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CONTINUING CARE RETIREMENT COMMUNITIES (CCRCs): SECURE RETIREMENT OR RISKY INVESTMENT?

HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

WASHINGTON, DC

JULY 21, 2010

Serial No. 111–21

Printed for the use of the Special Committee on Aging

Available via the World Wide Web: http://www.gpoaccess.gov/congress/index.html

U.S. GOVERNMENT PRINTING OFFICE

62–691 PDF WASHINGTON : 2010

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CONTINUING CARE RETIREMENT COMMUNITIES (CCRCs): SECURE RETIREMENT OR RISKY INVESTMENT?

WEDNESDAY, JULY 21, 2010

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 1:32 p.m. in room SD–106, Dirksen Senate Office Building, Hon. Herb Kohl (chairman of the committee) presiding.

Present: Senators Kohl [presiding], Franken, and Corker.

OPENING STATEMENT OF SENATOR HERB KOHL, CHAIRMAN

The CHAIRMAN. Good afternoon. We thank you all for being here.

Today, we are going to take a look at continuing care retirement communities, or CCRCs. CCRCs offer three types of senior housing in one location, so that older residents can move from one to the other as their need for care increases throughout retirement.

These communities allow seniors to stay among friends and near their spouse during the aging process, and for that reason, they have grown in popularity over recent decades.

The number of older adults living in CCRCs has more than doubled between 1997 and 2007 and now totals 745,000 seniors living in over 1,800 CCRCs. With the boomer generation retiring, we can only expect this number to grow.

Over the past year, our committee has taken a look at the financial stability of the typical CCRC business model. In most cases, new residents must pay a large deposit in order to join a community. These deposits often represent their life savings or their children's inheritance. In return, residents can generally expect to move within the community as their long-term care needs grow and, in some cases, to receive their deposit back if they decide to move away.

Through our investigation, we found that CCRCs are particularly vulnerable during economic downturns. Slow real estate markets can drive down occupancy levels in independent living units, which are the main source of profit for these retirement communities. Occupancy levels for five prominent CCRC companies we questioned have, indeed, dropped in the past 3 years, leading to financial difficulties for some. The result is often an increase in the monthly fees, a reduction in the services and amenities provided, or both.

Disturbingly, we have seen instances where seniors had to file lawsuits to keep their CCRC services from being cut back or re-

duced. Residents may feel forced to put up with these situations because most of their assets are tied up within the CCRC. This is especially true in a stagnant economy, when financial distress can cause long delays in receiving refundable entrance fees, or, as one of our witnesses experienced, the loss of one's refundable deposit altogether.

One CCRC company refunded several sizable deposits only after getting a letter of inquiry from this committee. While this represents an extreme scenario, the fact is that many CCRCs who advertise their entrance fees as "100 percent refundable" will only repay them if and when they can line up a new tenant.

In some States, such as California, CCRCs are granted up to 10 years to repay full or partial refunds. Such a delay can be devastating to an older couple who has their life savings tied up in a CCRC deposit.

To supplement our investigation, we asked GAO to survey CCRC regulatory oversight nationwide. As you will hear, they found considerable variation in State regulations, with 12 States having no CCRC-specific regulations at all. Consumer safeguards and protections regarding disclosure, asset reserves, and escrow requirements vary widely, and only 17 States require CCRCs to submit studies that assess their long-term viability.

In terms of the industry's internal policing, GAO found that only 16 percent of CCRCs are voluntarily accredited by the Continuing Care Accreditation Commission. That is an astonishingly low number. The fact is that while CCRCs are a good residential option for many retirees, entering into an agreement with one can pose financial risk.

Our investigation has found many CCRC ownership structures to be very complex and that financial troubles at any level can have real consequences for individual residents. Evaluating such a transaction can be quite challenging for the average consumer without professional assistance.

Today, our committee is releasing a summary of findings from our investigation, which outlines the financial health of the five companies that we questioned, as well as their disclosure policies regarding entrance fees and transitions of care. We also included several helpful resources for consumers and CCRC providers.

Finally, we are calling on State regulators to beef up their oversight. Every State should be requiring proof of their long-term viability from CCRCs and ensuring transparency and strong consumer protections for residents. As part of our report, the committee has developed our own checklist for State regulators who wish to expand or improve their oversight of CCRCs, and we urge them to put it to use.

Moving forward, we hope to increase both consumer protections and consumer awareness with regard to CCRCs. If these companies are going to take the life savings of seniors, they need to be able to guarantee that they will be around to provide the lifetime of care that they promise.

We would like to thank our witnesses today for speaking with us on this important issue. I am very pleased that Senator Corker was able to take just a few minutes away from his other responsibilities to stop here and make some brief comments.

OPENING STATEMENT OF SENATOR BOB CORKER

Senator CORKER. I will be very brief. Mr. Chairman, I thank you for your efforts leading this committee and certainly for asking for this study.

I know we have some great witnesses today, certainly one telling a personal story that always affects us and certainly brings home some of the challenges that exist. So I thank you for that.

We have Chairman Bernanke in just a few minutes in the Banking Committee. With the economic situations being what they are, I am going to step out, and I will not hear the testimony. But I want to thank you for coming and say that, my dad actually lives in a facility that uses this model with Alzheimer's, and I appreciate you bringing up these issues.

I know there is a study that has been done. I would say to our witnesses that sometimes we need to be careful what we ask for, OK? State regulation, it appears to me in some cases, certainly needs to be enhanced. We regulate insurance companies at the State level and have had some pretty good success there. Sometimes us at this level getting involved, again, be careful what you ask for.

So, hopefully, States themselves will pick up the pace. I don't know what the outcome ultimately will be, but I certainly appreciate my staff will certainly be here during this hearing. I thank you again for being here.

Again, Mr. Chairman, your vigilance in continuing to look at issues where individuals, in many cases unbeknownst to them, end up in situations that certainly damage them.

We thank you all for being here.

The CHAIRMAN. Thanks a lot, Senator Corker.

Now I will introduce our panel. Our first witness today will be Alicia Cackley. She is the Director of the Financial Markets and Community Investment team at the U.S. Government Accountability Office, GAO. There she manages research and program evaluation on issues such as consumer protection, financial literacy, the Recovery Act, as well as homelessness.

Next, we will be hearing from Kevin McCarty. He is the Commissioner of the Florida Office of Insurance Regulation, where he oversees Florida's insurance market and is responsible for company solvency and market investigations. As Commissioner, Mr. McCarty has focused his efforts on senior protection. He is also the Vice President of the National Association of Insurance Commissioners.

Next, we will be hearing from Charles Prine. Mr. Prine is a resident of a CCRC himself in Mount Lebanon, PA. That CCRC declared bankruptcy in 2009. During the bankruptcy, Mr. Prine served as the chairman of the unsecured creditors association, and he is now a resident's advocate on the board of the new CCRC owner.

Then we will be hearing from Katherine Pearson. She is a Professor of Law at Pennsylvania State University's Dickinson School of Law, where she teaches law and aging policy. Ms. Pearson directs the Penn State's Elder Law and Consumer Protection Clinic, and she is coauthor of a forthcoming book on protection of older adults against financial exploitation.

Finally, we will be hearing from David Erickson. He is the Vice President of Legal Affairs for Covenant Retirement Communities in Chicago. He will be speaking on behalf of the American Association of Homes and Services for the Aging, where he helped developed the resource for providers to improve their disclosure and transparency practices.

We thank you all for being here today, and now, Ms. Cackley, we will start with you.

ALICIA CACKLEY, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Ms. CACKLEY. Good afternoon.

Mr. Chairman, I am pleased to be here today to discuss continuing care retirement communities, or CCRCs. As a growing population of older Americans seeks options for ensuring that their assets and income in retirement will cover the cost of their housing and healthcare needs, some may choose to enter a CCRC, which aims to provide lifelong housing, household assistance, and nursing care in exchange for a sometimes sizable entrance fee and ongoing monthly fees.

However, CCRCs are not without risk. My testimony today is based on our June 2010 report, which is being publicly released today and addresses four issues—first, how CCRCs operate and what financial risks are associated with their operation and establishment; second, how State laws address these risks and what is known about how adequately they protect CCRCs' financial condition; third, risks that CCRC residents face; and fourth, how State laws address these risks and what is known about their adequacy.

In summary, we found that CCRCs can benefit older Americans by allowing them to move among and through independent living, assisted living, and skilled nursing care in one community. They offer a range of contract types and fees that are designed to provide long-term care and transfer different degrees of the risk of future cost increases from the resident to the CCRC.

However, developing CCRCs can be a lengthy, complex process, and CCRCs, like other businesses, face a number of risks, both during their development and after they become operational. While few CCRCs have failed, challenging economic and real estate market conditions have negatively affected some CCRCs' occupancy and financial condition.

With respect to financial oversight of CCRCs, according to a broad industry study, 12 States and the District of Columbia do not have CCRC-specific regulations, meaning an entity in one State may be subject to such regulations while a similar entity in another State may not. The eight States we reviewed in detail varied in the extent to which they ensured CCRCs addressed financial and operational risks, and some focused more on long-term viability than others.

