NYAHSA Document ID# 32912501

New York Association of Homes & Services for the Aging

Compilation of Testimony Submitted To:

NEW YORK STATE ASSEMBLY

COMMITTEE ON HEALTH

Richard N. Gottfried, Chair

CONTINUING CARE RETIREMENT COMMUNITIES

Legislative Office Building
Roosevelt Hearing Room C
Albany, New York
11:00 A.M.

November 22, 2005

Public Hearing On Continuing Care Retirement Communities
November 22, 2005
Index

Testimony Presented In Order of Appearance:

NEW YORK STATE ASSEMBLY
NOTICE OF HEARING

COMMITTEE ON HEALTH

Richard N. Gottfried, Chair

CONTINUING CARE RETIREMENT COMMUNITIES
Tuesday, November 22, 2005
11:00 AM
Roosevelt Hearing Room C
2nd Floor, Legislative Office Building
Albany, New York

Continuing Care Retirement Communities (CCRC's), or life care communities, have been legally recognized in New York State since 1989, when they were authorized by Public Health Law Article 46. Life care communities provide unlimited long-term care, with residential, assisted living, nursing, dining, recreational and other services available within one setting and for one monthly fee, after paying an entrance fee. In 1997, the law was amended to authorize modified communities, which provide a limited number of nursing home days included with the base fee, and then additional care on a fee-basis when the pre-paid days run out.

Chapter 519 of the Laws of 2004 created a new type of life care community, with up to 8 demonstration programs on a fee-for-service model. Residents pay only for the services for which they contract.

This hearing invites testimony from interested parties on how this legislation is working and recommendations for change.

Persons wishing to attend or present testimony at this hearing should complete and return the reply form as soon as possible, but no later than November 17, 2005. It is important that the form be fully completed and returned so that persons may be notified in the event of emergency postponement or cancellation of the hearing.

Oral testimony will be limited to ten minutes in length. All testimony is under oath. In preparing the order of witnesses, the Committee will attempt to accommodate individual requests to speak at particular times in view of special circumstances. This request should be made on the attached reply form or communicated to Committee staff as soon as possible. Ten copies of any prepared statement should be submitted at the hearing registration table.

Questions about this hearing may be directed to Shay Bergin of the Assembly Health Committee staff at 518-455-4941 or bergins@assembly.state.ny.us.

Introduction

Continuing care retirement communities (CCRCs) have provided quality housing and services to New Yorkers since 1989, when state legislation was enacted to authorize the establishment of these senior living arrangements. CCRCs combine the best of all worlds-independent living, adult care facility (ACF), and skilled nursing care-within one community.

In a fiscal climate that calls for encouraging economic development and containing public spending, increased CCRC development would meet both of these important goals. Residents of CCRCs invest their assets into the CCRC for residential and health-related services, which in turn obviates the need to rely on Medicaid to cover such costs. In addition, the residents of the CCRC spend their income in the community, contributing to the economic growth of the local economy.

Unfortunately, 16 years after enactment of Article 46 of the Public Health Law, only eight (8) communities are operational in New York, with only eight (8) more life care CCRCs in pre-operational status. Unnecessary fiscal and regulatory requirements under Article 46 of the state's Public Health Law have prevented the proliferation of CCRCs. In addition, CCRC reserve and investment requirements under Department of Insurance Regulation 140 have increased resident fees and operational costs.

NYAHSA has long advocated for legislative hearings to allow providers, their residents and CCRC developers an opportunity to demonstrate the need for CCRC reform. On November 22, 2005, the Assembly Committee on Health, chaired by Richard Gottfried, held hearings on how the laws governing CCRCs are working and recommendations for change. NYAHSA President Carl S. Young opened the hearing with on overview of CCRCs in New York state and the challenges faced by operators in developers of CCRCs due to over proscriptive legislation and regulation. Besides NYAHSA, four operators, three residents, two developers, a financer and attorney representing CCRCs presented testimony at the hearing. The Department of Health presented written testimony to the committee. This paper includes all testimony presented and submitted at the CCRC hearing with contact information for the witnesses and their organizations.

The New York Association of Homes and Services for the Aging (NYAHSA) recommends a number of changes to Article 46 and Regulation 140 to encourage additional development and better operation of CCRCs. NYAHSA is asking state lawmakers to embrace the proposals in this report by enacting changes in the law to promote CCRC development and operation – a and the resulting increased economic activity – in New York state. NYAHSA's paper on CCRC reform can be found at: http://www.nyahsa.org/docs/Article46.doc.

NYAHSA represents nearly than 650 not-for-profit providers located throughout New York state. NYAHSA's members provide a full spectrum of continuing care services to an estimated 500,000 elderly, disabled, and chronically-ill New Yorkers each year. For more information on CCRCs contact Ken Harris, senior housing policy analyst, at 518-449-2707, extension 136, or by e-mail at kharris@nyahsa.org; or Wendy Saunders, director of government relations, at 518-449-2707, extension 121, or by e-mail at wsaunders@nyahsa.org.

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Good morning. My name is Carl Young and I am the President of the New York Association of Homes and Services for the Aging (NYAHSA). I am here to respond to your request for testimony regarding issues concerning Continuing Care Retirement Communities (CCRCs). I will take the opportunity to focus my remarks on the need to initiate legislative and regulatory reform for CCRCs. There are several NYAHSA CCRC members and their residents here today to provide additional details on these needed reforms.

Founded in 1961, NYAHSA is the only statewide organization representing the entire continuum of not-for-profit, mission-driven and public continuing care, including CCRCs, nursing homes, senior housing, adult care facilities, assisted living and community service providers. NYAHSA's nearly 650 members serve an estimated 500,000 New Yorkers of all ages annually.

On behalf of NYAHSA, I want to commend the Assembly Committee on Health and Chair Richard Gottfried for seeking input on what we believe is an urgent public policy need. Our vision is that New York will achieve housing and service capabilities equal to consumer need and choice. We appreciate the opportunity to share our thoughts and concerns.

Introduction

One of the best opportunities available for senior retirement living is a CCRC. CCRCs combine the best of all worlds – independent living, adult care facility (ACF), and skilled nursing care – all within one community. Article 46 of the New York Public Health Law was enacted in 1989 creating a process and criteria for establishing CCRCs within New York state. While NYAHSA

commends the Legislature for developing the CCRC statute, changes are required to meet the growing need for more affordable CCRC communities.

Unfortunately, 16 years after the enactment of Article 46, only eight communities are operational in New York, with only eight more life care and fee-for-service (FFS) CCRCs in pre-operational status due to an extra-ordinarily stringent legislative and regulatory climate…far beyond what is needed to ensure quality care and service and financial good health. In contrast, Pennsylvania has 141 life care CCRCs due to less stringent legislative and regulatory requirements. New York's seniors have historically moved to CCRCs in surrounding states' that allow for more affordable options.

In a fiscal climate that calls for encouraging economic development and containing public spending, increased CCRC development would meet both of these important goals. The development of retirement communities is very important to the future economic development of New York state. There will be an anticipated 37 percent increase in New York's senior population from 3.0 million in year 2000 to 4.4 million in year 2025. Because residents of CCRCs invest their assets into the CCRC for residential and health-related services, they reduce or eliminate the need to rely on Medicaid to cover health care. In addition, CCRC residents spend their income in New York and within the local the community, contributing to the economic growth of the economy. It was for these reasons that the Legislature, led by Assemblyman Gottfried and others on this committee, authorized CCRC development in New York. We believe there is now an opportunity to take action to advance development and improve the environment for successful, quality operations.

What are the advantages to New York in adopting legislation that would encourage additional CCRC development and allow providers to operate more effectively and efficiently? They are substantial and varied:

- CCRCs encourage seniors to invest their assets in long-term care services within a retirement community that largely prevents asset divestiture used to qualify for Medicaid-funded services;

- CCRCs consistently deliver high-quality senior housing and services under some of the most stringent state regulatory oversight and consumer protections;

- The development of CCRCs offers job creation and economic development opportunities for local communities; and

- CCRC development helps to reduce out-migration of retiring seniors to other states, while retaining their income and assets within New York.

There are aspects of Article 46 and corresponding Department of Insurance Regulations that must be revised to encourage additional development of CCRCs and to allow providers to operate better while continuing to protect the interests of their residents. We believe there are four broad action areas. We need to:

1. Level the playing field by establishing equitable requirements for FFS and traditional CCRCs;

2. Lift an unnecessarily onerous burden on CCRC residents by reshaping reserve requirements and modifying investment options under Regulation 140 – protect consumers, don't punish them as present constraints do;

3. Encourage development by creating more appropriate standards for use of entrance fees in construction, improving financing options, and eliminating the cap on nursing home beds available to CCRCs; and

4. Reshape operating constraints to allow CCRCs to operate as the integrated continuum of care and services they were intended to be by creating mechanisms for integrated licensing, regulation and surveillance and enabling licensed staff to work across all levels of care within the CCRC. This will reduce duplicative oversight and redundant work.

Let me address each of these separately.

CCCR Development in New York State

New York has three types of CCRC's. Life care or "Type A contracts," are communities authorized by Article 46 and regulated by both DOH and the New York State Department of Insurance (DOI). These full service "life care" contracts allow for unlimited long-term care for the life of the residents. Modified or "Type B contracts" limit the number of covered nursing home days available to each resident, and require that the resident receive at least a year of nursing home services before receiving Medicaid coverage for such services. On August 12, 2004, state lawmakers created the FFS CCRC demonstration program. This legislation allows for up to eight new communities that would provide the same services as a life care or modified CCRC, but charge for services on a fee-for-service basis as needed by individual residents. Fee-for-service CCRCs allow a "pay-as-you-need" service model that provides another potentially affordable CCRC option to New York seniors. Yet changes in the law for FFS CCRCs created an unfair financial advantage compared to life care CCRCs.

Changes Needed to Insurance Regulation 140

In an effort to safeguard residents' assets, Article 46 of the Public Health Law requires life care and modified CCRCs to maintain reserves and supporting assets in an amount and for the purposes set forth in Department of Insurance Regulation 140[1]. The specific financial requirements and criteria contained in this regulation are extraordinarily stringent, and contribute to New York's inability to attract the development of new communities. While life care and modified CCRC arrangements are insurance products that require reserves to protect resident assets, Regulation 140 requires CCRC operators to set excessively high entrance and monthly fees for their residents to meet the reserve requirements. In addition, the investment regulations designed to protect the CCRC resident reserve account only allow investment in instruments with virtually no risk. While it is important to provide guidelines to avoid risky investment, the

[1] Regulation No. 140 is found in Title 11 of the New York Codes, Rules and Regulations, Part 350.

current regulations prevent a reasonable return on investments. NYAHSA is proposing a more realistic reserve amount and investment opportunities used by other states.

Reserve requirements passed in law are different for various types of New York CCRCs. FFS CCRCs are required to maintain liquid reserves based on the projected annual operating expenses of the facility of 15 percent of the projected annual operating expenses of the facility, exclusive of depreciation. Reserve requirements for FFS CCRCs will be much lower than the requirements under Regulation 140 for life care and modified CCRCs. The higher reserve requirements for life care and modified CCRCs will require much higher entrance and monthly fees, putting them at a distinct marketing disadvantage in relation to FFS CCRCs.

NYAHSA is pleased to report that we have been working closely with the Department of Insurance and Department of Health (DOH) to change the reserve and investment stipulations under Regulation 140. We are hopeful that our efforts will result in changes to the regulations that will address our concerns. NYAHSA believes that modification of Regulation 140 is the single most import change needed to ensure that affordable CCRCs are developed in New York reducing entrance fees and allowing residents in existing CCRCs lower monthly fees.

