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Gary Teitel
Supervising Actuary
State of New York Insurance Department – Health Bureau
25 Beaver Street
New York, New York 10004

Dear Mr. Teitel:

NYAHSA members appreciated the opportunity on May 16, 2005 to discuss with the Department of Insurance (DOI) and Department of Health (DOH) proposed changes to Regulation 140 that governs, in part, actuarial amounts, reserve requirements, and allowable investment purchases in Life Care Continuing Care Retirement Communities (CCRCs).

In an e-mail dated June 30, 2005 sent to Ken Harris, NYAHSA's Senior Housing Policy Analyst, you asked questions requesting additional information from NYAHSA members and CCRC professionals. Below are your questions and responses from NYAHSA members.

1. For a proposed community, the typical projected deficit on the actuarial balance sheet when stable occupancy is projected to occur (ratio of deficit to total liabilities). This would not be the same as the projected GAAP deficit and this is also not the same as what deficit actually may emerge at stable occupancy once a community is operational since such results reflect the differences between what actually emerged and what had been projected. For a proposed community where an actuarial deficit at stable occupancy is projected, what is a reasonable time period in which to expect that this same actuarial report will project this deficit to be removed with fees increasing at the expense inflation rate?

It would probably be best if you can have the consulting actuaries discuss this with DOI directly.

Answer: A reasonable change would be for the DOI to accept a 90 percent actuarial balance at start-up and allow a minimum of ten years to obtain full actuarial balance.

2. For an operational community where a deficit occurs in the first post-operational actuarial report, the community will have to develop a corrective plan designed to remove the deficit. How long a time period would be reasonable to allow for such a corrective plan to achieve actuarial balance?

Answer: The correct timing for DOI to require actuarial balance for a CCRC depends on many factors and would change from each CCRC and their market. A reasonable standard would be to ensure that a CCRC is moving in a positive financial and actuarial direction showing positive corrections, without regard to a specific time period. Requiring quick financial adjustments to achieve an actuarial balance should not be required, since it places an undue financial burden on the first residents of the CCRC.

3. Has Rod Rolette or David Laffey found out any more information regarding Fitch's comments in their March 9, 2005 report? It would be helpful to know what Fitch is seeing and referring to and what are the underlying causes of the "severe financial difficulty" mentioned.

Answer: It is believed that the March 9, 2005 Finch report reflected the poor performance of the previous year's stock market and reflected short-term advice on making CCRC bond investments. It did not reflect current or future CCRC financial performance.

4. Proposed distribution by asset class (commercial paper + A and higher rated bonds + redeemable CDs, BBB and lower rated bonds, common stock, preferred stock) that would be appropriate for the minimum liquid requirement. That would be appropriate for investable funds in excess of the minimum liquid requirement. Restrictions on foreign investment in each of the asset categories (such as 5% of the total amount invested in that category). Other asset categories that should be allowed, why these other categories would be suitable for a CCRC, and what overall limit should apply to each of these additional categories.

Answer: Assets held in the Minimum Liquid Reserve (MLR) should be in the top five rating categories or considered investment grade.. DOI's role in reviewing a community's investment plan beyond the MLR requirements noted here should be at arm's length: offering notice if the community does not appear to have a sufficiently diverse investment portfolio but not undermining a CCRC Board's authority by requiring amounts and percentages in determining investment choices. We therefore recommend that investment of assets not held in the MLR should not be regulated.

5. Is there any problem if individual fixed income securities had to meet rating criteria from two of S&P, Moody's, Fitch?

Answer: CCRC investments should be based upon rating criteria from one of the three listed financial performance rating companies. Restricting investments to

those which have at least two ratings unnecessarily limits investment options without assuring better quality or security.

6. Suggested standards for allowable money market mutual funds, allowable bond mutual funds, allowable common stock mutual funds, and allowable preferred stock mutual funds. Would the industry suggest allowing other types of mutual funds? If yes, describe the additional type, why it would be suitable for a CCRC, the suggested standard, and should there be any limit on the amount invested in each of these other types of mutual funds.

Answer: Lacking any authoritative rating mechanism, we recommend that CCRC Boards be given the latitude to choose mutual fund investments at their discretion for funds outside the MLR. If DOI must regulate mutual fund investments and will not allow such latitude, we recommend that CCRC Boards be given the widest possible discretion in choosing such investments, perhaps restricting mutual fund investments to a percentage of a community's available investments and advising/monitoring for diversity in those investments.

7. Suggested wording for a repair/replacement fund, or if no fund should be established, how are regulators to ensure that a community is properly setting aside money for future scheduled repairs/replacements. (Such a fund created by a bond indenture cannot be relied upon - suppose IDA bonds aren't used or that the bonds have been paid off.)

Answer: Determining amounts for a replacement / repair fund is an operational decision that will change from year to year depending on the community's age, market, initial materials and construction quality as well as environmental factors. Mandating a fixed or variable amount would have the potential of holding resident funds in this account unnecessarily and would strip a CCRCs management of its ability to make sound operational decisions. DOI can instead refer to the CCRC's audited financial statement and ten year projection report to determine if a CCRC is setting aside sufficient funds for capital improvements. We strongly recommend that the revised regulation not require a replacement / repair fund.

8. Discussion of the valuation of the land and building. Isn't use of market value a cross-check that the asset value being used on the actuarial balance sheet is appropriate, and also a cross check that the cash flow generated by the community is adequate to support the appraised value? Doesn't market value reflect the best value of the asset since it represents the amount that would be received should the property ever have to be sold? How to take into account that the market value may not just go up, but may also go down. The industry might want to discuss this issue with the actuarial consultants.

Answer: A real estate appraisal is not needed to determine the financial viability of a CCRC, and such appraisals are an unnecessary expense to the community. CCRCs are, in effect, resold every year when residents vacate independent living units and entry fees from new residents are collected. The higher the actuarial value of the community, the higher its actual value. Actuarial deficits would lower the value. Appraisals do not reflect such value and are unnecessary in the context of maintaining a sound community or assessing risk or benefit to residents. We recommend they not be required.

Conclusion

NYAHSa suggests DOI contact the actuaries involved in CCRC reviews in New York state to ensure the recommendations made by NYAHSa follows standard actuarial practices.

If you have any questions, please contact Ken Harris at 518-449-2707, extension 139, or by e-mail at kharris@nyahsa.org.

C: Linda Gowdy