According to industry participants, actuarial studies can help CCRCs plan for contractual obligations and set appropriate housing and care prices. Without them, they noted, a CCRC may appear financially stable in the short term, yet still face threats to long-term viability.

We found that only three of the eight States we reviewed required an actuarial study at regular intervals, and one State, Florida, analyzes CCRC financial trends. This lack of a long-term focus in some States creates a potential mismatch with residents' concerns over their CCRC's long-term viability.

While CCRCs offer long-term residence and care in the same community, residents can still face considerable risk. For example, CCRC financial difficulties can lead to unexpected increases in residents' monthly fees.

While CCRC bankruptcies or closures have been relatively rare and residents have generally not been forced to leave in such cases, should a CCRC failure occur, it could cause residents to lose all or part of their entrance fee, which may amount to hundreds of thousands of dollars. For example, residents of one CCRC in Pennsylvania, who we will hear from later, lost the refundable portion of their entrance fees in 2009 when the facility became insolvent and was sold to a new operator.

Residents can also become dissatisfied if CCRC policies or operations fall short of expectations or there is a change in arrangements they thought were contractually guaranteed, such as charging residents for services that were previously free. In addition, residents also face the risk of being transferred involuntarily from one level of care to another or of not being able to obtain assisted living or nursing care onsite.

Most of the States we reviewed take steps to protect the interests of CCRC residents, such as requiring the escrow of entrance fees and mandating certain disclosures. However, not all States review the content of contracts, and the States we reviewed varied considerably in the type of financial and other disclosures they required.

While some CCRCs voluntarily exceed disclosures and protections required by their State's regulations, such variation and regulation means that consumers in some States may not receive the same protections as those in others.

In closing, we found that CCRCs can benefit older Americans by helping ensure access to housing and healthcare in a single community as they age. However, choosing to enter a CCRC is not without significant financial and other risks.

Further, the stress that recent economic events may have placed on CCRC finances underscores the importance of regulators being vigilant in their efforts to monitor CCRCs' long-term viability and protect consumers. Such efforts will only become more important as the number of older Americans grows.

Mr. Chairman, this concludes my prepared statement. I would be happy to answer questions.

[The prepared statement of Ms. Cackley follows:]

United States Government Accountability Office

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Testimony
Before the Special Committee on Aging, United States Senate

For Release on Delivery
Expected at 2:00 p.m. EDT
Wednesday, July 21, 2010

OLDER AMERICANS

Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk

Statement of Alicia Puente Cackley, Director
Financial Markets and Community Investment

GAO-10-904T

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss continuing care retirement communities (CCRC), the risks they and their residents face, and their regulation. A growing population of older Americans is seeking options for ensuring that their assets and income in retirement will cover the cost of their housing and health care needs. One option for meeting these long-term care needs is to enter a CCRC, which aims to provide lifelong housing, household assistance, and nursing care in exchange for a sometimes sizable entrance fee and ongoing monthly fees. These communities may appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become sick or frail, they will receive the care they need within the same community. But choosing to enter a CCRC can be a difficult decision and is not without risk. Moving to a CCRC generally involves a significant financial and emotional investment. Many older Americans sell their homes, which are often their primary assets, to pay the required fees, and, as a result, their ability to support themselves in the long run is inextricably tied to the long-term viability of their CCRC. Further, many CCRCs may be financially vulnerable during periods of economic decline—such as the recent downturn—that can result in tight real estate and credit markets.

My testimony is based on our June 2010 report, which is being publicly released today and addresses four issues: (1) how CCRCs operate and what financial risks are associated with their operation and establishment, (2) how state laws address these risks and what is known about how adequately they protect CCRCs' financial condition, (3) risks that CCRC residents face, and (4) how state laws address these risks and what is known about their adequacy.[1]

To address these questions, we reviewed CCRC statutory provisions from eight states—California, Florida, Illinois, Ohio, New York, Pennsylvania, Texas, and Wisconsin—and interviewed regulators from those states. We selected these states based on a number of criteria, including extent of regulatory requirements, size of CCRC population, and geographic location. We also reviewed summary information found in an industry

[1]GAO, *Older Americans: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk*, GAO-10-611 (Washington, D.C.: June 21, 2010).

study on laws and regulations across all states.[2] In addition, we also we interviewed officials from eight CCRCs and obtained relevant documentation to understand their specific experiences developing and operating CCRC facilities. Finally, we interviewed national industry associations, actuaries specializing in CCRCs, attorneys specializing in senior issues, CCRC providers, national and state residents' associations, and officials involved with CCRC finance and debt ratings. A full description of our scope and methodology is included in appendix I of our report.

We conducted this performance audit from June 2009 to July 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Mr. Chairman, the following summarizes our findings on each of the four issue areas discussed in our report:

- CCRCs can benefit older Americans by allowing them to move among and through independent living, assisted living, and skilled nursing care in one community. They offer a range of contract types and fees that are designed to provide long-term care and transfer different degrees of the risk of future cost increases from the resident to the CCRC. However, developing CCRCs can be a lengthy, complex process and CCRCs, like other businesses, face a number of risks both during their development and after they become operational. First, actual construction costs and consumer demand may not match developers' forecasts. To attract financing from lenders and ensure adequate underwriting for CCRC projects, developers need to generate sufficient presales and deposits prior to construction to show a tangible commitment from prospective residents. In addition, facilities in the start-up stage need to reach full occupancy as quickly as possible in order to generate income that will not only cover operational costs once built but also help pay down construction loans. As a result, accurate projections of future revenues and costs are important as a CCRC becomes operational. Once operational, risks to long-term viability include

[2]American Association of Homes and Services for the Aging (AAHSA) and American Seniors Housing Association (ASHA), *The Assisted Living and Continuing Care Retirement Community State Regulatory Handbook, 2009.*

declining occupancy, unexpected cost increases, slow real estate markets, and declining equity and credit markets. While few CCRCs have failed, challenging economic and real estate market conditions have negatively affected some CCRCs' occupancy and financial condition.

- With respect to financial oversight of CCRCs, states we reviewed varied in the extent to which they ensured CCRCs addressed their risks, and some focused more on long-term viability than others. Most of the states we reviewed required CCRC providers to maintain some level of financial reserves to address financial challenges. In addition, most of the states we reviewed required CCRCs to annually submit audited financial statements that reflected financial performance for the past year. However, only four of the states required information that could help them assess each CCRC's long-term viability, and three states had conducted financial examinations. Three of the states we reviewed required certain CCRCs to perform actuarial studies at regular intervals and one used financial information submitted over the years to assemble trend information including financial ratio trends.[3] Actuarial studies, according to industry participants, can help CCRCs plan for contractual obligations and set appropriate housing and care prices. Without them, they noted, a CCRC may appear financially stable in the short term yet still face threats to long-term viability. The lack of a long-term focus creates a potential mismatch with residents' concerns over their CCRC's long-term viability. CCRC bondholders and rating agencies, which focus on long-term viability, often place requirements on CCRCs that go beyond state licensing and oversight activities. While we did not survey all 50 states as part of our review, according to an industry study, 12 states and the District of Columbia do not have CCRC-specific regulations, meaning an entity in 1 state may be subject to such regulations while a similar entity in another state may not. Regulators and CCRC providers we spoke with generally believed that current CCRC regulation was adequate, however, some CCRC residents' association officials expressed the need for financial oversight that focused on the long-term viability of CCRCs.

- While CCRCs offer long-term residence and care in the same community, residents can still face considerable risk. For example, CCRC financial difficulties can lead to unexpected increases in residents' monthly fees. And while CCRC bankruptcies or closures have been relatively rare, and residents have generally not been forced to leave in such cases, should a

[3]Florida regulators said that they maintained a spreadsheet containing financial information on CCRCs dating back over a decade and used the data to develop trends of financial ratios for each CCRC.

CCRC failure occur, it could cause residents to lose all or part of their entrance fee, which may amount to hundreds of thousands of dollars. For example, residents of one CCRC in Pennsylvania lost the refundable portion of their entrance fees in 2009 when the facility became insolvent after a change in municipal tax policy made the CCRC liable for unanticipated local taxes. Ultimately, it was sold to a new operator. Residents can also become dissatisfied if CCRC policies or operations fall short of residents' expectations or there is a change in arrangements they thought were contractually guaranteed, such as charging residents for services that were previously free. In addition, residents also face the risk of being transferred involuntarily from one level of care to another or of not being able to obtain assisted living or nursing care on-site.