Changes to Encourage Development of CCRCs

NYAHSA believes that changes to the CCRC statute will encourage development of additional CCRCs in New York state. The following items have been identified as proposed changes in the law:

Eliminating the Cap on the Number of Nursing Home Beds for CCRCs

Currently, 1,000 residential health care facility (nursing home) beds have been approved for CCRC development in New York state, and more than half of those beds (593) have been allocated to operational and approved facilities as of this date. The newly enacted fee-for-service CCRC legislation allows up to 350 of the nursing home bed set aside to be used for the eight demonstration projects. Planned communities of life care and fee-for-service CCRCs bring the total number of nursing home beds close to the allocated 1,000 beds. Additionally, as the current CCRCs residents age in place, their communities will need to add additional beds to serve their residents. In the near future, CCRC development and financing in New York state will cease unless the Legislature acts to increase the nursing home bed set-aside for CCRCs.

NYAHSA urges the Legislature to eliminate the cap on total nursing home beds connected to the CCRCs. If this is not possible, we propose increasing nursing home bed set-aside to 2,000 beds. A related issue involves the use of existing beds to develop a FFS CCRC. The statute governing FFS CCRCs has been interpreted to require this model to use beds from the set-aside, even if the operator already has existing nursing home beds that it would like to redeploy for the FFS CCRC. NYAHSA believes this policy should be changed.

Releasing Escrowed Entrance Fees for Construction

Virtually all CCRCs that have been developed or are approved for development have obtained their capital financing through local Industrial Development Agencies (IDAs). The proceeds of IDA financing can be made available when a CCRC has entered into pre-sold contracts for at least 70 percent of all living units at 10 percent deposit levels, or when 60 percent of living units have been pre-sold at a 25 percent deposit level. Under existing law, however, resident deposits cannot be released for construction costs until an operator has executed contracts for 60 percent of its living units at a 25 percent deposit level. This equates to 15 percent of the total entrance fees for all proposed living units. The 70/10 requirement was stipulated under Article 46-A for FFS CCRCs. NYAHSA encourages the Legislature to enact a change allowing life care CCRCs the same option as FFS CCRCs of having deposit funds released for construction at either the 60/25 percent level or the 70/10 percent level without an aggregate 15 percent total.

Approving the Use of Entrance Fees for Construction

Current law allows the release of residents' CCRC deposits for up to 15 percent of the total cost of acquiring, constructing, and equipping the proposed CCRC. Yet, some resident deposits made after the 15 percent threshold is met cannot be used and must be kept in escrow.

The purpose of the escrow is to ensure depositors of the community access to the deposit funds given to the CCRCs if they decide not to move into the CCRC. Surveys of existing CCRCs show that only a few residents will ask for a deposit refund. However, CCRC must keep 85 percent of deposits in escrow. Therefore, CCRCs must borrow seed capital at high interest rates to pay for constructing the CCRC. This in turn raises the overall entrance fees and monthly fees of incoming residents.

NYAHSA encourages the Legislature to approve the use of 85 percent of residents' entrance fee deposits for the cost of acquiring, constructing, and equipping the facility, provided all other necessary conditions have been met. The remaining 15 percent should be kept in escrow for deposit refunds.

Allow Existing CCRCs to Offer a Variety of CCRC Contracts

As mentioned previously, in 2004 New York created a new a FFS CCRC option. Yet, NYAHSA is told that it is not clear from the legislation that existing life care CCRCs may offer FFS CCC contracts in their community. Additionally, New York seniors may find the *Life Care at Home* model attractive. In this model, seniors living in their existing, off-campus home may contract for the assisted living and skilled nursing services offered in the CCRC. This model is found in both Pennsylvania and New Jersey.

NYAHSA encourages the Legislature to allow life care CCRCs the option of offering FFS CCRC and *Life Care at Home* contracts.

Changes Needed for Industrial Development Financing of CCRCs

NYAHSA believes that immediate changes to the use of IDA financing are required to allow the development of CCRCs. The following items have been identified as proposed changes in the law:

Eliminating the IDA Sunset Provisions

The development of a senior housing or nursing home improvement project is a long-term commitment. Typically, a new project can take up to four years from inception to completion. As mentioned earlier, CCRCs depend on the tax-exempt bond financing allowed through the IDA to provide a more affordable financing of CCRCs to lower resident fees.

The statute authorizing the use of IDA financing, expires on June 30, 2006. Historically, civic facilities (including CCRCs) were given a three-year authorization. However, earlier this year, lawmakers passed only a one-year extension. Arbitrary sunset dates, such as those that have governed IDA financing of retirement communities, can threaten ongoing projects and severely impede the planning for new facilities. A permanent extension will remove uncertainty from the process for provider organizations, lenders and municipal officials.

The sunset provision of IDA financing has current and past ramifications for New York CCRCs. In 1999, the development of Jefferson's Ferry, Long Island's first CCRC, suffered through a six-month delay in financing because the Legislature did not address the sunset for several months. The delay cost the project hundreds of thousands of dollars since the start of construction did not begin until December. NYAHSA encouraged lawmakers to make the IDA financing permanent.

In addition, due to a technical oversight in the extension passed this year, DOH has determined that six CCRCs under development do not have authorization to use the IDA, putting these facilities in financial jeopardy. While the legislation allowing CCRCs to finance through the IDA was extended to June, 2006, the statute contained a requirement that only CCRCs that had obtained their Certificates of Authorization from the CCRC Council by June 30, 2005 could access IDA financing. This provision originally contained a date of June 30, 2000, but was extended in 1997 to the 2005 date. NYAHSA encourages the Legislature to eliminate this provision. Immediate action is needed when the Legislature reconvenes in January, to rectify this situation for the six affected projects.

Allowing IDAs to Issue Bond Anticipation Notes for CCRC Financing

CCRCs require substantial seed capital to fund start-up costs prior to receiving permanent IDA tax-exempt bond financing. IDAs are authorized to issue tax-exempt bond anticipation notes (BANs) in anticipation of project development. Notes are repaid when the project is permanently financed.

Bond anticipation notes would provide CCRCs with seed capital at a more reasonable cost in comparison to other sources of short-term financing, and offer the potential for substantial

savings to the CCRC's residents and sponsor(s). Bond anticipation notes would be purchased only by institutional or "accredited investors" (as defined in federal securities laws) that seek a higher return on investment than other short-term debt instruments.

NYAHSA encourages the Legislature to allow IDAs to issue bond anticipation notes for CCRC development costs prior to financing.

Changes Needed for Operational Issues

While CCRCs offer independent housing, assisted living and skilled nursing care in a comprehensive, integrated community, New York regulations and surveys require an individualized approach according to licensure. CCRC staff is not allowed to work in different levels of care that require different licensure. This creates duplicative oversight and unnecessary work for CCRC staff that ultimately increases resident fees.
NYAHSA encourages the Legislature to allow professionally licensed staff to perform all duties that are within the scope of practice of their license regardless of which level of care they are working within the CCRC. NYAHSA encourages New York to create a system for CCRCs to receive waivers for providing a seamless continuum of care.

Conclusion

CCRCs offer a highly desirable level of retirement housing and services option to hundreds of seniors throughout New York state. Unfortunately, very few CCRCs have been developed due in part to the very extensive application process and regulatory policies established under current statute.

NYAHSA believes that the changes we propose would lead to the following important outcomes:

- significantly reduced obstacles to development of new CCRCs;
- reduced administrative burden on existing CCRC sponsors;
- increased economic development;
- reduced Medicaid expenditures; and
- enhanced services and options for seniors residing in New York state.

NYAHSA's publication, *Continuing Care Retirement Communities in New York State: A Major Economic Development Opportunity*, provides more details about the proposals contained in this testimony. An updated version of this paper will be delivered to the Legislature after these hearings.

On behalf of NYAHSA, I want to extend our appreciation for your obvious interest in the future of CCRCs in New York state. Thank you again for the opportunity to testify today.

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Good morning, my name is Patricia Doyle and I am the CEO and Executive Director of Kendal on Hudson, a continuing care retirement community located in Westchester County, in the Village of Sleepy Hollow.

I thank the committee for this opportunity to speak about the opportunities available for the State to create a more welcoming environment for the development of CCRCs and a more positive environment for the successful operation and advancement of CCRCs.

Carl Young of NYAHSA has identified several very important issues we confront as providers in New York State and suggested some important opportunities for legislative action to advance continuing care communities in the State. He has also made an important case for the value of CCRCs -- to those who choose this retirement lifestyle; for economic development and job creation in our State; and for important relief for State tax payers via CCRC's ability to reduce the number of seniors who might otherwise have recourse to Medicaid to fund their long term care.

I would like to focus on just one area where legislative action could greatly improve our efficiency of operations and enable us to better provide what our residents want -- *continuity* and integration of care and service for their lifetimes, regardless of where in the CCRC they reside. In his testimony, Carl Young of NYAHSA referred to the burdens created by duplicative oversight. I have, I think, a unique perspective on this issue since Kendal on Hudson is NY's newest CCRC, having opening on May 9th of this year.

We have had a series of experiences I want to share with you -- they are examples of this very issue. Taken together they demonstrate that, while our residents seek continuity of care and service, and our life care models are all about providing continuity of care and service, the State of New York, in reality, licenses, regulates and surveys our communities in a discontinuous, disintegrated -- and I might add highly inefficient and costly-to-the-tax-payers -- manner. There is no mechanism in the state to allow the Department of Health to look at our communities holistically -- regulators are forced to treat our nursing home as if it were a free standing facility,

and likewise our Enriched Housing unit, and likewise our Resident Care Clinic, and likewise our Home Care Agency…and so on.

Let me share with you three illustrations.

The first:

In late spring and early summer we went through pre-opening surveys for our Enriched Housing Unit and our Skilled Nursing Facility. These surveys included an extensive and highly disciplined site visit by a State surveyor whose expertise is in evaluating the safety, operational readiness and regulatory compliance of each unit's physical plant, mechanical systems, life safety systems, and back room areas such as kitchens. Within the course of about 4 weeks we had these inspections. Each was conducted by the same man. On each visit he evaluated the location and systems from basement to attic in a thorough and professional manner. We received approval without deficiencies in these areas. But here's the silliness -- the two units are on consecutive floors of the same building -- they have the same physical plant, mechanical systems, life safety systems, kitchens, and so on. These two surveys were completely duplicative. That is in no way a criticism of the surveyor or the Department of Health. The issue is that there is no mechanism in the state code to allow one inspection to serve for both levels of care -- because NY views each of these units as though they were independent, free-standing operations. The cost to taxpayers; and the time spent by Kendal staff in the survey process -- time that otherwise could have been spent in serving residents -- is, to be frank, wasteful. And incompatible with the underlying concept of continuity.

A second example. Over the summer the Department of Health determined that, to fully execute our particular model of life care it would be necessary for us to seek licenses for a Diagnostic and Treatment Center and as a Home Care Provider. Those applications required execution of the full Certificate of Need process, with literally hundreds of pages of submissions. There was no available mechanism to shortcut this process and focus only on *new* information needed to properly evaluate the addition of these services. As a consequence, among other things, we submitted complete character and competency data for our board -- with *each* application…separately. Here's the rub -- 9 of the 12 members had already been through character and competency review when we filed for our CCRC approval. And even, I think, more inefficient, all the character and competency data had to be separately filed for each of the two licenses. So on the same day we sent hundreds of pages of identical paperwork, most about folks already approved by the Department of Health to serve as board members, to two different reviewing bureaus -- each of whom conducted their own entirely new character and competency review, independent of each other. Again, at what redundant cost to the taxpayer? And with what delay in providing services to our residents?

