirements for the minimum liquid requirement and achieving full actuarial funding are being liberalized, CCRCs should have no difficulty in meeting the revised requirements.

Some of the information indicated for an actuarial study may not currently be included in all such studies, but the information should be available as a by-product of the study Therefore, there should be no difficulty in providing the requested information.

The amendment provides sufficient time for the eight operational CCRCs to comply with the new requirement for a statement of investment policies and guidelines.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not require changes to the last published Regulatory Flexibility Analysis for Small Businesses and Local Governments

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not require a change to the last published Rural Area Flexibility Analysis

Revised Job Impact Statement

Changes made to the last published rule do not require changes to the last published Job Impact Statement

Assessment of Public Comment

The proposed regulation was published in the New York State Register on August 16, 2006. Comments were received from an industry organization representing, among others, operators of CCRCs.

COMMENT: The regulation should include a definition of an "approved rating methodology" as referenced in the new proposed section 350.10 and in Article 46 under section 4604(4)(a)(ii) The definition and details of the "approved rating methodology" should be provided by the department.

RESPONSE: A definition for "rating methodology" has been added to section 350.1. Section 350.10 has been expanded to discuss rating methodologies and the information that should be included when a proposed rating methodology is submitted to the superintendent for approval The specific details of a rating methodology are developed by the management of the CCRC and submitted to the superintendent for review and approval.

COMMENT: The new requirement under section 350.6(a)(4) for reporting quarterly on the status of liquid assets is an unnecessary reporting requirement that adds an additional cost to the CCRC; an annual report on liquid assets would suffice

RESPONSE: With the reduction in the minimum liquidity requirement included in the amendment, the Department feels it should be notified immediately if the minimum liquidity requirement is not being met so that the liquidity of the community can be monitored on an ongoing basis until the deficiency is corrected. The proposal for only an annual report on the community's liquidity is insufficient for the Department to fulfill its financial monitoring responsibility as mandated by the legislature Based on discussions with the industry, the Department decided that a quarterly self testing of the minimum liquidity requirement, and notification to the Department only when the minimum liquidity requirement is not met, would meet the Department's need to be promptly informed while minimizing the reporting efforts of the CCRC Therefore, no modification to the rule was made.

COMMENT: The new section 350.6(f) requiring the development of formal investment policies and guidelines to be approved by the CCRCs board of directors is duplicative and appears to be an unnecessary requirement.

RESPONSE: The Department considers it a good practice for a CCRC to have a formal set of investment policies and guidelines and for the board of directors to have oversight of the investment program. Given the reduction in the minimum liquidity requirement and the liberalization in the investments allowed for the minimum liquidity requirement included in the amendment, it is important to ensure that the board of directors of each CCRC is overseeing the investment program. Therefore, no modification to the rule was made.

COMMENT: The new test for solvency set forth in section 350.8 is more flexible in allowing more time for CCRCs to achieve actuarial balance and more in line with the national standard for solvency.

RESPONSE: The new requirement is intended to allow the operator more flexibility in how to achieve satisfactory actuarial balance.

COMMENT: Since the actuarial study is expensive, section 350.9(b) should specify the conditions under which the superintendent would require a new actuarial study for the CCRC to allow the CCRC to make the proper budget adjustment required by the department

RESPONSE: The circumstances that might cause a new actuarial study to be requested are too numerous to be specifically listed. The primary reason for requesting an actuarial study prior to the normal three year time frame would be a concern about the financial condition of the community and the determination by the superintendent that it would not be prudent to wait for the next regularly scheduled actuarial study. When a community is not in satisfactory actuarial balance, and a long time period for the correction plan is proposed, the Department may conclude that actuarial studies should initially be every two years until the situation has stabilized, and in this case the community will be informed about the more frequent time table in order to properly budget. A community may be proposing an expansion of the facilities, a significant change to the fee structure, a new contract type, or issuance of new bonds, and given the specific circumstances the Department may decide that an updated actuarial study, or other appropriate actuarial communication, is required in order to evaluate the proposal and approve the request. Therefore, no modification to the rule was made.

COMMENT: The Department should allow greater latitude in investments for funds in excess of the minimum liquidity requirement, and should eliminate the retrospective reserve calculation

RESPONSE: Both of these comments do not concern a change proposed in this rule making The Department will consider these comments when it develops a next amendment to the regulation.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Healthy New York Program

I.D. No. INS-34-07-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: Addition of sections 362-2.7(d), (e) and (f) and 362-2.8 to Title 11 NYCRR

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3217, 3221, 4235, 4303, 4304, 4305 and 4326

Subject: Minimum standards for the form and content of policies and contracts subject to the provisions of section 4326 of the Insurance Law.

Purpose: To offer high deductible health plans in conjunction with the Healthy New York Program; and add additional benefits to the program

Text of proposed rule: New subdivisions (d), (e) and (f) are added to section 362-2.7 to read as follows:

§ 362-2.7 Healthy New York benefit adjustments

(d) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to forty post-hospital or post-surgical home health care visits per calendar year

(e) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to thirty post-hospital or post-surgical physical therapy visits.

(f) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for diagnostic screening for prostatic cancer consistent with the benefit set forth in section 4303(z-1) of the Insurance Law.

A new section 362-2.8 is added to read as follows:

§ 362-2.8 High deductible health plan under the Healthy New York program

(a) For purposes of this section

(1) "High deductible health plan" shall mean a qualifying health insurance contract with a plan year deductible of at least $1,150 for individual coverage and $2,300 for family coverage Out-of-pocket expenses, including the deductible and copayments, shall be capped at $5,250 for individual coverage and $10,500 for family coverage for the plan year.

(2) "Family coverage" means any coverage that is not self-only.

(b) Effective January 1, 2007, every health maintenance organization and insurer participating in the Healthy New York program shall offer a high deductible health plan with a plan year deductible of $1,150 for individual coverage and $2,300 for family coverage to qualifying small employers and qualifying individuals under the Healthy New York program in connection with a Health Savings Account (hereinafter "HSA") authorized by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub L No 108-173) The health maintenance organi-