- Most of the states GAO reviewed take steps to protect the interests of CCRC residents, such as requiring the escrow of entrance fees and mandating certain disclosures. For example, a number require contracts to be written in clear and understandable language, though some industry participants questioned residents' ability to fully understand them. In addition, not all review the content of contracts. Also, states we reviewed varied considerably in the type of financial and other disclosures required of CCRCs. For example, some states required disclosure of fee schedules and a history of fee increases, but other states did not. Also, not all require disclosure of policies likely to have a significant impact on residents' satisfaction, such as policies for moving between levels of care. In addition, regulations in some states require that residents of a CCRC be allowed and encouraged to form groups in order to communicate with management, while other states had no such requirement. As noted above, 12 states and the District of Columbia do not have CCRC-specific regulations, meaning an entity in 1 state may be subject to such regulations while a similar entity in another state may not, and consumers in some states may not receive the same protections as those in others. In contrast, some CCRCs voluntarily exceed disclosures and protections required by state regulations.

The report we are releasing today acknowledges that CCRCs can benefit older Americans by helping ensure access to housing and health care in a single community as they age. However, choosing to enter a CCRC can be a difficult decision, and is not without significant financial and other risks. Entering a CCRC often means committing a large portion of one's assets with the expectation of receiving lifelong housing and care. Further, the stress that recent economic events may have placed on CCRC finances underscores the importance of regulators being vigilant in their efforts to monitor CCRCs' long-term viability and protect consumers. The potential

financial risks to CCRCs, and the risks to residents that result from committing a considerable amount of money to a CCRC, highlight the importance of states being vigilant in their efforts to help ensure that CCRC residents' long-term interests are adequately protected. Such efforts will only become more important as the number of older Americans grows.

Chairman Kohl and members of the committee, this concludes my prepared statement. I would be pleased to respond to any questions.

GAO Contacts and Staff Acknowledgments

For questions about this statement, please contact Alicia Puente Cackley at (202) 512-7022 or CackleyA@gao.gov and Barbara Bovbjerg at (202) 512-5491 or BovbjergB@gao.gov. Individuals who made key contributions to this testimony include Patrick Ward (Assistant Director), Clarita Mrena (Assistant Director), Joe Applebaum, Emily Chalmers, Erin Cohen, Andrew Curry, Mike Hartnett, Marc Molino, Walter Ochinko, Angela Pun, and Steve Ruszczyk.

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The CHAIRMAN. Thank you very much, Ms. Cackley.

Mr. McCarty.

KEVIN MCCARTY, INSURANCE COMMISSIONER, FLORIDA OFFICE OF INSURANCE REGULATION, TALLAHASSEE, FL

Mr. MCCARTY. Thank you, and good afternoon, Mr. Chairman.

My name is Kevin McCarty. I am the Insurance Commissioner of the State of Florida, a State with a substantial population of older Americans.

The decision to join a continuing care facility represents a substantial investment on the part of their own personal assets of our seniors, and Florida takes its responsibility to protect their seniors very seriously. In fact, Florida statutes provide for our residents of our senior facilities a bill of rights intended to ensure that residents are continually treated with dignity and respect.

Florida's regulatory framework emphasizes four fundamental areas. Firstly, verifying that CCRC owners and management are competent, trustworthy, and responsible. Second, we ensure that the relevant information that is important in decisionmaking is disclosed to the residents of the communities. Third, we are ensuring that the project is in full compliance with Florida's stringent licensing requirements. Last, but certainly most importantly, providing a thorough financial oversight to ensure that the continuing care facilities are there for the long term and that they continue to provide a home for Florida's seniors.

To determine professional competency and trustworthiness the Office of Insurance Regulation requires each officer, director, owner, or manager to submit a biographical affidavit, a legible fingerprint card, and an independent investigation background report. This biographical information applies to any new officer and director and management of an existing CCRC, as well as a new facility. These rigorous requirements ensure that the people of Florida are guaranteed not to have people of questionable moral character in a position to harm our seniors.

It is very important that prospective and existing residents have sufficient and relevant information on a facility available to them. Florida statutes require numerous disclosures, including, but not limited to a summary of the facility's ownership interests, their plans for expansion of their operations, rules and regulations governing the facility and, of course, a copy of the bill of rights, and a summary of the most recent examination conducted by our office.

Since the viability of a CCRC is primarily governed by the number of people in occupancy, it is imperative that the facility demonstrates sufficient demand for a facility prior to placing a consumer's funds at risk. Florida accomplishes this objective by requiring a prospective provider to submit an independent feasibility study with its application for licensure.

With respect to financial oversight, each facility is required to file an annual financial report, audited financial statements, and provide a liquid reserve calculation which ensures financial resources to pay in the future. Each facility has an assigned analyst within our office who reviews all financial submissions in great detail.

Our office may require a facility that has experienced a declining financial trend to submit to more frequent reports, actuarial studies, submit a corrective action plan to address any of their financial problems. All CCRCs are subject to periodic onsite examination by the Office of Insurance Regulation, and the office may also examine a CCRC at any time at the office's discretion.

A facility that has more significant problems may be subject to our onsite management and, ultimately, may be subject to suspension of their certificate of authority.

One of the new developments we are seeing in Florida is a trend toward CCRCs at home, also called CCRCs without walls. This new concept usually has a limited number of independent living facilities. Most of these CCRCs at home residents would live at home but eventually move to the facility when they had additional assisted living or nursing care services required.

This has been a provider reaction to the steep drop in the housing market when people are reluctant or unable to sell their homes for market value or what they think their properties are worth. We have one proposed facility which currently received the provisional certificate of authority to pursue funding a project of this type.

It is important to note that the office staff is in constant contact with a variety of stakeholders through the Florida Continuing Care Advisory Council. This council consists of three resident members, three executive directors of facilities, and four professionals familiar with the industry. Each year, our office hosts a meeting with the council to address industry needs, trends and conditions, and the regulatory environment for our seniors.

In conclusion, it has been almost 20 years since we had a failure in Florida, which is perhaps the greatest testament to our regulatory success. OIR continues to monitor ongoing trends in the CCRC industry as these entities adapt to changing economic circumstances.

Mr. Chairman, that concludes my prepared remarks, and I will be happy to answer any questions.

[The prepared statement of Mr. McCarty follows:]

Testimony of Kevin M. McCarty
Insurance Commissioner
Florida Office of Insurance Regulation

Continuing Care Retirement Communities

Before the
United States Senate Special Committee on Aging

July 21, 2010

Good afternoon Mr. Chairman and members of the Committee. My name is Kevin McCarty, Insurance Commissioner with the Florida Office of Insurance Regulation (OIR). Thank you for the invitation to appear before you today to share Florida's experience in regulating continuing care retirement communities (CCRCs). We are pleased the Committee has expressed an interest in these entities, and an interest in helping protect seniors with one of their most important financial and lifestyle decisions.

History of CCRC Regulation in Florida

In Florida, OIR and the Florida Agency for Health Care Administration (AHCA) regulate CCRCs jointly. AHCA regulates the health care quality of a CCRC while OIR regulates a CCRC's financial solvency, the residency contracts, and the disclosures made to prospective residents. OIR also works in conjunction with the Florida Department of Financial Services (DFS). DFS processes resident complaints not related to the quality of health care and also oversees mediation and arbitration between residents and CCRCs.

Florida Statutes define "continuing care" as furnishing shelter and either nursing care or personal services upon payment of an entrance fee pursuant to a contract. Therefore, OIR does not regulate facilities that do not require an upfront entrance fee.

The first regulation of CCRCs by OIR and its predecessors began in 1953. The original law was limited to the regulation of communities, which exchanged care for a single fixed fee and typically required a resident to assign all of his or her assets to the community. The law did not apply to facilities charging an entrance fee and a monthly maintenance fee or those with a mutual right of contract termination. Consequently, OIR

regulated very few facilities and the regulation of these facilities was minimal. These facilities were known as "Life Care" facilities.

After several high-profile bankruptcies that occurred in Florida and nationally, the regulatory climate for CCRCs evolved. In 1977, the Florida Legislature strengthened statutes governing CCRCs by expanding the definition of continuing care and adding new requirements for CCRCs. The 1977 revision formed the foundation of the current regulatory framework governing CCRCs. However, the failure of several CCRCs in the late 1970s and early 1980s prompted the Florida Legislature to further strengthen the CCRC statute in 1981 and in 1983.

Florida CCRC law has continued to undergo modifications. Most recently the 2010 Florida Legislature opted to increase disclosures to prospective and current residents and to recognize that some residents purchase a CCRC contract as a form of long-term care insurance, intending to delay their occupancy of the facility.

Currently, there are 73 licensed CCRCs in Florida serving approximately 30,000 residents. Most of the growth in the industry in Florida has been from existing CCRCs adding units since the number of licensees has remained consistent over the last decade. In general, new CCRCs have been entering the market at nearly the same rate as existing CCRCs have surrendered their licenses to become non-CCRC, rental communities. The total revenue reported for Florida CCRCs during 2009 was approximately $1.4 billion.

Residents' Rights

It is important to note that the general population utilizing CCRCs are seniors. The decision to join a CCRC represents a substantial investment of an older person's

assets, and Florida takes its responsibility to protect these consumers very seriously. In addition to the regulatory oversight structure of CCRCs discussed below, Florida law recognizes that residents of CCRCs are entitled to dignity and respect. Specifically, a section of Florida law governing CCRCs is entitled, "Residents' rights." This section states, among other things, that a resident of a CCRC may not be denied any civil or legal rights, that they are entitled to live in a safe environment, that they are entitled to be treated with dignity and respect, that they are entitled to present grievances and recommend changes in policies and procedures of the CCRC, and that they are entitled to a copy of the these residents' rights.