And a final example, along the same lines. In the filing of the application for our Diagnostic and Treatment Center we were required to do a complete submission to the Bureau of Architecture on the space designated for that use. That space had already been through review when it was labeled as our Resident Care Center -- and no modification to the space had been made since that initial approval. The bureau looked at the same space, simply with a different name -- and

required a complete new submission to do so. Once again, because there is no mechanism to shortcut this type of activity in a way that is compatible with CCRCs as a model of care.

I would add, in closing, that under present law and regulation, these kinds of duplication and redundancy will continue in the regulation and surveillance of our ongoing operations, again because there is no mechanism to shortcut or combine these activities in a way that reflects the basic model of *continuing* care.

I would urge the committee to look closely at this issue -- when the State of New York recognized the importance the CCRC concept over a decade ago, as a public good that met an important consumer desire -- the significance of *continuity* was front and center. Going forward I urge the legislature to enable the Department of Health to license, regulate and survey our communities based on that idea that led to the adoption of Article 46…that continuity is at the center of the Continuing Care idea.

Thank you.

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Good Morning, my name is Daniel Governanti. I am the CEO and Executive Director of Kendal at Ithaca, an Article 46 Continuing Care Retirement Community (CCRC).

My thanks to the Committee for holding this hearing and the opportunity to share with you how this legislation is working and a few recommendations for change.

First a little background information on Kendal at Ithaca. We were issued a CCRC Certificate of Authority in July 1993 and opened in December 1995. Located in the Village of Cayuga Heights in Tompkins County, we are home to 330 life-care residents. Our community includes 213 independent living units, 36 adult home beds and 35 nursing home beds. As of last Friday, November 18, 2005, we have received Public Health Council approval of our applications to add a Diagnostic and Treatment Center (D&TC) and a Licensed Home Care Services Agency (LHCSA) to our certified Article 28 services. Two additional applications, to become licensed

as an Assisted Living Residence (ALR) and certified as an Enhanced Assisted Living Residence (EALR) are pending at the Department of Health.

Kendal at Ithaca is also a member of the Kendal System, which serves older persons in accordance with the principles of the Religious Society of Friends (Quakers), and now includes 10 communities in 6 states.

Regarding today's hearing, I support the testimony of Carl Young from the New York Association of Homes and Services for the Aging (NYAHSA) and that of Pat Doyle from Kendal on Hudson.

For my testimony, I want to focus on 3 needs that I believe, all Article 46 CCRC's have:

1. the need for regulatory flexibility between Article 46 and Article 28.
2. the need to maintain an adequate nursing home bed set-aside, separate from the Certificate of Need Nursing Home bed methodology; and
3. the need for the authority to offer Article 46-A, Fee-For Service Contracts in an Article 46 CCRC.

1. Regulatory Flexibility:

By our nature, Article 46 CCRC's differ from Article 46-A "Fee-For-Service" CCRC's and "look-alike" retirement communities that package housing and health care services in order to offer a "continuum" in two important ways.

We are obligated to provide "continuing" care over the remaining lives of our life-care contract holders and, we are obligated to do this, even if the life-care contract holder no longer has the ability to pay their on-going life-care fees. Our life-care contract holders are not eligible for Medicaid Assistance.

In order to better meet these two significant obligations and to support the future of Article 46 CCRC's, I recommend that the Commissioner of Health and the CCRC Council be charged with identifying the need for regulatory flexibility under Article 28, for Article 46 CCRC's and be authorized to implement such flexibility in the best interests of New York's Continuing Care Initiative.

Examples of such may include:

► granting Article 46 CCRC's the authority to use employed medical professionals to practice their profession without additional Article 28 licensure, such as a D&TC or a LHCSA.

► allowing Article 46 CCRC's to employ "universal" aides, qualified and trained to meet the personal care needs of life-care residents, regardless of their level of

residency (independent, enriched housing, adult care, assisted living, enhanced assisted living or nursing home).

▶ allow the Department of Health to conduct "consolidated" State and Federal surveys of Article 28 programs, especially regarding the use of the same facilities and spaces (dining and kitchens, life-safety, infection control, etc.).

▶ allow the Department of Health to waive unnecessary reporting requirements, such as the RHCF-4 Cost Report, the Adult Home Cost Report, the Patient Review Instrument (PRI), etc. The most important reports for any Article 46 CCRC are; the Annual Medicare Cost Report, the Annual Audited Financial Statements, the full Actuarial Study (at least every 3 years), and the tri-annual Article 46 site visit and examination by the Departments of Health and Insurance.

2. Nursing Home Bed Set-Aside:

The original legislation in 1989 had the foresight to set-aside 1000 nursing home beds in order to get New York's Continuing Care Initiative, off the ground. The same foresight is now needed to keep the Initiative alive and growing.

In the market place, people who are purchasing life-care contracts, and paying entry and monthly fees, want their life-care community to have its own nursing-home beds to be assured that there will be a high quality nursing home bed for themselves when they may need it.

To continue New York's support of Article 46 CCRC's, I recommend that:

▶ The state recognize that existing Article 46 CCRC may need more nursing home beds, as Actuarial Studies indicate, (this is the case for KaI, which shows a need for additional nursing home/adult homes beds by 2010).

▶ The State release the cap on total nursing home beds for CCRC's or at least increase the set-aside by an additional 2000 beds.

3. Fee-For-Service Contracts:

Currently KaI offers 3 types of life-care contracts, and "Extensive Contract", a "50% Return of Capital Contract", and a "Modified Contract" for those with long-term care insurance.

I recommend that existing Article 46 CCRC's be authorized to offer Article 46-A Fee-For Service Contracts as another option. This would help us in two ways. First, where waiting-list couples desire an Article 46 Contract for one and a Article 46-A for the other. And secondly, to remain competitive in a changing market.

This concludes my testimony. Thank you for this opportunity. I would be pleased to answer questions now or in the future.

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Good morning ladies and gentlemen, I am Karen Brannen, the Executive Director of Jefferson's Ferry.

Jefferson's Ferry is a not-for-profit lifecare retirement community that provides independent living, enriched housing and skilled nursing care to 450 senior citizens on a 50-acre campus on Long Island.

Although they are relatively new to New York, lifecare communities have been operating successfully in the United States for more than one hundred years. The first not-for-profit lifecare retirement community opened its doors in New York less than ten years ago, and the community I represent began admitting residents in May 2001.

Lifecare communities significantly and dramatically enhance the lives of seniors. Older people who live in their own homes may face isolation and depression. Lifecare communities provide tremendous socialization opportunities. New residents are embraced by the existing resident population, friendships flourish, and it is common to observe dating and even marriage among the residents.

Seniors who live alone may lack access to adequate health care or proper nutrition. They may not be able to clean their homes or launder their clothes. They may live in unsafe environments, exposed to physical and even criminal hazards. They may suffer the burden of caring for a sick spouse. Lifecare communities provide residents abundant health care for the remainder of their lives. They provide nutritionally balanced meals, housekeeping, laundry service, maintenance and security service, transportation, emergency medical response, and many other services and amenities. In addition, a sick spouse may be cared for in the on-site assisted living or skilled nursing unit, relieving the well spouse of the responsibility of medical care while affording them unlimited on-site visitation.

Seniors who live alone risk financial devastation when their assets are depleted by the high cost of long-term health care. When that happens, they must look to their family or the government for financial assistance. Lifecare communities safeguard residents' assets by providing unlimited healthcare at no additional cost for the life of the resident. In doing so, they also relieve the state of significant Medicaid costs, because not-for-profit lifecare communities provide their residents long-term health care at no cost to the state.

Last month we conducted our annual Resident Satisfaction Survey and the residents overwhelmingly reported the supportive and family-like culture that exists at Jefferson's Ferry our greatest asset. I'm going to share some of their comments with you; as you hear them, I'd ask that you measure their comments against the yardstick of your hopes for – and experiences with – ensuring the quality of life of your own parents and grandparents and all New York seniors.

"We enjoy an extraordinary group of people who are kind and caring for each other. This is an unusual and wonderful atmosphere in which to live. I am happy to know my future health needs will be taken care of."

"Our families have no need to worry about our needs, they are being met and we are cared for by Jefferson's Ferry."

"Moving to Jefferson's Ferry was the best decision we have made. My husband had a lot of health problems and the care he received in our health center was outstanding."

"I love this place and am happy to spend the rest of my life here."

"Strong feeling of family. The concern and genuine camaraderie among the residents and staff is unusual and comforting to all of us."

Clearly, not-for-profit lifecare communities make a tremendously positive difference in the lives of our seniors. Why then, you may ask, am I here today seeking your assistance on their behalf?

I'm here because there are significant challenges facing the continuation of affordable lifecare communities in the state of New York, and these challenges must be overcome unless we wish to continue to under serve the needs of our seniors, and by extension the economic needs of all New Yorkers.

Sixty-three percent of Jefferson's Ferry's residents reported keeping the monthly fees down as the biggest challenge facing Jefferson's Ferry in the future.

Increasing costs are uppermost in the minds of our current and future residents. Although our current residents were financially qualified for our contract when they moved in, escalating fee increases severely reduce their discretionary spending and threaten their abilities to keep up with necessities.

Increasing costs are a fact of life, and we all have to deal with them. Most are beyond our control; but by far the largest single cause of rising costs our community is an issue that you may be able to address to the benefit of your constituents, my residents – and your parents and grandparents as well, if they live in New York.

As you know, Article 46 of the Public Health Law requires lifecare communities to maintain reserves and supporting assets in accordance with the requirements of Regulation 140, which was issued by the Superintendent of Insurance.

Last year, Jefferson's Ferry underwent a review by the New York State Insurance Department. We were found to be financially impaired because we did not meet the reserve requirements of Regulation 140. By any other measure we are a highly successful community. We enjoy high occupancy rates, we retired our short-term debt ahead of schedule, and we have exceeded every quarterly bond covenant since we opened our doors in 2001.

Despite this strong financial posture, we were deemed to be financially impaired and were required to implement a restoration plan that included raising entrance fees 25% and raising resident monthly service fees 2% higher than would otherwise be necessary for operations. This first 2% additional increase was implemented in 2005, 2% will be added to that in 2006, 2007, 2008 and so on until we meet our reserve requirement. Over time, this will result in a significant increase over normal inflation and will cause financial hardship to our current and future residents.

Although most states have reserve requirements, they do not specify the required results. Instead they evaluate communities to make certain they are maintaining occupancy rates, improving operating results, generating cash, properly pricing contracts for new residents and maintaining positive overall actuarial and financial conditions. We are doing all of these things. Jefferson's Ferry would not be considered impaired in other states.

Lifecare communities typically reach the level of reserves required by Regulation 140 eight to ten years after opening. The start-up losses naturally incurred by new communities are usually recovered within that eight to ten year period. The New York regulations, which require communities to meet the reserve requirements in the third year of operations, essentially require all start-up losses to be recovered from the initial residents, thereby placing an unfair burden on those residents.

Testifier: Neil McNeill
Resident of Jefferson's Ferry Lifecare Community
One Jefferson Ferry Drive
South Setauket, New York 11720
http://www.jeffersonsferry.org/

Good morning. My name is Neil McNeill. I am a resident of Jefferson's Ferry Lifecare Community located in South Setauket, Long Island. I am here today representing my fellow residents. I shall follow FDR's advice- be short, be sincere, be seated. My background- a civil servant- US Postal Services, US Marine Corps- WW11, in Education 32 years, Kings Park State Hospital, Internal Revenue Services in Holtsville.

