

September 29, 2006

Gary Teitel
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Dear Mr. Teitel:

NYAHSA members appreciated the Department of Insurance (DOI) submission to the New York State Register on the proposed amendment of Part 350 (Regulation 140) of Title 11 NYCRR that governs, in part, actuarial amounts, reserve requirements, and allowable investment purchases in Life Care Continuing Care Retirement Communities (CCRCs). NYAHSA acknowledges several positive changes to the proposed regulation.

In response to the August 16, 2006 proposed rule making notice, NYAHSA has listed below the critical aspects of the proposed changes with comments to the changes and suggested revisions.

Comments to Proposed Amendments to Regulation 140

Section 350.1 Definitions

A new section 350.1 has been added, which consolidates the definitions used in various sections. Some new definitions are added to enhance the clarity of the regulation.

NYAHSA Comments:

This new section will be useful to operators and parties interested in CCRCs to better understand Regulation 140.

The department should include a definition of their *Approved Rate Methodology* referenced in the new proposed section 350.10 and in Article 46 under section 4604 (4) (a) (ii).

Section 350.6 (a)

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 a plan to achieve compliance.

NYAHSAs Comments:

The calculation for a CCRC to maintain liquid asset in the amount greater or equal to of 35 percent for specific operating expenses, taxes, expenses, debt interest payments and refund expenses will be an improvement and assist CCRC in the financial situation. Eligible liquid assets no longer have the one-year maturity requirement which is also an improvement.

Yet, in our opinion the new requirement under section 350.6 (a) (4) for reporting quarterly on status of liquid assets an unnecessary reporting requirement that adds an additional cost to the CCRC. An annual report on liquid assets would suffice.

Section 350.6 (f)

Section 350.6 is amended by adding a new subdivision (f) that 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.

NYAHSAs Comments:

This new section requires the development of formal investment policies and guidelines to be approved by its board of directors. The CCRCs is required to submit their investments in the annual report and resubmitting investments would be duplicative and add an additional cost for the CCRC.

Section 350.8

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.

NYAHSAs Comments:

The new test for solvency is more flexible in allowing more time for CCRCs to achieve actuarial balance and more in line with the national standard for solvency.

Section 350.9 (b)

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, including under section 350.9 (b) "A continuing care retirement community shall submit a new actuarial study upon the request by the superintendent."

NYAHSAs Comments:

A CCRC actuarial study is extremely expensive and will draw funds from the CCRC that could otherwise be used for the CCRC and their residents. Section 350.9 (b) should specify in which conditions the superintendent would require a new actuarial study for the CCRC to allow the CCRC to make the proper adjustment required by the department.

Section 350.10

A new section 350.10 is added, which includes the fee schedule submitted pursuant to an *Approved Rating Methodology*.

NYAHSAs Comments:

The proposed amendment of Regulation 140 of Title 11 NYCRR, nor Article 46 of the Public Health Law, stipulates the details or definition of an *Approved Rating Methodology* pursuant to this regulation. The definition and details of the *Approved Rating Methodology* should be provided by the department.

Additional Comments

Investments

It would be a great improvement for CCRCs financial growth be allowed by the department to invest in fixed income products with different maturities. The proposed Regulation 140 changes do not address the issue of CCRC investments, and CCRCs are therefore still very limited by the amount of equities in which they can invest. As CCRC reserves grow, they will not be able to match inflation if the vast majority of their investments are in fixed income products.

NYAHSAs recommends that CCRC boards be given the latitude to choose mutual fund investments at their discretion for funds outside the minimum liquid reserve. If the department 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.

Another possibility is to allow CCRCs to open up their investment portfolio to include the investments permitted by New York State insurance companies regulated by the Department of Insurance.

Retrospective Reserve Requirements

New York CCRCs continue to be held to a retrospective reserve calculation that appears to be a requirement only for New York CCRCs. This requirement is unnecessary and adds an additional cost to the CCRC and their residents. New York seniors continue to move to CCRCs in surrounding states with health and insurance policies and requirements that allow for operators to fix lower resident fees.

New York should adopt the national standards of the American Academy of Actuaries for continuing care retirement communities – the Actuarial Standard of Practice Three (ASOP 3). It is NYAHSAs understanding that the CCRC ASOP 3 standards are currently being revised for CCRCs and New York state should use these new standards for the reserve calculation.

Conclusion

NYAHSAs members are pleased that the Department of Insurance has proposed a first amendment to Regulation 140. We are suggesting a few changes to the proposed regulations and suggest additional changes to Regulation 140 including items involving investments and reserve requirements.

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

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