Overview of Regulatory Structure

OIR's regulatory emphasis focuses on four distinct areas:

1) Verifying that CCRC owners and management are reputable and responsible;
2) Ensuring information is properly disclosed to prospective and current residents;
3) Ensuring compliance with licensure requirements; and
4) Providing financial oversight.

CCRC Owners and Management

OIR considers the CCRC's principals to be a key component of the success of a CCRC facility. Prior to approving an application for licensure, Florida Statutes require a CCRC to submit evidence that the facility's owners and management are reputable and of responsible character and that they have sufficient experience to properly operate a CCRC. To make this determination, OIR requires each officer, director, owner and

manager of the CCRC to submit a biographical affidavit, a legible fingerprint card, and an investigative report obtained from an independent vendor. These biographical requirements also apply to any new officers, directors or management of existing CCRCs. These rigorous requirements ensure that people of questionable moral character are not in a position to harm Florida residents.

Disclosures to Residents

Another key component of Florida's CCRC regulation is disclosure requirements to residents. Florida Statutes contain a list of items that must be disclosed to prospective residents prior to entering into a continuing care contract. Some of the more significant items include a summary of the facility's ownership interests and its affiliations, plans for expansion, rules and regulations of the facility, the facility's policy concerning admission to and discharge from the various levels of care, a copy of the resident's rights and a summary of the most recent examination report issued by OIR. A copy of the facility's most recent annual report must also be accessible to prospective residents. A CCRC is required to submit a copy of these disclosure documents on an informational basis to OIR prior to their use.

Florida Statutes also require a number of disclosures in the residency contracts. Each contract must be filed with and approved by OIR prior to its use to ensure that all required disclosures are contained in the contract, the contract meets statutory requirements for items such as refunds provisions, and to ensure the contract is written in plain language.

Florida Statutes require additional items to be disclosed to existing residents on an on-going basis. For example, existing residents are entitled to inspect the facility's annual financial reports and audited financial statements and receive 60-day advance notice of any changes in fees and services. Management is also required to conduct quarterly meetings with residents to discuss items of concern including reasons for fee increases.

To ensure that CCRCs comply with these disclosure requirements, OIR conducts examinations of each facility at least every three years unless they are accredited by an accreditation agency such as Commission for Accreditation of Rehabilitation Facilities-Continuing Care Accreditation Commission (CARF-CCAR). Accredited CCRCs are required to be examined at least once every five years. Currently, 19 of Florida's 73 CCRC facilities are accredited through CARF-CCAC. Florida Statutes also allow OIR to conduct an examination of a facility at any time on a discretionary basis.

Licensure Requirements

The third emphasis of Florida's CCRC regulation concerns licensure requirements. For example, one of the licensure requirements is that a prospective CCRC must provide evidence of demand for a new facility. Since the viability of a CCRC is primarily governed by occupancy, it is imperative that a CCRC demonstrate sufficient demand for a facility prior to placing the residents' funds at risk. Florida accomplishes this objective by requiring a prospective CCRC to submit a feasibility study with its application for licensure, which follows a two-step application process, and through the escrowing of residents' entrance fees.

A CCRC first obtains a Provisional Certificate of Authority (PCOA) which allows the CCRC to market the facility and collect reservation deposits equal to at least 10% of each entrance fee. A CCRC is prohibited from beginning construction of the facility while under a PCOA. During the PCOA period, prospective residents' deposits are 100% escrowed.

To obtain a full Certificate of Authority (COA), a CCRC must collect a reservation deposit on a minimum of 50% of the independent living units, and submit a second feasibility study -- this one being from an independent consultant. In addition, the CCRC must prove the CCRC has secured financing for the project. OIR has found these requirements to be very important as many projects that have failed in Florida did so during the PCOA phase; these failures were primarily due to the CCRC's failing to meet the 50% reservation requirement. As a result, these facilities were halted prior to construction and the residents received full refunds.

If a facility does obtain the necessary deposits, OIR authorizes the CCRC to begin construction. Under a COA, a CCRC is allowed to access 25% of residents' deposits and entrance fees. The CCRC must maintain the remaining 75% of residents' deposits and entrance fees in escrow to reduce the financial risk to residents until the CCRC demonstrates the facility has a likelihood of success. To obtain release of the remaining initial entrance fees, a CCRC must provide evidence to OIR that the facility is constructed, a certificate of occupancy has been issued, and 70% of the independent living units are paid-in-full. In addition, CCRCs must show statutory reserve requirements have been met and an independent consultant certifies that there have been no material adverse changes with regard to the feasibility study that was submitted with

the COA application. After the release of initial entrance fees has occurred, a facility is required to escrow entrance fees for seven days during Florida's rescission period and escrow all wait list deposits which are over $1,500.

Financial Oversight

Another critical area of Florida's regulatory emphasis is financial oversight. Each facility is required to file with OIR an annual financial report, audited financial statements and a minimum liquid reserve calculation. Facilities are also required to file quarterly financial reports unless they are accredited. OIR has maintained the financial information from annual reports filed since 1990 and quarterly financial information since 1996.

OIR has used this information to construct spreadsheets that calculate a series of financial ratios to assist OIR in determining the financial viability of a facility. These ratios address a facility's profitability, liquidity, debt levels and occupancy. OIR then uses the ratios and its historical data to analyze the financial trends of a facility to determine whether OIR should take any action in regards to that facility. OIR may require a facility that is experiencing declining financial trends to submit more frequent reports for closer monitoring or OIR may require the CCRC to submit a corrective action plan to address the issues causing the financial problems. A facility with more significant problems may become subject to administrative supervision where an OIR designee oversees the operations of the facility, or a facility may ultimately have its COA suspended. A CCRC with a suspended COA is restricted from finalizing new residency contracts. A facility that experiences severe problems may have its license revoked or it

may be placed into Rehabilitation with DFS pursuant to a court order. Another option for assisting troubled CCRCs in Florida is to refer the facility to the Florida Continuing Care Advisory Council. The Advisory Council consists of three CCRC residents, three CCRC Executive Directors and four professionals familiar with the CCRC industry. The Advisory Council is charged with acting in an advisory role to OIR and assisting with any corrective action plan, rehabilitation or cessation of business plan of a CCRC upon the request of OIR.

In the unfortunate event that a facility is liquidated, Florida Statutes contain provisions to assist residents financially to relocate to other facilities. This process includes DFS becoming a creditor of the facility or through an assessment levied on other CCRCs. Fortunately, this has been a rare event and has not occurred in almost 20 years.

Another important part of financial solvency is each facility's minimum liquid reserve (MLR) which is held in an escrow account. The MLR can be used by the CCRC with OIR approval in an emergency or by DFS if the facility is in rehabilitation as Florida does not have a guaranty fund for CCRCs.

Each facility's MLR consists of a debt service reserve equal to one year of debt service payments, an operating reserve equal to 15% of annual operating expenses, and a renewal and replacement reserve which is equal to 15% of the lesser of annual operating expenses and accumulated depreciation. The operating reserve and renewal and replacement reserve are required to be unencumbered. OIR assists facilities to properly calculate their reserve requirements and then monitors the escrow accounts to ensure that the facility maintains adequate reserve funding.

In addition to emergency funding, the renewal and replacement reserve can serve as a source of inexpensive financing for facilities since the CCRC can access a portion of the renewal and replacement reserve each year to fund capital expenditures. The withdrawals are then required to be repaid in equal installments over a 36 month period.

OIR conducts its financial oversight by assigning each CCRC to one of four CCRC examiners who are responsible for their CCRCs. It is this examiner that reviews and analyzes the financial reports and ensures that a CCRC's reserves are adequately funded. In addition, the examiner reviews any new financing documents such as loan agreements, reviews and approves the escrow agreements that govern the reserve and entrance fee accounts, reviews the CCRC's investments to ensure that they comply with diversification requirements, reviews management agreements, reviews and approves any acquisition filings if a CCRC is acquired, maintains the public records for each facility and serves as a point of contact for any questions from OIR's field auditors, the public or from the CCRC. The CCRC section supervisor provides oversight of the four CCRC examiners and also performs secondary reviews of all financial reports of CCRCs that are deemed to have a higher priority level usually as a result of some financial difficulties.

Regulatory Outreach

OIR receives information from various sources concerning regulatory problems or concerns about CCRCs. For example, each year OIR hosts a meeting of the Advisory Council to discuss industry trends, issues and the regulatory environment. The residents and Executive Directors on the Advisory Council are frank in giving their opinions of areas where OIR should focus its resources. In addition, during each on-site examination,

the examiner meets with the President or Chair of the facility's residents' council to discuss any resident concerns. Furthermore, OIR maintains good relations and frequent contact with an industry association that represents many of the Florida CCRC residents (Florida Life Care Residents Association) and an industry association that represents many of the Florida CCRCs (Florida Homes and Services for the Aging). These associations often bring the concerns of their constituents to our attention.