One of the very best social and financial opportunities available for senior retirement living is a continuing care retirement community. These communities provide a wonderful quality of life for their residents and ensure that their long-term healthcare needs will be taken care of without spending down all their assets and relying on their families or the government to support them in their later years. I was raised in the depression. I learned frugal ways, saving 10% of all earnings and after marrying 25% of our combined earnings.

When I retired, I planned to eventually give up many of the every day stresses in life such interior and exterior home maintenance. I wanted to spend my golden years pursuing those things I didn't have time for while I was working- hobbies, continuing education, social activities, cultural events, volunteerism, etc.

Since moving into Jefferson's Ferry in June 2001, I have been able to relinquish the stress of maintaining my own home and have taken advantage of the many services and activities that Jefferson's Ferry offers. Jefferson's Ferry is a marvelous community that promotes an active lifestyle, dignity, privacy, and individuality for each resident.

Moving into Jefferson's Ferry is the best decision my wife and I could have made. We have many friends there and have an active social life. We have unlimited opportunities for social, recreational, educational, and cultural activities and we have an active voice in the operations of the community through resident committees and the Residents Council.

Our community offers everything we need under one roof. We have on-site banking, a hair salon, a library and computer center, putting green, various dining rooms, a full-service bar, billiards, cards, dancing, a swimming pool and spa, fitness room, transportation to medical appointments, shopping and cultural events, on site-medical services and much more.
More importantly, we have peace of mind knowing that we can live at Jefferson's Ferry the rest of our lives and our future long-term health care needs will be taken care of even if we outlive our assets. I've worked hard in my life and take pride in taking control of my future by planning

ahead. By choosing to live at Jefferson's Ferry, I took control of my future, eliminating the need for my family or the government to take care of me.

I am sure you understand, the senior population is the fastest growing segment of people in the United States- and probably the world. We are seeking alternative housing options. We are educated, we are financially secure and we want to remain in a setting that maximizes our independence. A Continuing Care Retirement Community is the perfect solution for us.

One of the few drawbacks to our idyllic life at Jefferson's Ferry is the unnecessary increase in our monthly service fees. Every year, our rates are adjusted for inflation and the increasing costs of providing service. Because of the current regulatory requirements of Article 46, specifically the reserve requirement in Regulation 140, our monthly fees increase 2% per year more than they need to. That may not seem like much to you, but when you're living on a fixed income, as most seniors are, an extra $80 per month can have a significant impact on our quality of life. This article enacted in 1989 and needs to be reviewed, as any sixteen- year law should.

My understanding is that this extra 2% is the result of a restoration plan required by the Insurance Commission because Jefferson's Ferry was found to be impaired because it has not yet met the reserve requirements of Regulation 140, which requires lifecare communities to maintain reserve liabilities and supporting assets that are particularly strict. So strict, in fact, that it may actually harm the residents it intends to protect and may prevent the ability of lower and moderate-income seniors to live this wonderful lifestyle. This regulation needs to be modified.

New York State requirements are much more stringent than other states. And those other states' regulations appear to be sufficient to protect the interests of their residents. I understand that you are trying to protect the senior population, but these strict requirements require us to pay higher monthly fees, which adversely affect my quality of life and prevent many New York seniors from entering CCRCs because they can't afford it. Many of them must leave their homes in New York and travel to other states that have more affordable CCRC's.

Please consider revising the current reserve and actuarial requirements.

On behalf of my fellow residents of Jefferson's Ferry, I want to thank you for your continued attention to the needs of the senior population. Thank you for providing me the opportunity to testify today.

Testifier: Robert Spann
Resident of Jefferson's Ferry Lifecare Community
One Jefferson Ferry Drive
South Setauket, New York 11720
http://www.jeffersonsferry.org/

My name is Robert Spann. I have been a resident of Jefferson's' Ferry Continuing Care Retirement Community (CCRC) for the last 4 ½ years. I am also a member of the NYS CCRC Council. I am one of the two members on this council who are responsible for the concerns of all residents of CCRCs in NYS.

First, I would like to substantiate the fine life that the previous speaker portrayed at Jefferson's Ferry. It is ideal for senior citizens and we wish all NYS seniors could enjoy the privileges of belonging to a CCRC. But they can't because of the financial burden that NYS places upon CCRC members. Today I would like to question the provisions of the Regulation 140 of the New York State Insurance Department, which is contributing to the financial burden of CCRC members.

Regulation 140 requires NYS CCRCs to meet financial accounting procedures that are more stringent than any other state. Rightly, they were designed to protect the interests of the members of these communities. But they have had unintended side-effects in that they have contributed to large monthly service fees and yearly increases. These service fees increases caused by Regulation 140 exceed those necessary for community operation by at least 2 % a year. At Jefferson's Ferry, our total fee increases have been about 6% a year for the last 5 years. When compounded, the result is a 30 % increase over what we initially paid. 10 % of this increase can be attributed to our Regulation 140 Indebtedness status. Roughly, this amounts to some additional $4000 per resident/year. In addition, the community is declared fiscally "Impaired" even though it far exceeds other financial criteria and are in very healthy financial conditions.

What's wrong with Regulation 140 that causes such an unnecessary burden on the residents? Regulation 140 calculates indebtedness in two ways. The way that produces the largest indebtedness is the determining one. The method that usually causes the problem is the one based upon actuarial projections in which the present value of a CCRCs future obligations are estimated. These future obligations include future contracted Enriched Housing and Skilled Nursing obligations and would be expected to be a part of such a projection. The calculation also includes the contracted return of a resident's initial entrance fee, usually the 50% to 90% return when a member leaves a community. These are certainly accounting, insurance-like factors that should be considered. What is not taken into account in this calculation is the present value of the entrance fee of future new residents who replace those who have left. The generally accepted

concept of CCRCs is that the entrance fee for the incoming resident would replace the one that left.

Regulation 140 requires that the indebtness be corrected in an unrealistic time period, in effect, placing a high financial burden on the first residents of these communities. What happens is the initial residents are asked to pay to the community amounts to cover the return of their own 90% refund of their initial entrance fee. What's more unsettling is that the residents on the traditional plans, with no expected return, are also paying to finance these 90% returns.

In closing, I have talked with both NYS Senator Kemp Hannon who is the Chair of the Senate committee on Public Health and NYS Assemblyman Steven Englebright, Chair of the NYS Committee on Aging and it was the desire of both to make NYS CCRCs more affordable for the average citizen of New York. I'm sure that any changes to NY State Laws or Regulations would have the support of our legislative bodies.

Testifier: Fred Nadel
Resident of Canterbury Woods
705 Renaissance Drive
Williamsville, New York 14221
http://www.canterburywoods.org/home.html

My name is Fred Nadel and I have been a resident of Canterbury Woods, a Continuing Care Retirement Community. I am currently an elected member and Treasurer of its Residence Council, and actively participate in several residence committees, including Finance, Investment Task Force, Fund Management, Health and Wellness, and Communications. For three years I have sincerely enjoyed living an active independent life in this community. Significant to me is the contractual guarantee that regardless of my physical, or mental, condition I will be able to "age-in-place" among caring friends and employees of this life-care community.

I am here to speak on behalf of the concerned residents of this community who have been unsuccessful in convincing the New York State Department of Insurance to modify their Regulation 140 to permit "liquid assets" supporting reserve liabilities to include marketable GNMA securities with more than on-year maturity. Consequently, our community has been required to invest about 30% of its reserve funds in securities with less than one-year maturity, e.g. money market funds. Our lost income because of this requirement continues to accumulate at an annualized rate of about $200,000 per year. This must be replaced by increases in resident monthly fees.

Enclosed is a chart of Canterbury Woods, which shows that if all of the Liquid Assets supporting reserve liabilities could have been invested in GNMA's without maturity restriction of 1-year, or less, their resulting income would have been almost the same as the incremental revenues generated from the last 3 years of Monthly Fee increases.

Instead of requiring Liquid Assets supporting reserve liabilities to mature in 1-year, or less, their resulting income would have been almost the same as the incremental revenues generated from the last 3 years of Monthly Fee increases.

Instead of requiring Liquid Assets supporting reserve liabilities to mature in 1-year, or less, an adjustment in the amount of Liquid Assets required would appropriately safeguard residents' assets by compensating for the increased investment risk.

In my opinion, so long as the Liquid Assets supporting reserve liabilities are high quality, low risk, marketable securities and their amounts are adjusted for any increased investment risk, there is no need to regulate the type, or maturity of such investments. What's most important is the marketability of such Liquid Assets and their cash conversion value to support the required reserve liabilities.

Because Article §4611 of the New York Public Health Law, sets forth what amounts and for what purposes Liquid Assets must be maintained as reserve liabilities to safeguard residents' assets, only Section §350.6 (a) of Regulation No. 140, issued by the superintendent of insurance, would require modification.

For your information, I have identified the referenced Article §4611 of "Current Law", and referenced Section §350.6 (a) of Regulation No. 140 of "Current Regulation".

The majority of Canterbury Woods' residents favor modifying Section §350.6 (a) of Regulation No. 140, issued by the superintendent of insurance, to permit Liquid Assets supporting reserve liabilities, which are in agreement with Article §4611 of the New York Public Health Law, to be invested in higher yielding, marketable securities, e.g. GNMA's without a maturity restriction of 1-year or less.

Enclosed is a copy of a letter dated October 7, 2004, addressed to Linda Gowdy [CCRC Council Chairperson], Bureau of Continuing Care Initiatives, New York State Department of Health, from the Canterbury Woods Resident Council, which was written in response to a request from members of the New York State CCRC Council for resident input on the interpretation of Insurance Department Regulation 140.

Also, enclosed is a second letter dated January 20, 2005, addressed to Linda Gowdy from the Canterbury Woods Resident Council, which referred to our previous letter and urged her "to take immediate steps to modify the interpretation of Regulation 140 so that our residents can be relieved from this burdensome inequity."

Also, enclosed is a third letter dated April 11, 2005, addressed to Antonia C. Novello, NYS Commissioner of Health, and Howard Mills, Acting Superintendent of the Department of

Insurance, signed by Senator Mary Lou Rath, Senator of NYS District 61, requesting them to consider whether it would be appropriate to amend current regulations regarding the definition of "liquid assets" to add additional investments that are safe and readily marketable, but also earn somewhat higher levels of income.

The resident Council of Canterbury Woods is still awaiting a favorable response. Assistance that you could provide would be of great benefit to the residents of Canterbury Woods, and those of other CCRC's in New York State.

On behalf of the residents of Canterbury Woods, thank you for this opportunity to present our specific request for a modification to Regulation 140. I look forward to responding to your questions.

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On behalf of the residents of Canterbury Woods, thank you for this opportunity to present our specific request for a modification to Regulation 140. I look forward to responding to your questions.

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Introduction

Good afternoon I'm Stephen Grifferty. I am managing partner at the law firm Tobin and Grifferty P.C. Our firm represents numerous not for profit long term care health providers throughout the State of New York. My role as counsel involves the planning, start-up, regulatory approval, development and financing of Continuing Care Retirement Community Models. I am co-chair of the Senior Living Communities Sub-committee of the New York State Bar Association Real Property Section and I am a licensed insurance agent, real estate broker and an accountant by training. Thank you for inviting us here today to share information and experience with your Committee.

