



September 24, 2014

Mr. Troy J. Oechsner
Deputy Superintendent for Health
NYS Department of Financial Services
One Commerce Plaza
Albany, NY 12257

Re: CCRC Regulation 140 Reform Initiative

Dear Mr. Oechsner:

Thank you for taking the time to meet with representatives of LeadingAge New York concerning proposed amendments to Regulation 140 (11 NYCRR Part 350). As you know, we have sought relief from portions of this regulation for quite some time. We are encouraged by the Department of Financial Services' willingness to work with providers to mutually develop language which permits New York's continuing care retirement communities (CCRCs) to achieve investment returns closer to yields routinely realized by communities in other states while, at the same time, meeting our shared goal of safeguarding the financial security of residents of New York's CCRCs.

Our proposed amendment to Regulation 140 submitted in September of 2013 is attached. Our discussions in July of this year focused on four key elements of the Department's draft investment regulations relative to our request:

1. Proposed 20 Percent Limitation - The addition of mutual funds and exchange-traded funds (ETFs) was well received by the group. We do, however, remain concerned about the allowable equity allocation. Our proposed amendment recommended the regulations be revised to permit the holding of common or preferred stocks of U.S. companies and that such investments would be limited to no more than **35 percent of total cash and investments** [see Section 350.6(c)(1) of September 2013 proposal]. We believe 35 percent is a fiscally responsible limitation given that the equity allocation of CCRCs in all other states is over 50 percent and that under the current Reg. 140 limitations New York CCRCs are handicapped by substantially lower than average rates of return on investments. Please see the attached Cleary Gull study dated September 2014 for more information on actual and anticipated yields nationally. Also, to clarify, we did not intend for the 35 percent allocation to be limited to mutual funds specifically but to represent an overall limitation on equity investment.
2. Treatment of Fixed Income Funds – It is our understanding that mutual fund and ETF holdings, regardless of composition, would count against the 20 percent limit under the draft regulatory amendments. As we addressed in our proposal at Section 350.6(c)(6), we believe funds that invest primarily in investment grade bonds and other fixed income instruments should not be

subject to this limitation, as individual fixed income holdings of a certain grade are already permitted under existing regulations without reference to the equity limitation. To this end, we request consideration be given to the use of widely available information sources for the categorization of mutual funds. We believe this will assist both the Department and providers in conducting due diligence and oversight of portfolio investments.

3. Basis of Limitation – During the meeting, there seemed to be some confusion regarding the basis for calculating the 20 percent limitation. As noted above, our proposal uses the simplified measure of total cash and investments as the basis for determining maximum allowable equity holdings.
4. Prohibition of Investments in Affiliates – Based on your explanation of the revised regulation, investments in affiliates would be prohibited. As per Section 350.6(c)(13) of our proposal, we agree with this provision.

In addition to discussing the revised proposed investment guidelines, the Department presented draft language relating to distributions of surplus capital. It is our understanding these proposed regulations will only impact for-profit CCRCs. If in fact that is the case, we do not object to the Department's proposal on this issue.

Finally, during our meeting, the Department noted that the revised regulation would require notifying the Department of all CCRC transactions with affiliates. To ease the administrative and review burden on providers and the Department, we recommend that only individual transactions with affiliates in excess of \$50,000 would require notice to the Department.

Thank you again for taking the time to meet with us, and we look forward to the opportunity to review and provide feedback on the Department's proposed regulatory amendments when they are published for comment. In the meantime, please contact us if we may be of assistance.

Sincerely,




Patrick Cucinelli
Vice President for Financial Policy

Enclosures

cc: LeadingAge NY Reg. 140 Workgroup
LeadingAge NY CCRC Cabinet
Sean Doolan, Esq.
Caron Crummey