CCRC Trends

CCRCs have continued to evolve to adapt to the changing needs of seniors. Over the last ten years Florida has seen a significant increase in the quantity and quality of services that CCRCs offer to their residents both for the convenience of residents and to obtain additional sources of revenue. For example, several CCRCs in Florida have opened their own home health care agency on campus. The resident receives the benefit of being able to live independently for a longer period of time rather than having to move to the facility's assisted living or skilled nursing units. The resident also gains the benefit of receiving services from a familiar person on campus rather than from a stranger with an outside agency. In turn, the facility gains an additional source of revenue. The facility also may use this program as a marketing tool if they provide the extra services to individuals outside the facility. We have also seen an increase in the number of CCRCs operating their own pharmacies which also provides more convenience to the resident while providing additional revenue for the CCRC.

Another new development in Florida is the "CCRC at Home" concept that may also be characterized as a "CCRC without walls." The main difference between a

"CCRC at Home" and a traditional CCRC is that the resident's independent living occurs in his or her own home rather than at an independent living unit at the facility. Therefore, a "CCRC at Home" resident eventually moves to the facility when he or she needs assisted living or skilled nursing services rather than when the residency contract has been signed. As a result, the resident typically pays a much smaller entrance fee than if he or she immediately moved into an independent living unit at the facility.

OIR has received requests from CCRCs that wish to add a "CCRC at Home" program to their existing facilities to generate more revenue. Florida also has a proposed facility that, if successful, will consist mostly of "CCRC at Home" residents. This CCRC proposed this model in response to the poor real estate market resulting in potential residents being unable to sell their homes -- the proceeds of which are typically used to pay the entrance fee due when the residency contract is signed.

Conclusion

It has been almost 20 years since a CCRC has failed in Florida, which is perhaps the greatest testament to the success of Florida's regulatory framework. (The residents affected were successfully moved to other facilities.) With that being stated, several Florida CCRC facilities have experienced financial difficulties in recent years, which is partially due to the economy, and more specifically, the depressed housing market. The housing market is especially critical as many residents need to sell their current homes (at reasonable prices) to be able to pay the entrance fees required by a CCRC facility.

OIR continues to monitor several trends in the CCRC industry as these entities adapt to changing economic circumstances. Some of these trends may be favorable,

including an expansion of services that will help generate additional revenue, and add to the diversification of CCRC revenue, which will add to these entities' financial stability.

The CHAIRMAN. Thanks very much, Mr. McCarty.
Mr. Prine.

CHARLES PRINE, RESIDENT OF CONCORDIA OF THE SOUTH HILLS CCRC, MOUNT LEBANON, PA

Mr. PRINE. My name is Chuck Prine. I want to thank the committee for providing this opportunity to explain what happened at the Covenant, where the residents lost a total of more than $26 million in refundable deposits.

Like most of the residents, my wife and I selected this community primarily because of the reputation of its sponsor, B'nai B'rith, which promoted itself as a leading operator of senior living facilities throughout the United States. It later became apparent that B'nai B'rith's actual experience was primarily in Government-financed low-income rental facilities and that it had no experience whatsoever in building and operating life-care facilities.

Furthermore, B'nai B'rith did not invest a penny of its own money in this venture, but rather set up a nonprofit corporation, which financed the construction and operation through a bond issue and bank loans. B'nai B'rith's stated plan was to draw out of the financing and operation a development fee of $1 million and a licensing fee equal to 50 percent of the quarterly net income.

Almost from the very start, it became apparent that the Covenant was in trouble. Its occupancy rate did not meet expectations. The cost of the building exceeded estimates by several million dollars. Constant repairs were required. Real estate taxes had been grossly underestimated.

All of the board of the dummy corporation set to run this facility were either B'nai B'rith International directors or employees. However, many of them never set a foot in the building. They refused repeated requests for a meeting with the Residents Council.

They allowed the escrow fund of resident deposits to be used to make up for lack of other income to pay the various bills. They became delinquent in real estate taxes and finally defaulted on their debt service. Eventually, the bond holders demanded that B'nai B'rith take some drastic action to solve the problem, but B'nai B'rith refused to put any of their funds into the situation.

Under a State act passed some 25 years ago, the Pennsylvania Insurance Department had the right to step in and appoint a trustee to take over the facility, but it refused to take this step. In 2009, the bond holders commenced a mortgage foreclosure action in State court. That action could have resulted in us being put out on the street.

Eventually, we landed in Federal bankruptcy court, where the bond holders and bank lenders refused to consider any kind of resolution in which the residents would receive a single penny. The Residents Council and the Unsecured Creditors Committee did play a role, however, in the selection of a new buyer. We were able to facilitate a sale in which the new owner agreed to honor our existing residency agreements with our life-care provisions, but with the total loss of our deposits.

Based on our experience, I would like to make four recommendations for consideration in any legislation which might be put

together to protect senior citizens from losing their life savings in questionably financed life-care projects.

One, senior housing facilities, which are financed in part by the use of interest obtained from the investment of refundable deposits from residents, should be required to place these funds in a true escrow account held by a trustee with the proviso that the principal could not be utilized for operating expenses or other purposes.

Two, every project should include a minimum of 30 percent of its financing coming from a cash investment of the sponsor/owner organization. The primary purpose should be to provide guaranteed lifetime care for residents rather than a financial program to provide a high return for speculative investors and lenders.

Three, the boards of directors of life-care facilities should include at least 33 percent residents. In effect, the residents should be players, not just pawns in the game.

Four, there should be in each State a single responsible governing agency, as opposed to responsibilities split among various State agencies. In Pennsylvania, licenses must be obtained from the Department of Insurance, the Department of Public Health, and the Department of Welfare. None of these agencies now has total control, and they do not have, either individually or collectively, sufficient staff and budget to supervise and regulate the facilities properly.

Not in any sense to diminish the loss our residents have suffered, I am happy to report that our current residents are very pleased with the operation under our new identification, Concordia of the South Hills, which is owned by the Concordia Lutheran Ministries of Pittsburgh. I might point out that Concordia of South Hills put up $15 million of their own money in cash to buy our community. There is no debt at all on the facility at this time.

Not only that, they went a step further and voluntarily gave us a $1 million endowment fund to help cover the potential losses of somebody in the assisted living or nursing who ran out of money to pay their bills.

I thank you very much for this opportunity. I would be happy to offer some other ideas about why Concordia has been successful and what could be done, but thanks for the opportunity to speak at this point.

[The prepared statement of Mr. Prine follows:]

Statement of Charles W. Prine

My name is Chuck Prine and I want to thank the Committee for providing this opportunity to explain what happened to me and to my fellow residents at the Covenant at South Hills and to offer some suggestions, based on our experience, which might afford some protection to other seniors considering a move to a CCRC.

Like most of the residents, my wife and I selected this community primarily because of the reputation of its sponsor, B'nai B'rith, which promoted itself as a leading operator of senior-living facilities throughout the United States. It later became apparent that B'nai B'rith's actual experience was primarily in government financed low-income rental facilities and that it had no experience whatsoever in building and operating life- care communities.

Furthermore, B'nai B'rith did not invest a penny of its own money in this venture, but rather set up a fully controlled "non-profit" affiliate, which financed the construction and operation of the multi-purpose building through a bond issue and bank loans. Although they had invested no money, B'nai B'rith's stated plan was to draw out of the financing and operation substantial fees and a share of the "profits". Prior to the start of construction, B'nai B'rith's controlled affiliate, the Covenant, agreed to pay B'nai B'rith Housing, Inc., another affiliate of B'nai B'rith, a development fee of $1,000,000. At the same time, pursuant to a licensing agreement, the Covenant agreed to pay B'nai B'rith Housing a licensing fee equal to 50% of its net income.

Almost from the very start, it became apparent that the community had been misrepresented to us and that Covenant was in trouble. Although a sign at the entrance on opening day advertised that there were only seven apartments still available, the highest occupancy achieved several years later was still 14 units short of capacity and fell off sharply as residents died or moved out and were not replaced. The assisted-living and nursing occupancy rates rarely met expectations. The cost of the building exceeded estimates by several million dollars. Constant repairs were required. Costs of staffing and real estate taxes had been grossly underestimated.

All of the directors of the shell corporation set up by B'nai B'rith to oversee the facility were either B'nai B'rith International directors or employees. However, many of

them never set foot in the building and they seemed to hold most of their meetings over the phone with the directors from Chicago, Texas, and Washington, DC. They refused to provide an audience for a meeting with the Residents' Council. They allowed the "escrow" fund of resident deposits to be used to make up for lack of other income to pay various bills. They became delinquent in the payment of real estate taxes and defaulted on their debt service.