You have already listened to a great deal of testimony today relating to the importance of modifying aspects of the CCRC legislation and regulatory framework to allow for greater implementation of the CCRC model. Technical revisions to the current models are important but do not address the larger issue of managing a shared risk of aging. I will direct my testimony to seek reform of the CCRC legislation to make this vital option an affordable consumer driven reality. Achieving a better spreading of the risk of the insurance component over a greater number of lives is critically important to the success of this program. Without a program to influence risk sharing these communities will remain economically challenged and the State will see little in the way of development of this service solution. I also respectfully submit to you that an imperative, simple and effective reform is the elimination of the current sunset clause and project borrowing cap placed on the availability of IDA financing to senior housing projects across the state.

Through the good work of your committee and the very fact of your service to State government you share your time and talent with fellow residents of the state for the common good. Indeed you are purveyors of the public good and our State has a constitutional history of weaving a

strong fabric of social justice. Yet sometimes in our zeal to protect we may forget to take into consideration the power and the wisdom of the consumer. Just as the ballot is a measure of the will of a constituency the economic decisions and choices made by informed consumers are telling in terms of the need for more options. In all my years of practice and my own life experience I can categorically state that few consumers willingly select a stand alone nursing home as a destination of choice. The senior living industry has brought consumer driven products to market in the form of CCRCs, assisted living and CCRC look alike communities that greatly diminish the length of stay and in some instances eliminate the need for institutional skilled nursing care altogether. The market has created a demand for solutions which the industry has been meeting within the constraint and restraints of our current law and regulations.

We are facing an unprecedented demographic trend in the aging of America and specifically the aging of the residents of our State. Some states have created economically viable options for senior that have attracted and will continue to attract our residents to migrate to other destinations. Carl Young has phrased this phenomenon very adeptly in stating that the State's largest export is our income qualified senior population. Today you have heard the economic reasons of why this is a problem that requires solution but there is an even more direct and perhaps equally subtle effect to this out migration on the work and oversight area of your committee, the dilution of the senior risk pool. We all share the risk of aging. CCRC services offer an effective solution to management of this problem through a variety of social and health programs that facilitate the mitigation of risk.

Let me start off by briefly reiterating the numerous benefits to having CCRCs in our state. CCRC's are a combination of both independent living and residential health care within the confines of one community. But the CCRC provides more than this physical aspect of meeting the needs of seniors. These communities not only offer seniors a chance to socialize with one another and obtain all of the benefits from living in a community with others instead of alone they provide a safety net of services. The healing influence created through a sense of belonging is one area where residential CCRC programs excel. Basic measures of wellness improve, nutrition is monitored and a consumer acceptable approach to a funding a shared risk is created. The safety net of services is a relief to the senior and provides enhancement to their quality of life reducing the stress of living at home.

Expanding on the success of the CCRC product by importing a socialization component and case or care management component to active seniors in their existing home setting while building a safety net of an attractive care option should services be required is a proactive way to reduce the demand for Medicaid consumption.

As you are keenly aware currently, New York only has 8 CCRCs that are operational. This is indeed disparate when compared to other states, most of which have a significantly greater number of CCRCs than New York. For example, Maryland has over 200 CCRC's. Pennsylvania has almost 150 CCRCs. Yet New York has demographics that suggest a native population that has a much greater need for a viable CCRC option than exists in these other states. This begs us to look at what New York State does differently than other states where CCRC development is flourishing. New York has allowed a condition to exist that encourages our age and income eligible residents to migrate away from New York during their early

retirement years when they are still active, healthy and spending consumer dollars, returning after they age further to be near family when they are typically Medicaid eligible and in need of supportive and health services.

One possible way to close the gap between the numbers of CCRCS functioning in New York State compared to other states is to creatively spread the insurance risk of long term care over a broader number of people.

The typical CCRC community consists of 200 to 280 residents with ILU residents and health related beds ranging through the continuum from adult home or enriched housing to skilled. Providers that serve over 1500 ILU on a single campus are few and will remain few in New York due to our demographic constraints and the geographic influence on populating retirement communities. Other than downstate urban population centers there are no communities within New York that could sustain this level of development because there are not sufficient numbers of age and income qualified residents within each Metropolitan Service Area ("MSA") that can or would populate such a facility. Yet the number of lives covered in these behemoth communities and the experience of managing these populations suggests that a targeted group of 1,500 to 2,000 lives is a viable CCRC risk pool.

The senior living industry has developed predictable measures of potential success commonly utilized and accepted in feasibility analysis for various projects.

1. Typically communities generate their residents from a 5 to 10 mile area surrounding the location of their campus. Natural barriers such as rivers further impact this industry phenomenon.

2. The collective experience of the industry further suggests that market penetration rates for successful communities remain under 10% of the age and income eligible population.

3. A comfortable market penetration rate is anything below 5%.

These limitations and barriers on the movement into a community belie the fact that there is 90 to 95% of age and income qualified residents living within any area that could otherwise support and make vibrant a CCRC at home program. Basic analysis reveals that even in a challenged market with 10% market penetration on a typically sized facility there is up to another 2, 250 age and income qualified persons that could and may support a CCRC through participation in an at home program. In other words while within a given area consumers may choose not to physically move to a CCRC there are still an ample number of citizens that could benefit from and choose to pay for CCRC type services at home**.** There is a viable risk pool in almost every mid market MSA within our state; both upstate and down state economies contain such demographics. Delivering some of these services at home is a powerful motivator for consumer choice and has the further significant benefit of spreading fixed costs, reserves and administrative expenses of a CCRC over a greater number of lives.

CCRCs are complicated models. They include elements of real estate, hospitality, insurance and health care. A common theme you have heard addressed in this session is the insurance component and more specifically the funding and regulation of the insurance component of CCRCs. I respectfully submit that small scale communities will never be able to affordably absorb the insurance component. We can adjust retention criteria and market investment potential of reserves and use of entrance fee dollars all necessary reforms but none of these changes addresses the fundamental need to share the risk over a greater pool of resources.

Insurance is all about the pooling of resources to share the risk of loss over a greater number of lives. Retention, claims, administration and marketing are the key factors that determine the amount of premium dollars a particular insurance product must have to support the risk to be insured. The ability to fund reserves over a broader population makes the incremental cost to each consumer more economical. Claims can be avoided and deferred by proactive delivery of care management or case management services in a home setting. Claims avoidance and delay have the added benefit of reducing bed days reducing cash flow drain on government, provider and consumer. Long term care policies do not provide coverage for proactive treatment and do not cover socialization programs. Industry statistics show that CCRCs through proactive social programs help fight depression and nutrition lapses that frequently cause seniors to become consumers of health care. Providing effective tools to consumers can result in the reduced need for institutional care. Reduced claims and health care costs are a likely result.

Moreover with proper interaction in their own care plans consumers can be influenced to make choices that promote less institutional care. The overall result will be more affordable CCRC benefits to a greater number of persons paid for with the consumers own funds. This will have the further social benefit of allowing Medicaid dollars to be used for those genuinely in need of this financial support.

I urge you to consider programs that can make CCRC benefits available to a greater number of persons at more affordable costs.

Put simply, if a CCRC can provide its services to a larger number of people in the community, this would make operation of CCRCs more feasible. CCRCs can do this by offering Continuing Care at Home Programs. These programs are popping up all over the nation. For instance, Maryland signed a law allowing Continuing Care at Home providers in April of 1996- nearly ten years ago! States such as New Jersey and Delaware followed shortly thereafter.

Just as with the traditional CCRC model, the individual will pay a lump sum entrance fee as well as an ongoing monthly premium and in return, he or she will receive access to the wide variety of services that are available to those who live in the CCRC. The fee that will be paid up front will be significantly less than if the individual to receive continuing care at home were to actually live at the facility. There is also a social benefit involved in allowing seniors to remain in their homes for as long as they are able. Fixed costs of the CCRC can be allocated over a larger body allowing for a reduction in costs to the resident consumer as well.
Services at home can include:

1. Coordination of services;
2. Housekeeping;
3. Grounds maintenance;
4. Home modifications for mobility impairment and reduction of risk factors;
5. Transportation to medical appointments and shopping;
6. Participation in social – recreational programs;
7. Meal plans with emphasis on nutritional needs of older persons;
8. Geriatric education;
9. Access to respite, assisted living and skilled beds as needed.

Use of established Skilled Facilities in this continuum will allow existing Skilled Nursing Providers another use for their inventory of beds. Trends reveal less demand for skilled beds and shorter lengths of stay. Allowing new life to existing beds through modification to assisted living and private pay potential for remaining skilled beds will have a positive effect in reducing the demand for Medicaid.

This form of product is more targeted and of greater use to a consumer than is a long term care insurance product.

Long term care policies tend to have limited benefits with underwriting criteria that eliminates many consumers from eligibility. Aggressive underwriting programs result in coverage availability for those least likely to require long term care. Coverage carve outs and limitations of benefits also reduce the efficacy of long term care insurance as a solution. Reliance on a third party payment vehicle also tends to reduce the involvement of the consumer in care choices.

Affording a targeted CCRC option to residents at home will provide a greater dimension to long term care choices and engage the consumer in the economics of health care. Consumers will be more willing to spend their own funds on care in a comfortable familiar environment rather than in institutional settings. This is one small way to address CCRC reform and lessen the burdens of State and local government through reduction in the potential demand for Medicaid.

Sunset Clauses

Financing capital expenditures through tax exempt debt is a fundamentally accepted way of allowing for lower costs of capital to not for profit providers of social and educational services.

Industrial Development Agencies (IDAs) were created to promote economic development in the grant of significant state and local tax exemptions to the businesses community; as such, they are an important catalyst to local economic growth, benefiting communities by offering incentives to attract, retain, and expand business within their jurisdictions. In recent years an experiment to expand IDAs into the traditional not for profit financings has been underway. The experiment has been successful since financings are accomplished at a local level with less cost and in less time than through the conventional statewide conduits for tax exempt borrowing. The experiment has been controlled with a sunset

provision and project borrowing cap limiting and curtailing an extensive growth of this form of IDA borrowings for *Civic Facilities*.
The legislature has recently passed a nine-month IDA extension expiring on June 30, 2006. Arbitrary sunset dates and artificial project borrowing caps such as these unnecessarily hinder the financing options for new and existing facilities. If the legislature instead opts to invoke a permanent extension, the uncertainty that currently taints the development process will be improved.

An elimination of the sunset provision and expansion of project borrowing cap for IDA financing for CCRCs would only serve to benefit the development of CCRCs in New York State; I respectfully submit that legislative action to eliminate these artificial provisions would provide a great service to local governments and to the consumers of senior care services.

Conclusion

With great efforts at legislative reform surrounding the development and financing of CCRCs, we can improve the senior living and long term care environment in New York State and proactively reduce the burden on State and local government to fund Medicaid.
Thank you for your consideration.

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My name is John Kowalik and I am Vice President for Regulatory Compliance with RLS, a consulting company specializing in development and management of not-for-profit life care communities. RLS has the distinction of being the company which developed most of the continuing care retirement communities, commonly called CCRCs, currently operating in the State of New York. We also have the advantage of having examined at least 19 States' law and

regulations regarding such communities, thereby providing some basis for comparison on which to present this testimony.

About a week and a half ago, I was returning from the American Association of Home and Services for the Aging conference when the person sitting next to me by coincidence opened one of our company's folders given out during the conference. I learned that he was an investment banker with A.G. Edwards out of Philadelphia and was looking to learn about the CCRC market in New York so that his firm could break into a new line of business financing such communities. New York seemed like a promising market to him and we spoke about that potential for some time.

We both acknowledged that there is a huge number of baby boomers now approaching retirement age and that the CCRC industry will be at the forefront of providing services to this rather unique clientele. They are unique in that they are the most educated, affluent, healthy and numerically the largest generation thus far. The impact of their growing old will be far greater than that of previous generations.

We both believed that they had a great potential for becoming CCRC residents because of their determination to stay independent and healthy – trying to live life to its fullest even into old age. They do however, need to be educated about the CCRC alternative to other retirement options and to the advantages of CCRC coverage for long-term care that many of them will inevitably need. We both also acknowledged that if the boomers were to take the path of asset divestiture favored by many of their predecessors to qualify for Medicaid funded nursing home care, many States would not be able to fund that effort. Given the current difficulties with Medicaid financing at the State and local level, New York would certainly experience that difficulty.

He then asked me the question that everyone seems to bring up when it comes to New York and CCRCs: why aren't there more of them in New York? In truth, there is no single reason. The staff of NYAHSA, the representatives of currently operating CCRCs, as well as those that are in development or contemplating development have discussed this topic many times. Each speculates on the reasons from their own point of view and some spectators outside the CCRC community even contend that the current pace of development in New York is just fine. I try to take a balanced view – as in many other States, some portions of the law are appropriate while others need improvement. If those items needing improvement are adjusted, we'll see more development and healthier operating communities. If not, we'll see business as usual, with slower development and less than optimal conditions for those communities that provide services in the State.

So what do we have to complain about with currently operating CCRCs in this State? After all, they are operating, most are full and none have been threatening closure like some nursing homes. Yet I'm certain this hearing will demonstrate that both operators and residents are troubled.

Operators are troubled because <u>all</u> New York State CCRCs are trying to dig their communities out from being designated as "financially impaired" by the Insurance Department, which hurts marketing and debt financing.. Operators are frustrated because their initial costs to fund

reserves are structured in such a way as to significantly bump up the costs to their first residents, making the initial entrance and monthly fees proportionally higher than that for subsequent residents. Operators are troubled because they cannot invest a portion of their funds in investment vehicles that yield more than the short-term investments currently allowed. Residents are troubled because they are the ones that have to pay for all of this in increased entrance fees and monthly fees, with monthly fees increasing beyond the rate of inflation.

Both operators and residents are troubled when people say that CCRCs are only for the rich and that they can therefore afford increased costs or that residents must be protected by not allowing greater flexibility in investments. I've heard residents dispute such speculation, talking about making due on fixed incomes, about investing their life savings in their CCRC homes, of their desire to pass on some of the assets they worked hard to earn during their lifetimes by investing in a CCRC life care contract and many residents' determination not to take advantage of the 'system' by divesting income and becoming dependent on Medicaid for their long term care. Many are not pleased that their fees cannot be invested in portfolios that bear a reasonable risk for a reasonable return.

Operators are asking for some relief from taxes. Among the tax issues is the 6% nursing home tax which CCRC nursing homes could not recoup because they care mostly for non-Medicaid residents. We understand that waivers may now be available to eliminate that oversight. I believe Connecticut has recently received such a waiver and I would urge New York to look into the possibility of applying for one. It would not cost the State more than investing some staff time but any decreased tax burden would be passed on to residents in the form of services, rebates or reduced monthly fee increases, since all New York CCRCs so far are not-for-profit organizations which use any excess funds for the benefit of their residents.

Operators need to have the current one year repurchase requirement for resident apartments and cottages contained in Public Health Law eliminated. Accounting standards are changing nationwide and refund amounts for equity model CCRCs are now considered short term liabilities. Accounting firms are also evaluating whether to make non-equity, entrance fee model refunds short term rather than long term liabilities. Such short term liabilities are not sustainable on community balance sheets. Eliminating the repurchase requirement should also be made in fairness to life care and modified CCRCs, most of which contract to take care of their residents without State Medicaid involvement. Fee-for-service CCRCs, on the other hand have no such repurchase requirement but are more likely to require Medicaid participation.

We would like to see elimination of higher resident fees required through their subsidy of Medicaid reimbursed long term care within CCRC facilities. This occurs during the first seven years of operations when outside residents are taken in. To the best of my knowledge, most States discourage or prohibit such a practice. New York is the only one that actually requires it.

Developers are also facing difficulties with New York State laws. We require a stable business environment so that projects, once initiated, can be brought to completion. The current situation that sunsets the ability of IDAs to issue tax-exempt bonds on behalf of CCRCs every two years is troublesome, considering that it takes two or more years to get to financing and requires the investment of substantial amounts of venture capital. IDA financing must be made permanent.

Stability in the form of replenishing the 1,000 nursing home beds set aside for CCRC use is required. Our previous requests for such replenishment have always elicited the response that sufficient beds remain. That is no longer the case. A positive response by replenishing beds available for CCRC use would be helpful but the best way of assuring stability in this area is to adopt in statute a policy many States have undertaken, which is to eliminate the cap on CCRC beds completely.

We believe the market exists for communities with a combination of A, B and C contract types and ask that we be given the opportunity to offer such combinations. They are financially feasible and can provide access to CCRCs for individuals of more modest means.

The State should provide sponsors with the ability to use bond anticipation notes. We understand such notes are already allowed by law and would decrease the cost of development. For non-profit sponsors, that again translates to lower entrance and monthly fees charged residents. Bond anticipation notes cost the State nothing, provide additional revenue for localities and work in other States. We only ask for the ability to use this financial resource.

There are other items and issues that would assist in allowing additional development in New York, some of which are detailed in the NYAHSA issue paper that has been recently revised and made available. I will not revisit those here in order to stay within my ten minute timeframe.

Will making all these changes assure that development will be increased and operations of current CCRCs will be enhanced? We can offer no guarantees but we must start somewhere. Demographics experts at the AAHSA conference warned about the strain the aging baby boomer generation will put on the retirement housing industry, our system of long term care and the States' Medicaid programs. Our current efforts to curtail long term care usage, as we all know, have not been effective. CCRCs are not the ultimate answer in caring for all the baby boomers but they should be a much greater part of that effort than they are now in New York.

So are there any bright spots in this situation? There are indeed. Discussions were held with the Health and Insurance Departments on the use of actuarial standards, reserve funding and allowed investments this past Spring. Through the good offices of NYAHSA, investment bankers, CCRC operators, their financial managers and I offered Insurance and Health Department representatives' comments on changing Regulation 140, which sets the rules for such standards, reserves and investments.

We look to the Insurance Department for prudent administrative relief from unnecessary regulatory requirements, hopefully through publication of regulatory revisions and subsequent public hearings. We have not yet heard about any actions taken but understand that such complex regulations take time to be properly revised. Adoption of the revisions as we currently understand them, would substantially diminish most of the problems operating CCRCs have with Insurance Regulation 140.

RLS plans to continue doing business in New York State because we believe there is a strong market here, fulfills the mission of many not-for-profit sponsors and serves a public need. We

have put in the time and effort to understand Article 46 of the Public Health Law as well as Insurance Department and Department of Law regulations for establishment of entrance fee and equity models of such communities. Our requests for change as presented here are modest ones, with little or no effect on consumer protections and neutral or positive effects for State and local budgets. I thank you for holding these hearings and allowing CCRC issues to be presented in a public forum. I would be happy to respond to any questions.

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Assemblyman Gottfried, members of the Committee, ladies and gentlemen, my name is Frank Mandy. I am a Principal with New Life Management & Development, a national firm that specializes in the development, marketing and management of continuing care retirement communities. New Life has assisted in the creation of more than 25 CCRC projects in 17 states, all for not-for-profit organizations. This includes having developed Jefferson's Ferry, the first CCRC on Long Island. We are currently working on four projects in New York State: Fox Run at Orchard Park, sponsored by the United Church Home Society; Woodland Pond at New Paltz, sponsored by The Kingston Regional Health Care System; Harbor Village at Mount Sinai, a sister community to Jefferson's Ferry; and Skyline Commons, sponsored by the Margaret Tietz Center for Nursing Rehabilitation in Jamaica, NY. All four are actively marketing to seniors, with Fox Run at Orchard Park scheduled to achieve the start of construction financing early in 2006.

The timing of this hearing is particularly appropriate because there are a number of major problems facing the not-for-profit organizations working to serve the senior citizens of NYS by creating new CCRCs. First, and among the most pressing issues, is that fact that during the legislative session in 2005, the Senate and Assembly attempted to enact a law that addressed a scheduled June 30 sunset of the authority of county industrial development agencies (IDAs) to finance civic facilities such as CCRCs. Due to a mistake during the bill drafting process, this sunset was only extended for projects that had received their certificate of authority (COA) prior to June 30. Of the four projects that New Life is developing, only one meets this arbitrary

criteria. The other three projects, all of which are progressing towards a mid- to late-2006 financing, are now in a kind of legislative limbo. Unless the Assembly and the Senate can reach an early agreement on an extension of the IDA financing authority beyond June 30, 2006, all three sponsors will face the prospect of finding other, more expensive means of financing these projects. Therefore, my firm and the sponsors of the four projects we have in the pipeline are urging the Assembly and the Senate to immediately address this issue upon returning to session either late this year or in January. The enactment of an extension of the IDA authority would be the minimal solution that we are seeking. A permanent extension would make much more sense. In fact, we would urge that the sunset be eliminated and IDAs be allowed to provide the financing mechanism that has worked for all eight operating communities.

The development of a continuing care retirement community is a long-term commitment for the not-for-profit organizations seeking to expand their missions. We have been working on our New York projects for periods ranging from three to five years. The arbitrary sunset dates that exist in NYS law threaten the ongoing projects and severely impede the planning for new communities. A permanent extension will remove uncertainty from the process for provider organizations, lenders and municipal officials. New York is the only state in the country that has this shortsighted sunset mechanism in place. This may help to explain in part why, despite the passage of 15 years since the enactment of Article 46, in a state with more than 2 millions seniors, there are only 8 operating CCRCs.

The development of CCRCs in New York State should not be limited to the most affluent areas, where there are high housing resale values and incomes. Projects like Fox Run at Orchard Park and Woodland Pond at New Paltz, which will be located in very middle class suburban marketplaces, are more difficult to structure financially because of the need to keep fees affordable to a wide segment of the senior market. Despite these challenges, we are proud that both projects are well positioned to be successful.

A second major problem with CCRCs in New York State relates to the onerous regulatory oversight process currently in place. While the goal of the Legislature back in 1990 when it enacted Article 46 was clearly to create a CCRC oversight statute that afforded the senior citizens of New York the most consumer protection possible, the law and subsequent revisions from the mid-1990s have created a system that limits flexibility and, in many ways, has made the projects less affordable for many middle class seniors. Please do not misunderstand. New Life is firmly committed to ensuring that the senior citizens who select CCRCs for their retirement residences are protected from mismanagement and/or malfeasance. However, after having developed CCRCs in many other states, we do not believe that the NYS regulatory model affords its seniors any more protections than much less extensive approaches used in other states. Among the specific issues we would recommend changing or eliminating are the following:

Regulation 140

As a means of protecting residents' assets, Article 46 requires life care and continuing care retirement communities to maintain reserve liabilities and supporting assets in specific amounts. The controlling language is set forth in Regulation 140, which was issued by the Superintendent of Insurance. New Life believes that the specific financial requirements and criteria contained in

Regulation 140 are unnecessarily stringent without actually contributing to any increased level of consumer protection. In fact, it is our belief that Regulation 140 is making it much more expensive to develop and operate CCRCs in NYS and may have contributed to New York's inability to attract the development of new communities. While we do concede that life care and modified CCRCs are a type of insurance product that require reserves to protect resident assets, New Life urges the State to consider more realistic reserve amounts that are used by other states. Although most states require life care communities to conduct periodic actuarial reviews, they do not specify the required actuarial results. Instead, they take a more realistic business approach to make certain that they are operating efficiently while maintaining occupancy rates and meeting financial ratios that are required under tax-exempt bond documents.