Eventually, the bond holders, demanded that B'nai B'rith take some drastic action to solve the problem. B'nai B'rith refused to put any of their funds into the situation. They hid behind their shell corporation and finally agreed to hold a series of auctions. The leading bidder turned out to be an outfit which had lost its license to operate in Pennsylvania because of health-care deficiencies. They also were having licensing problems in other states.

We tried to get the Pennsylvania Insurance Department to intervene. Under a state act passed some 25 years ago, they had the right to step in and appoint a trustee to take over the facility, but the Department refused to take this step. Fortunately, the bidder was unable to obtain adequate financing and the deal fell through. I say fortunately because it later turned out that the bidder ran into major financial trouble which newspaper reports indicate was caused by a sort of Ponzi scheme in which some of the investors in their older projects were being paid high interest rates out of funds obtained from investors in their newest units.

In 2009, the bond holders commenced a mortgage foreclosure action in state court. That action could have resulted in the loss of our homes, our long term care insurance and our deposits. Eventually, we landed in Federal Bankruptcy Court where the bond holders and bank lenders refused to consider any kind of resolution in which the residents would receive a single penny. The Residents' Council and the Unsecured Creditors' Committee did play a role, however, in the selection of a new buyer. Through our efforts, we were able to facilitate an arrangement pursuant to which the new owner agreed to honor our existing residency agreements and our life care contracts, but with the total loss of our deposits.

Based on our experience, I would like to make some recommendations for any legislation which might be considered to protect senior citizens from losing their life savings and their long term care in questionably-financed life-care projects.

1. Every project should require a minimum of 30 per cent of the financing coming from a cash investment of the sponsor-owner organization. The primary purpose should be to

provide guaranteed lifetime care for the residents rather than provide a high return for Wall Street lenders.

2. Senior housing facilities, which are financed in part by the use of interest obtained from investment of refundable deposits from residents, should be required to place these funds in a true escrow account held by a trustee with the proviso that the principal could not be utilized for operating expenses or other purposes.

3. The boards of directors of the life-care facilities should include at least 33 per cent residents. In effect, these residents should be players, not just pawns in the game. In the case of the Covenant, our residents could have offered several money-saving operational suggestions if we had been granted an opportunity to be heard.

4. In view of the impending increase in longer-living senior citizens, the need for more facilities providing all phases of continuing health care is evident. There should be in each state a single responsible governing agency *as* opposed to responsibilities split among various state agencies. In Pennsylvania, licenses must be obtained from the Department of Insurance, the Department of Public Health and the Department of Welfare. None of these agencies has total control and they do not have, either individually or collectively, sufficient staff and budget to supervise and regulate the facilities.

Not in any sense to diminish the loss our residents have suffered, I am happy to report that our current residents are very pleased with the operation under our new identification, Concordia of the South Hills, which is owned by Concordia Lutheran Ministries of Pittsburgh. In just a few months of ownership, through implementation of their policies and principles, in consultation with the Residents' Council and the residents, the fiscal and operational status of the facility has greatly improved. More than twenty units have been leased to new residents during the first few months of Concordia's ownership. During the last two years of B'nai B'rith's control, only one unit was rented to a new resident. If time allows, I would be pleased to explain in more detail how and why I believe Concordia's modus-operandi will be successful and could be emulated by other life-care facilities.

I welcome your questions.

The CHAIRMAN. Thank you, Mr. Prine.

Ms. Pearson.

KATHERINE PEARSON, PROFESSOR, DICKINSON SCHOOL OF LAW, PENNSYLVANIA STATE UNIVERSITY AND DIRECTOR, ELDER LAW AND CONSUMER PROTECTION CLINIC, UNIVERSITY PARK, PA

Ms. PEARSON. Thank you very much.

I am glad to be here as well, and it is hard to follow Mr. Prine because he is so eloquent in speaking on behalf of his situation and other residents.

I feel I am also here on behalf of residents. As the Director of an Elder Law and Consumer Protection Clinic at Penn State University's Dickinson School of Law, I have had opportunities for several years to speak with residents of CCRCs not only in Pennsylvania, but around the country, as I have become more interested in this venture.

I am a fan of CCRCs. I would like them to be there when I am ready for this form of living. Therefore, when I am speaking today, I am speaking on behalf of residents. But I am also hoping that the industry is going to be as healthy as it can be.

About 6 years ago, I was approached by a group of residents at a CCRC—not Mr. Prine's CCRC, actually another one. They were concerned about an expansion plan at their particular facility. They felt that it was economically not feasible.

As with many CCRC resident groups, this was a pretty sophisticated group of residents and they had crunched some numbers, and the numbers didn't look very good. So, I asked them, "Have you approached the management of your facility?" They had, and they were not satisfied with the information they were getting in response. I asked whether they had approached the Department of Insurance, the regulating agency in their State. They said they also had done that, and they had received no substantive response.

Well, that intrigued me. What was the role of State regulation? So, I went to that same department and started asking some questions.

What I discovered was that in that particular State, annual reports were filed and then stacked in a dusty closet and never opened. I found reports that the seal had never been broken on, and that said to me, well, there is something about regulation that is not working here, and particularly in this particular circumstance.

I ended up writing an article about it. In response to the article, I talked more to State regulators. One of the State regulators said, "You know, we feel we have done a great job." I think on many respects that the State had had a good track record with CCRCs. But the State regulator said that in our State, we have had a few financial insolvencies. We have been able to solve it without formal action.

I said that is great news. What criteria were used to decide whether there was a problem? What criteria were used to solve the problems? How did you make it better? The problem was there was no collective information about that, no collective information about what were standard practices, what were good practices, and what

were poor practices. So that began to concern me about what do we mean by State regulation?

As I have talked to CCRC residents around the country, I repeatedly hear that they want financial transparency that is more than just disclosures, that also involves actuarial testing, if you will. I think that as a result of that, what I am calling for in my testimony, and I elaborated in greater detail in my written testimony, I am calling for a national residents' bill of rights on behalf of residents of CCRCs.

I think it is time to give some real meat to their ability to get useful, transparent information. I think the industry as a whole would be helped by that. The industry is served by transparency, and I think the industry with greater transparency can achieve greater health. So, I don't think the industry should be frightened by the idea of a residents' bill of rights.

So that is what I am asking for, and I am happy to respond to questions about that particular item.

Thank you very much, Senator Kohl, Senator Franken.

[The prepared statement of Ms. Pearson follows:]

Prepared Testimony by Professor Katherine C. Pearson[1]

Submitted on July 16, 2010

United States Senate Special Committee on Aging

The Importance of Resident Voices in Regulation of

Continuing Care Retirement Communities

I am pleased to be invited to speak to the Senate Special Committee on Aging and to have this opportunity to share observations based on several years of research and consultation with residents of Continuing Care Retirement Communities (CCRCs) and Life Care Communities (LFCs) in Pennsylvania and elsewhere in the United States. Thank you.

I am a law professor who focuses on law and aging policy and I am the educational director of Penn State University's Elder Law and Consumer Protection Clinic. Recently, relevant to this topic, I was a visiting scholar at Oregon State University's Gerontology and Family Studies program. During the last dozen years, I have had multiple opportunities to tour CCRC and LFC sites; to read voluminous marketing materials, application forms and contracts; to review several different state regulatory schemes; and to meet with operators and lawyers for CCRCs and LFCs. Most importantly, I have had frequent opportunities to hear from residents about their experiences and their concerns. My testimony here is based on the legal and policy issues that I perceive, from my perspective in listening to the concerns of residents.

I am a supporter of this form of long-range planning and long-term care. For many thousands of people, CCRCs and LFCs provide an active and supportive environment, with essential flexibility in both housing and care arrangements. Well-run operations enhance quality of life and make living long a pleasure. One key to success of such operations is the extent to which they can provide

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[1] I am grateful to many for assistance in my research on CCRCs, especially the students at Pennsylvania State University's Dickinson School of Law and the supervising attorneys and legal interns working in Penn State's Elder Law and Consumer Protection Clinic. Special recognition for excellence in research goes to Joshua Wilkins, Penn State Dickinson, and Ryo Hirayama, Oregon State University.

predictability about the future. Peace of mind, particularly in later years, is an important goal, and a recognized marketing concept within the industry.

I. Background for CCRC Regulation

I remember hearing the comments of John Erickson, until recently the head of one of the largest CCRC operations in the country, when he was asked in a televised interview about whether he had competitors in the business. He said, in effect, that the greatest challenge he faced was the unwillingness of people to think early enough about retirement living options, especially about what he called the "second half" of retirement, where personal care needs often increase, even for those in good health. I agree with Mr. Erickson on this point; it is tempting to view elder years from the perspective of an ostrich, with our collective heads stuck firmly in the sand.

At the same time, my research makes me realize that some CCRCs and LFCs have succumbed to ostrich-like temptations of their own, as have some state regulators. This format of collective living -- where retirees often commit their life savings to payment of large entrance fees or hefty future monthly fees, in exchange for promises about housing and services for the rest of their lives -- has existed for decades if not centuries. However, the concept first attracted serious public regulatory attention in the 1980s. Notable failures of communities made residents realize that promises can be illusory and the end-of-life consequences particularly disturbing.