Recently, the Department of Insurance convened meetings with CCRC sponsors, consultants and financial institutions to consider a range of regulatory changes, including some revision to Regulation 140. To date, we have not seen any concrete proposal come out of these meetings.

In New Life's experience, CCRCs typically achieve an actuarial surplus seven to ten years after opening, depending upon the size of the community, its marketplace, fill-up experience and range of other factors that are unique to each CCRC. Any start-up losses that naturally occur in new communities are usually recovered after this initial period. However, Regulation 140 requires that communities have an actuarial surplus in the third year of operations, thereby passing on the burden of all start-up losses to the initial residents. The resulting higher entrance fees and monthly service fees inhibit marketing of new communities and make it difficult to develop new CCRCs in any locale that does not have significant housing values and concentrations of wealth.

New Life has experienced this issue firsthand in its management of Jefferson's Ferry. After much negotiation, Jefferson's Ferry (which opened in 2001) was required to increase their entrance fees by more than 25 percent for new admissions and increase monthly fees for all residents 2 percent annually (above operating cost increases) for the next ten years under a restoration plan established last year. This fee change is being implemented despite the fact that Jefferson's Ferry is fully occupied with a long wait list and is meeting all of its bond covenants and financial ratios. We remain concerned that the negotiated increase in fees may affect the ongoing marketability of Jefferson's Ferry for new admissions and will mandate increased fees for all residents without adding services.

Affordable CCRC Models

The current regulations (including Regulation 140 and others) make it is extremely difficult to construct an affordable continuing care retirement community in New York. While New Life has been working on the two upstate CCRCs (Fox Run at Orchard Park and Woodland Pond at New Paltz), it has been a challenge to keep these projects affordable. Though we have been able to structure financially viable projects in both markets, with some reasonable change in the State's regulatory approach, this model could be replicated in many more markets across the state. The level of reserves required under Article 46 are intended to protect resident assets, yet ironically result in higher resident fees and development of small numbers of communities that can't be built with a middle-income entrance and monthly fee structure.

Under Regulation 140, the State has opted for the most stringent reserve requirements allowed under this provision, requiring CCRCs to fully fund 12 months of reserves, principal and interest payments upon obtaining financing of the CCRC, while six months of projected operating costs, repairs and replacement reserves are funded with resident entrance fees. In addition, investment restrictions result in poor options that produce the lowest amounts of return on investments for CCRCs. There are a variety of investment options that could be allowed which would protect reserve funds while providing greater investment flexibility to enhance yields, and would adjust required reserves to those more commonly maintained by CCRCs according to accepted actuarial standards.

Level Playing Field for All CCRC Models in NYS

The recently enacted statute establishing a fee-for-service (FFS) CCRC demonstration program in New York is a positive step towards allowing more options for seniors. This legislation allows for up to eight new communities that would provide the same services as a life care community, but utilize a fee-for-service pricing system for care and services.

Despite our support for the concept, we have several concerns. As part of this legislation, FFS CCRCs are required to maintain liquid reserves of the projected annual operating expenses of the facility, according to specific provisions in the law. The reserve requirements for FFS CCRCs will be much lower that the requirements under Regulation 140 for Type A and B CCRCs. This will put Type A and Type B communities at a distinct competitive disadvantage in relation to any FFS CCRCs developed in or near their marketplace.

Also, the FFS CCRCs are to be given a huge advantage in financing because the new statute allows new projects to access a portion of resident deposits collected at the 10% level to be used as equity at financing. This will reduce borrowing costs, thereby providing another competitive advantage. The Type A and Type B models are only allowed to access resident deposits at financing if the deposits were at the 25% level.

New Life believes that if FFS CCRCs are to be allowed in New York, there must be an even playing field with existing CCRCs and any in the current pipeline. Therefore, the State should make changes to Article 46 to mirror the reserve and financing provisions enacted under Article 46-A.

Expansion of the Pool of SNF Beds Dedicated to CCRCs

The original pool of skilled nursing beds dedicated to Article 46 CCRCs has dwindled to just a few hundred. Without an immediate expansion of this pool, it will soon become impossible for sponsors and developers to pursue needed CCRC development opportunities in New York State. Given that the population of senior citizens living in CCRCs have made a lifestyle decision that not only ensures a high quality of retirement living, but one that also ensures that their future long term care needs are provided for without reliance on Medicaid, it would seem logical that the state government would do all within its power to encourage the creation of more CCRCs. Expansion of the pool of SNF beds would be but one such action.

Conclusion

A paternalistic approach to regulatory oversight and disclosure is manifested in a belief that an individual cannot be relied upon to reach a decision that is "really" in his or her best interests. To the extent that government tries to take away this right, it marginalizes its senior citizens. This is demonstrated by the success of other states in making a wide array of choices available to their senior populations and the response of the market place to supplying the demand of their senior populations. In fact, many other states in this country that allow for consumer driven choices have created market opportunities where there is a much greater availability of alternative housing options. New Life believes that while consumer protection should remain a priority, the State's attempts to prescriptively regulate every aspect of CCRCs have limited the development of communities to such a degree as to deprive large numbers of its senior citizens of a desirable living option. Again, this is demonstrated by the fact that there are currently over 1200 CCRCs across the nation – and only eight are located in New York State. It is time for New York to make the necessary changes to its statutes and regulations to free its local not-for-profit organizations to create new retirement communities for senior citizens across the state. Thank you.

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Good morning, my name is Rod Rolett and I am executive vice president of Herbert J. Sims & Co., Inc., Southport, Connecticut. Founded in 1935, Herbert J. Sims & Co., Inc. is a leading underwriter of continuing care retirement community tax exempt bond issues in the northeastern United States. We also served as either sole or co-senior manager on each of the industrial development agency bond issues used to finance the eight continuing care retirement communities currently operating in New York. Earlier this year our accredited investors provided seed money to three New York based continuing care retirement communities currently in the development stage (Skyline Commons in Queens, Harbor Village in Mt. Sinai and Harborside Village in Port Washington).

Construction Financing Requirements

Prior to closing on an industrial development agency bond issue and beginning construction on a new continuing care retirement community, the owner must complete several key steps required

by New York State and the investors who buy tax exempt bonds. Those key steps include obtaining a) a certificate of authority issued by the Commissioner of Health, b) zoning, site plan and State Environmental Quality Review approvals, c) signed residence and care agreements and deposits for 60% to 70% of the independent living units, d) complete architectural plans, e) signed construction contract with a fixed price and f) feasibility and actuarial studies.

Pre-Construction Time and Cost

In our experience, it takes approximately three to five years and $4 to $10 million dollars for an owner in New York to complete the steps outline above. The three to five years required to complete key pre-construction steps and the $4 to $10 million cost is also typical for new continuing care retirement community projects located in other states along the eastern seaboard of the United States. The long time and high cost reflect the complex nature of both continuing care retirement communities and the real estate development process. The owner must acquire or control the site and assemble and pay a professional development team. The team required to plan and develop a successful continuing care retirement community includes a land use attorney, contracts attorney, architect, civil engineer, environmental consultant, development consultant, certified public accountant, marketing and sales consultant, advertising agency, management company, construction contractor, actuary, and an interior designer.

Pre-Construction Financial Risk

The continuing care retirement community owner invests a great of amount of time and money prior to the start of construction to obtain land use and regulatory approvals, and to design and market the continuing care retirement community. The owner also assumes enormous financial risk during the pre-construction period. For example, if the owner fails to obtain necessary land use or regulatory approvals, or to successfully market the independent living units to prospective residents, the owner will not recoup the fees paid to the team of professionals.

IDA Financing

To foster development of new continuing care retirement communities, New York State should insure access to tax exempt bonds issued by an industrial development agency ("IDA"). New continuing care retirement communities in Connecticut, New Jersey, Massachusetts, Pennsylvania and many other states may issue tax exempt bonds to finance their construction. Continuing care retirement community access to tax exempt bonds in those states is not subject to sunset. In contrast, the New York IDA financing is set in law which sunsets and the next sunset occurs on June 30, 2006. If access to IDA financing continues to grow more uncertain, the pace of pre-construction investment in new continuing care retirement communities will certainly decline. New York can create a positive climate for investing large sums during the pre-construction period in new continuing care retirement communities. Reduce the uncertainty of access to IDA bonds, which discourages pre-construction investment in new continuing care retirement communities. I recommend that New York grant a permanent extension to IDAs to finance continuing care retirement communities.

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Thank you for the opportunity to testify to the Committee on Health on issues regarding Continuing Care Retirement Communities. My name is Dan Katz and I am the president and CEO of the Jewish Home of Rochester which operates a CCRC, called the Summit at Brighton.

The Summit was the second CCRC to open in the State. We have 90 independent living apartments, 60 enriched housing units and, of course, we have access to the skilled beds available at the Jewish Home. As a lifecare community, we fulfill an important purpose, providing a continuum of services for the aging. Our impact on residents has been far greater than even we anticipated. We find that our residents are staying healthy far longer than expected, aging in place more successfully. This is a testimony to the environment which CCRC's create, taking the concern out of medical care and providing many of the tools necessary for wellness including social interaction, stimulating activities, proper nutrition and staff that is proactively assessing and addressing medical concerns.

Continuing care retirement communities are also, as you have heard, a benefit to New York State. As we keep our retired citizens here, we also keep their assets in the State and invested in our communities. CCRC residents are funding their own long term care, through the facilities in which they live and, therefore, doubly benefit the state by preserving their dollars locally, enhancing local economies and by avoiding the need for Medicaid funding.

The model of Continuing Care Retirement Communities offers many pluses and that fact is evident in the large number of these facilities that exist in other parts of the country. New York State, however, has limited growth through the stringent requirements with which CCRC's are forced to comply. Some of these requirements, as you have heard from others today, need to be changed to allow us to function effectively. I ask that you carefully consider some of the points we are addressing as the changes we are proposing can have a significant positive impact on the

lives of our residents. Our issues will focus on three areas: reserve requirements; investment limitations; and contract constraints.

One of the key concerns for us at the Summit at Brighton is the CCRC reserve requirements. Our current reserve requirement is over $3,000,000. This high level of reserves, combined with the limitation on nature and type of investment has created a dilemma for us on both ends. The investment limitations have caused us to experience a rate of return on average of only 2.5%, or about $73,000 annually. If we were able to fully invest these funds, cautiously but wisely, we would easily achieve a 6-7% return or at least $210,000. This additional income would allow us to either lower, or maintain, our monthly fees to residents. Under the current scenario, we are forced to raise fees yearly. At the Summit, our increase for 2006 will be 5.95%, an undue and avoidable burden for our residents.

As well, lowering the reserve requirement would free up capital in ways that would have a significant positive impact. If we look to our neighboring state of Pennsylvania, where CCRC growth has been much greater, the reserve requirement is at 15%. Were that the case in New York, the Summit could have access to nearly $2,000,000, which could be used to improve our cash flow, reduce our subordinated debt and/or improve our actuarial calculations. All of these are significant and impact not only our operations but the lives of those within our facilities.

This 15% reserve requirement is not a new concept for New York State either. It is the level that has been applied to the fee-for-service CCRC's that have been allowed to open in the state. To have a much lower level reserve for this model versus the traditional lifecare model is not just inequitable, it is wrong and creates a significant disadvantage for those of us who run lifecare CCRC's. It penalizes us economically and also creates a competitive advantage for the fee for service organizations. I do not believe that was the State's intent and it is a imbalance that should be corrected.

Along with the other lifecare communities in New York, we at the Summit are limited to offering two types of contracts—what are referred to at "type A" and "type B" plans. Under the type A contract, a resident who medically qualifies may move through the long term care continuum from independent to enriched to skilled care, all at the same fee level as they were paying in their initial independent apartment. Type B residents are those who do not qualify medically and receive limited long term care coverage. Consumers are asking for the availability of a "type C" plan in our existing facilities, in which they could pay the market rate and have flexibility within our system. We believe that this is an option that should be provided, that not only do our current customers want this type of plan, our future customers will demand it.

As part of the Jewish Home of Rochester organization, we are committed to offering care for all those who need it in our community. We believe in the work that we do, in the benefits we offer to the residents we serve at every level of our organization. We ask that you, the legislators of New York State, support this important work on behalf of the aging by modifying your rules to encourage CCRC's and by giving us the flexibility we need to be economically viable and competitive. CCRC's play an important role in retirement housing, in keeping people well and in caring for them without an additional burden to our tax payers. We ask you to recognize this role and strengthen it for the good of our residents, our organizations and our future. Thank you.

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Background

Article 46 of the Public Health Law, the legislation authorizing continuing care retirement communities, was created by Chapter 689 of the Laws of 1989 and signed into law on August 8, 1989. The need for integration of both residential living and comprehensive long-term-care services had long been recognized by seniors, advocates and service providers. While attractive residential options were available for many seniors, most lacked the services necessary for the resident to age in place and remain in the community as his or her health care needs increased. CCRCs were a response to this need for an attractive and cohesive living arrangement, combining an independent life style with social, cultural and educational opportunities, along with a continuum of on-site health care services.

Prior to development of the Article 46 legislation, input was sought from residential and health care service industry experts, advocates and senior citizens. Problems and successes found by other states offering CCRCs were considered and discussed before the legislation was finalized.

New York was concerned about the failure of some life care communities in other states. Some communities failed due to outright fraud on the part of developers. Others appeared to be inadequately funded or simply unable to achieve an occupancy level that supported continued operation. As a response to these concerns, New York developed legislation which emphasized consumer protections and the security of resident finances. These protections included escrow of resident entrance fees, state determination of the character and competence of the sponsor and manager, and determination of the financial viability of the community through required presales prior to construction.

In addition to these consumer protections, Article 46 defined a rigorous procedure for approval and monitoring of CCRCs, including a direct review by state agencies and consideration by advocates, service providers and consumers in the form of an appointed Council. The

Continuing Care Retirement Community Council consists of representatives from four State agencies, Health, Insurance, Aging and the Attorney General's Office, and eight public members appointed by the Governor with the advice and consent of the Senate. All Council members have a demonstrated expertise or interest in CCRCs and at least two members must be residents of a continuing care retirement community.

The DOH was named the lead agency for coordination of the multi-agency application and approval process. The Insurance Department determines the initial and ongoing financial viability of the community including required reserves, the fee structure and the form and content of resident contracts and disclosure documents.

To assure a full, on-site continuum of care, Article 46 authorized the set-aside of 1000 residential health care facility beds available to CCRCs, outside any determination of public need.

Development

Many states, in the 1970s and 1980s, began to authorize various forms of continuing care retirement communities. New York State took a more deliberate approach and did not develop legislation establishing such communities until 1989.

Article 46 initially authorized only full life care communities which included an unlimited skilled nursing facility contract benefit. While independent senior living communities were well-represented in New York State, these communities were not recognized under Article 46 as there was no inclusive skilled nursing facility benefit. Most continuing care retirement communities, in states contiguous to New York such as Pennsylvania and New Jersey, provided a residential apartment and access to a variety of health care services (including skilled nursing facility care) with no contractual obligation to provide these services. Instead, these communities included only the availability of, or priority access to, skilled nursing and other health care services. New York's limited number of continuing care retirement communities is due, in part, to the definition and required health care services established under Article 46.

Although the authority for continuing care retirement communities was in place in 1990, there was little immediate interest in development due to limited financing sources.

Change began with the passage of Chapter 66 of the Laws of 1994. This legislation permitted use of escrowed entrance fees in financing CCRC construction and permitted financing by Industrial Development Agencies. With IDA financing available, interest in CCRC development increased. Between 1994 and 2000, ten proposed communities initiated the Certificate of Authority process, with seven projects receiving full Certificates of Authority and eventually admitting residents.

Growth and Change

As CCRC development continued, need for further change was considered.

Initially, Article 46 authorized creation of CCRCs offering only life care or Type A contracts. Under a life care contract, the resident pays a substantial entrance fee and a monthly fee and receives in return, independent housing and use of community amenities, residential services such as housekeeping, a meal plan, access to physician, rehabilitation and prescription drug services, and, the opportunity to take part in a variety of social, cultural and educational opportunities. In addition, the life care contract provides unlimited adult care facility services, if offered by the CCRC, and unlimited skilled nursing facility services. The monthly fee may increase based on annual adjustments but increases are not based on the level of care or services needed by the resident. As the resident moves from independent living to the adult care facility to the skilled nursing facility, the monthly fee does not increase but remains at the level paid in independent living.

CCRCs offering only life care contracts had to set entrance and monthly fees and maintain reserves needed to provide residents with the promised unlimited long-term care services. In response to both sponsor and consumer interest, modified or Type B contracts were permitted under Article 46 beginning in 1997. Modified contracts cover all residential services and amenities but include a minimal skilled nursing facility benefit of at least 60 days. When the benefit period ends, residents requiring skilled services pay a per diem market rate for care. As Type B contracts promise limited nursing home care, entrance fees can be set lower than full life care.

CCRCs offering modified contracts are allowed to access the nursing home bed set-aside and use IDA financing if the community guarantees to the State that each resident can pay for at least one-year of nursing home care before becoming Medicaid eligible. If the resident is unable to pay for the full year, the community must pay for the care.

Currently, all Article 46 communities offer life care contracts. About two-thirds of the operational communities also offer modified contracts, although the majority of residents have opted for life care contracts.

Additional revisions to Article 46 were made in 2003 allowing communities flexibility in meal plan offerings and streamlining the IDA refinancing approval process.

Fee-for-Service Communities Are Introduced

New York, unlike most other states regulating continuing care retirement communities, defined CCRC contracts as inclusive of some pre-paid skilled nursing facility benefit, not merely providing access to or availability of such skilled care. The concept of fee-for-service CCRCs was introduced in New York in 2004 to make this form of residential accommodation with available health care services more accessible to seniors.

Chapters 519 and 545 of the Laws of 2004 established Article 46-A, the Fee-for-Service Continuing Care Retirement Community Demonstration Program. Article 46-A was signed into law on September 27, 2004. The legislation allowed for the development of up to eight (8) fee-for-service projects to encourage affordable care options for middle income seniors. Fee for service communities would provide access to on-site geriatric services, including but not limited

to nursing facility, adult care facility, home health services, meals, social services and independent living. Up to two (2) of these projects can operate as for-profit entities. Up to 350 nursing home beds from the original set-aside may be used by fee-for-service CCRCs.

The CCRC Council has the same authorization and approval functions for Fee for Service CCRCs as for the Article 46 communities. The Department of Health continues as the lead agency. Because there is no promise of skilled nursing care in the fee-for-service contract, the State Insurance Department has no role in the Article 46-A review process.

Current Status

We currently have eight (8) fully operational Article 46 CCRCs in New York. Operational communities are located in Tompkins, Orange, Monroe, Erie, Suffolk and Westchester Counties. Seven (7) additional projects are in various stages of development. One of these seven proposed communities is a fee-for-service model. One currently operational community is undergoing a 40-cottage expansion. All are at 90% or better occupancy.

Over the past four or five years, development has been centered in Long Island, but currently, CCRCs are proposed for Erie, Ulster, Queens and Broome Counties.

Most communities have requested beds from the 1000 RHCF bed set-aside and established small, on-site skilled nursing facilities for their residents. (The exception is the Summit at Brighton, in Rochester, located on the campus of the Jewish Home of Rochester Nursing Facility, and utilizing that facility's beds for their residents.) As of today, 593 of these exempt beds are in use or needed for pending projects, leaving 407 beds available for future projects.

With input from the industry, the New York State Insurance Department is considering revision of the financial regulations regarding CCRC reserve requirements and solvency.

Recommendations:

- **Assure availability of IDA financing.** Chapter 66 of the Laws of 1994 authorized IDA financing of CCRCs through two legislative requirements: CCRCs were designated as "Projects" eligible to receive IDA financing under General Municipal Law; and, the CCRC Council was given authority to review and approve, or reject, any CCRC's proposed financing by an IDA. These eligibility and authorization issues become problematic as the CCRC designation as "project" and the CCRC Council's authority do not have permanent status as legislation. Both requirements must be legislatively extended every few years. The timing of this legislation, and in recent years, delays in finalizing the legislation, have been a major source of anxiety for project sponsors, as without clear authority to access the IDAs, no source of financing is available for the projects. Viable CCRC development requires unbroken and consistent access to IDA financing. For sponsors to lose access to the most significant source of project financing, possibly for an extended period of time while legislation is passed, effectively precludes ongoing development. Multi-year or, most beneficially, permanent IDA authorization is the most effective solution and is recommended.

The CCRC Council's authority to approve or reject a project's request to finance through the IDA lapsed on July 1, 2005. The Department will propose legislation to extend this required authority.

▶ **Assure continued availability of dedicated SNF beds.** The 1000-RHCF bed set-aside under section 4604(5) was established to meet the needs of continuing care retirement communities offering life care and modified contracts. With the authorization of fee-for-service communities, we anticipate the establishment of large-scale, moderate-fee facilities that will serve the needs of a middle-income senior population. To serve this population, and to continue to offer a full continuum of health care, access to an on-site skilled nursing facility is necessary. The community nursing home is an integral, and for residents, an extremely desirable part of the continuing care retirement community offering. The ability to age in place, remain part of the community and continue to live near a spouse and friends is the focus of the CCRC experience. A limitation or lack of nursing home beds dedicated to CCRC projects will effectively preclude development of all model CCRCs including large scale, moderately priced communities. Continued availability of beds for these projects is essential to future development.

CCRC Resources and Web Links

CCRC Publications and Resources

NYAHSA's Paper on CCRC Reform
November 22, 2005
http://www.nyahsa.org/docs/Article46.doc

The Legislative Gazette's Article on the November 22 CCRC Hearing
http://www.legislativegazette.com/read_more.php?story=797

Laws / Regulations of New York State

Article 46 of the Public Health Law
http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS
(Go to **Search** - Laws of New York - **PBH** Public Health - **Article 46** - (4600 - 4624) CONTINUING CARE RETIREMENT COMMUNITIES)

Article 46-A of the Public Health Law. Fee-for-Service CCRC.
http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS
(Go to **Search** – Laws of New York - **PBH** Public Health - **Article 46-A** - (4650 - 4676) FEE-FOR-SERVICE CONTINUING CARE RETIREMENT COMMUNITIES DEMONSTRATION PROGRAM)

Industrial Development Agencies - General Municipal Law 18 – A, Title I.

http://public.leginfo.state.ny.us/menugetf.cgi

New York State Insurance Department Regulation 140
Effective October 2, 1991
ttp://www.nyahsa.org/docs/CCRCReg140.pdf

NYAHSA Document ID# 32912501

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