Beginning in the 1980s, many states responded by enacting CCRC-specific regulatory schemes that impose licensing standards, often with rules for financial operations. The financial rules often incorporate one or more of three major themes:

First, mandatory "disclosures" to prospective and actual residents,

Second, mandatory minimum financing terms, such as rules for handling of lump-sum payments (sometimes called entrance fees) and requirements for operating reserves, and/or

Third, legal sanctions for certain prohibited conduct, such as misleading, deceptive or fraudulent business practices.

In addition, some state laws address a *fourth* theme, incorporating lessons learned during the legal reform movements of the nursing home industry, by recognizing and adopting specific legal rights for CCRC residents. CCRC residents are active, engaged adults. Many value the right to organize and participate actively in the governance of their village-like communities. Residents frequently seek to exercise their rights in connection with financial decisions and business practices that affect their daily lives and their investments in the community. While some states recognize specific rights for residents, this is the least developed area of regulation, in my opinion.

By my count, more than 30 states have enacted regulations in some form for CCRC operations. I have attached a chart of state statutes, including notes about recent amendments. There are relatively few cases that are reported; litigation of a CCRC resident's right issue is usually cost prohibitive -- and more importantly -- energy depleting for older adults.

The 1990s appeared to be a decade of relative stability and gradual but steady growth of the CCRC industry. By the late 1990s, states had reached what might be called the "teenage" years of CCRC regulation, just as the nation's overall economy seemed to permit any high-flying scheme the chance for immediate success, no matter how much leveraging or debt was involved. At the same time, there were subtle and not- so-subtle shifts within the CCRC industry. My research suggests that many states did not keep abreast with changes in the industry. Residents are aware of the challenges within the industry and, in some cases, have tried to communicate with regulators. But frequently there is no effective way for residents to raise concerns.

II. The Importance of Resident Voices in CCRCs

About five years ago, a group of residents of a CCRC asked me for a referral for experienced advice about their concerns about an expansion plan at their CCRC. They believed that the plan was unsound, and they impressed me with the

sophistication of their reasoning. CCRC residents are often a vital group, with a host of specialized backgrounds. In this instance, the group had residents with skills at crunching numbers and the outcome of their analysis was not satisfactory to them. Attempts to communicate with the management of their CCRC had not been successful. I asked whether they had talked to the state department in charge of CCRC regulation and I learned they had tried to do so, but that they had received no substantive assistance.

That intrigued me, and eventually I tried the same, with the same lack of response to my inquiry about CCRCS operating in the state. I sought information about whether there had been any failures, whether there were any facilities with complaints about financial problems or whether the department was aware of other significant management concerns at CCRCs within the state. I was told, bluntly, that the regulatory scheme required "only" disclosures and not state assessment of the financial health of licensed CCRCs.

I went to view the annual reports filed by CCRCs with that state department and discovered that the public reports were nicely stacked. As far as I could tell, they had never been opened. Since then, I have spoken to other residents and to other regulators. In some instances I have heard regulators report that they do "take action" if they receive notice of financial problems in a CCRC, and one regulator reported that he felt the work of his office had prevented bankruptcies. The latter point sounded particularly positive. I became concerned, however, when I realized that there was no system for tracing complaints and no public reporting of actions taken. It was impossible to determine what factors were contributing to any problems. Residents wanted information so that they could compare their own institution with the success or failure of others. But, there was no systemic information available from the state, even though the state was collecting relevant data.

I wrote a short article in 2006, because I was concerned even then that we were operating like proverbial ostriches, ignoring available evidence of good or less-than good CCRC operations, while we buried our heads in the sand and said "the industry looks healthy from here." In 2006, I wrote that it "seems important

to keep a watchful eye for key markers of a stable or unstable industry in light of the apparent sudden growth in CCRCs."

In 2010, we are still in need of that information and we have new reasons to appreciate the absence of the information.

I believe that many – and I hope all – CCRCs will emerge from this challenging economic time intact. I hope I am wrong in my concern that some additional CCRCs will fail, or be drastically restructured to avoid failure. My concern, during this challenging time, is that both current residents and prospective residents need information, information that is not merely stacked in dusty shelves in state offices, but that is read and synthesized and reported candidly, so that current and future residents can make appropriate decisions about their end-of-life investments in CCRCs.

I believe that some states are recognizing the need for more proactive approaches to regulatory assessment. Research discloses that at least seven states have amended their regulations since the financial crisis hit, and I have heard from other states considering changes. For example, Oregon has amended its CCRC law to require greater disclosure of the identities of persons who have direct or indirect ownership or beneficial interests in CCRCs within the state and to require resident representation on the governing boards of CCRCs. *See* Enrolled House Bill 2138, 2009 Oregon Laws Chap. 201, amending Oregon Rev. Stat. §§ 101.010-101.160, effective January 1, 2010.

In reviewing submissions filed with the bankruptcy court in Texas during the Erickson Retirement Communities' bankruptcy case, I have seen a host of objections by non-resident creditors and relatively little from residents themselves. The lack of resident objections is potentially a positive sign as that particular empire emerges from reorganization with new owners. But I also know from years of listening to residents, that some are fearful of speaking out unless they feel someone will listen seriously to their concerns. They fear that they will be shunned, encouraged to leave their homes, or subjected to other negative response if they talk about what they perceive as problems when outside of their campus walls.

State regulators can do a better job of making it safe for residents to speak, and can encourage them to speak while the problems are still solvable. The nation's nursing home industry was changed dramatically, for the better, by adoption of a national bill of residents' rights. *See* 42 U.S.C.A. § 1396r (c). I believe that a national bill of rights for residents in Continuing Care Retirement Communities is also merited, with a goal of providing residents more effective voices, including greater access to transparent financial information. The nursing home bill of rights was predicated on physical or mental vulnerability of residents. With residents at CCRCs, the concern is financial vulnerability in an older population, people who have limited energy and time.

III. Challenges Arising from CCRC Industry Developments

I believe that we must recognize that the CCRC industry is indeed a national industry, even though many CCRCS are still run as individual operations. Residents (and prospective residents) across the nation want more information about financial decisions that affect their communities. There are several key developments that concern residents across the nation.

First, although religious and fraternal organizations continue to have high-profile positions within the CCRC industry, in some instances the "church" or "lodge" in question has little involvement in the daily operation of the facilities. Some non-profits distance themselves from management decisions, decisions that have financial impact on residents. This was once an industry of mostly non-profit operation facilities managed by their own staffs, and certainly there are many CCRCs that are entirely locally owned and operated. I perceive a trend, however, toward non-profit "affiliation" of facilities. Ownership is still in the hands of non-profits, but management is increasingly "contracted out," and in the hands of management companies (which are often for-profit companies). Residents indicate to me that they would like greater accountability from non-profit affiliates for the management issues *and* financial operations of their facilities.

Second, for-profit companies in some instances have recognized the benefit of non-profit structures and have created elaborate tiers of for-profit and not-for-

profit companies, including development companies, ownership companies, and management companies. These are often tied together with contracts that permit substantial profits to be harvested. Financial instability of any component of these systems affects the overall system. This trend poses unique challenges for anyone attempting to determine financial soundness and accountability. Residents indicate to me that they are often unable to pierce the veils of elaborate structures to get information from the people with the power to make key financial decisions.

Third, residents are concerned about trends in taxation that affect their communities, a concern that is undoubtedly shared by the operators of CCRCs. While not strictly speaking a residents' rights issue, I believe that the soundness of the industry may depend on better guidelines for what will or will not qualify for non-profit consideration in the operation of CCRCs. Residents should not be hit with bad news after their investment decisions are already made. This is a challenge for states (and local taxation authorities), to coordinate their tax collection goals with other regulatory goals for the industry, while still fostering a climate that supports sound growth of a valuable industry.

Finally, the boom in the real estate market that allowed many to reap substantial increases in value from the sales of their homes coincided with abundant creativity and expansion on the part of the CCRC developers. For example, as recently as May 2008, one CEO of a CCRC community operation predicted that his then-current empire, with 20 facilities serving 22,000 residents in 12 states, would grow in the "next couple of years" to serve more than 50,000 residents. This was an interstate operation, even though it had state-specific legal structures. As you may be aware, it was John Erickson who made that prediction, less than 18 months before his communities filed for protection and reorganization under the bankruptcy laws. Erickson Retirement Communities is probably a dramatic example of a uniquely complex structure, but my sense is that other facilities have been moving in the direction of complexity, sometimes driven by the need for more cash or resources to stay solvent. We are seeing, and I believe will continue to see, CCRCs consolidating or joining together, and thus creating more co-dependent entities.

One couple expressed their concern during Erickson Communities bankruptcy case about fees paid to one facility that were used for construction of apartments in other Erickson facilities. They were concerned because they did not know about the leveraging until after the bankruptcy case had been filed. *See* Document 354, Erickson Retirement Communities et al, Case No. 09-037010, U.S. Bankruptcy Court, Northern District of Texas.

Whatever the reasons for the increasing complexity of the structures, it seems wise to recognize that increased complexity contributes to the need for regular reassessment of the industry. Financial decisions in one CCRC unit potentially affect the financial stability of other units within that same ownership group, and ownership can cross state lines. Regulators need to think beyond the borders of a single CCRC campus and beyond the borders of a single state system of regulation. National guidelines are needed. I am aware that the industry itself is preparing new "best practice" guidelines. That is very encouraging; however, I believe this does not eliminate the need for public regulation.

Many in financial circles have had to reconsider their exuberance in predictions. We need to recognize that difficult financial circumstances will not be cured by punitive measures, but also, that the challenging financial climate for CCRCs should not be viewed as an excuse for non-regulation. It is not satisfactory to residents when someone says, "the CCRC industry is too complex" or "too sophisticated" to permit effective state or federal regulation. We need sophisticated regulatory professionals who can and will listen to residents.

IV. A National Bill of Rights for CCRC Residents

The CCRC industry should not be surprised or even upset about federal inquiry into the CCRC industry and the concern for greater financial accountability. The regulation of CCRCs, even those with financial ties that cross state borders, has been largely a function of state regulators. But the industry benefited when Congress adopted federal legislation to assist CCRCs, tied to internal financing questions. In 2005, Congress amended the Medicare and Medicaid laws to require residents at Continuing Care Retirement Communities to spend declared resources before applying for Medicaid for nursing-care needs,

thus potentially limiting the healthier spouse's use of the couple's savings. *See* Deficit Reduction Act of 2005, Pub. L. No. 109-171, 2006 Stat. 1932, codified as 42 U.S.C.A. § 1396r (c) (5) (B) (v). *See also* 42 U.S.C.A. §1396p. Thus, CCRC owners have already benefitted from federal regulation.

I am aware that there is little appetite for regulation that will cost additional money to implement. Therefore, with my testimony here I am focusing on a single recommendation, and I believe it is cost efficient, although not cost free to implement properly. I recommend providing residents of CCRCs with a national set of threshold rights, a national bill of CCRC resident rights, geared to their particular concerns about financial accountability and transparency in operations. Many CCRCs already provide, by contract, guaranteed rights to residents. The question is whether such rights adequately address the concerns of residents who want greater financial accountability.

In conclusion, just as the CCRC industry benefitted from federal legislation to address financial concerns, so it is reasonable to expect residents – voters – to be given similar consideration. I believe the first important step is a national bill of rights for residents of Continuing Care Retirement Communities. Providing a national base-line for recognition of the voices of CCRC residents will encourage states and state regulators to work together, will encourage the industry's best practice guidelines to be nationalized, and will help residents enjoy CCRCs for many years to come.

Continuing Care Retirement Community (CCRC& LFC) Statutes – 50 State Survey (updated 7/15/2010)

State	Statute	Cases of Interest	Last amended	Amendments added
Alabama				
Alaska				
Arizona				
Arkansas	Continuing Care Provider Registration Act, ARK. CODE ANN. §§ 23-93-101 to 23-93-114.		2003 & 2009.	Technical changes.
California	CAL. HEALTH & SAFETY CODE §§ 1770-1793.84.	Matthews v. State, 163 Cal. Rptr. 741 (Cal. Ct. App. 1980) (CCRC debtor lacked standing to assert claim that state failed to revoke license when debtor failed to maintain statutory reserve levels).	Minor amendment in 2009.	Indicates that no reimbursement charges are required by this act.
Colorado	COLO. REV. STAT. § 10-16-413.5 (slight application to CCRCs).		Effective 1999.	
Connecticut	Management of Continuing Care Facilities, CONN. GEN. STAT. §§ 17b-520 to 17b-549.		Amended 2008 & 2009.	2008: clarified application to in-home services; 2009: Technical changes.
Delaware				
Florida	FLA. STAT. §§ 651.011 to 651.134.	Clearwater Land Co. v. Koepp, 778 So.2d 1022 (Fla. Dist. Ct. App. 2000) (residents could convert "free" nursing center care into home care services on the basis of the daily charges for nursing home care, not assisted living care).	Amended 2010.	Provided further direction for annual reports; provided for non-refundable escrow fees; clarified rights to rescind residency contract; strengthened "residents' council".
Georgia	GA. CODE ANN. § 31-6-47; Ga. Code Ann. sec. 33-45-1 to 33-45-12.		Effective 1990.	
Hawaii	HAW. REV. STAT. § 431:10H-219.		Enacted 1999.	
Idaho	Idaho Continuing-Care Disclosure Act, IDAHO CODE ANN. §§ 26-3701 to 26-3715.		Enacted 2005.	
Illinois	20 ILL. COMP. STAT. 3960/12.2 (permits State Board to collect fees from CCRCs).		Enacted 1995.	
Indiana	IND. CODE§§ 23-2-4-1 to 23-2-4-24.		Amended 2009.	Rewrote significant portions (largely definitions and scope).
Iowa				
Kansas				
Kentucky	KY. REV. STAT. ANN. §§ 216B.015, 216B.040, 216B.330-216B.339.		Amended 2007.	Changed name of state agency to which certain reports are submitted.

ıuisiana	Louisiana Continuing Care Provider Registration and Disclosure Act, LA. REV. STAT. ANN. §§ 51:2171-51:2188.		Enacted 1987, portions amended in 1989.	Minor textual revision.
Maine	Continuing Care Retirement Communities, ME. REV. STAT. ANN. tit. 24-A §§ 6201-6228.		Portions amended in 2003.	Minor textual revision.
Maryland	MD. CODE ANN., HUM. SERV. §§ 10-401 to 10-499.		Enacted 2007.	
Massachusetts	MASS. GEN. LAWS. ch. 93 § 76.		Amended 1996.	Added additional provisions for "long term care services" and other continuing care facilities.
Michigan				
Minnesota	Continuing Care Facility Disclosure and Rehabilitation Act, MINN. STAT. §§ 80D.01-80D.20.		Amended 1981.	
Mississippi				
Missouri	MO. REV. STAT. § 198.048 (brief treatment of CCRCs).		Enacted 1984.	
Montana				
Nebraska				
Nevada				
New Hampshire	N.H. REV. STAT. ANN. §§ 420-D:1 to 420-D:27.		Amended 2010.	Significant changes indicated within NEW HAMPSHIRE 2010 SESSION LAWS 2010 REGULAR SESSION Ch. 144
New Jersey	Continuing Care Retirement Community Regulation and Disclosure Act, N.J. STAT. ANN. §§ 52:27D-330 to 52:27D-360.	Seabrook Village v. Murphy, 853 A.2d 280 (N.J. Super. Ct. App. Div. 2004) (resident discharged from continuing care facility has a right to a hearing, and discharge must be based upon "just cause").	Enacted 1986.	
New Mexico				
New York	Continuing Care Retirement Communities, N.Y. PUB. HEALTH LAW§§ 4600-4624; A-Fee-For-Service Continuing Care Retirement Communities Demonstration Program, N.Y. PUB. HEALTH LAW§§ 4650-4676.		Amended 2003.	Minor additions.
North Carolina	Continuing Care Retirement Communities, N.C. GEN. STAT. §§ 58-64-1 to 58-64-85.		Amended 2003.	Interchanged terms.
North Dakota				
Ohio	OHIO REV. CODE ANN. §§ 173.13, 173.42.		No recent amendments.	
klahoma				

Oregon	Continuing Care Retirement Community Provider Registration Act, OR. REV. STAT. §§ 101.010-101.160.		Amended 2009.	Permits establishment of Resident Councils; mandates registration, disclosure, and reporting to state.
Pennsylvania	Continuing-Care Provider Registration and Disclosure Act, 40 PA. STAT. ANN.§§3201-3225.	Moravian Manors v. Commonwealth, 521 A.2d 524 (Pa. Commw. Ct. 1987) (court interpreted Continuing-Care Provider law in determining operation was a "continuing care provider").	No recent amendments.	
Rhode Island				
South Carolina	State Continuing Care Retirement Community Act, S.C. CODE ANN. §§ 37-11-10 through 37-11-140.		Amended 2000.	Limited scope of act.
South Dakota				
Tennessee				
Texas	Texas Continuing Care and Disclosure and Rehabilitation and Disclosure Act, TEX. HEALTH & SAFETY CODE ANN. §§ 246.001 through 246.117.		Portions amended 1993, 1995.	Altered terms.
Utah				
Vermont	VT. STAT. ANN. tit. 8 §§ 8001-8018.		Amended 2010.	Added further provisions for "Resident assistance fund."
. irginia	VA. CODE ANN. §§ 38.2-4900 to 38.2-4917.		Last amended 2010.	Technical changes.
Washington	State Health Planning and Resource Development Act, WASH. REV. CODE§§ 70.38.015-70.38.920 (sections not limited to CCRCs).		Portions amended 2005.	Added provisions pertaining to record keeping.
West Virginia	Residential Care Communities, W. VA. CODE§§16-5N-1 to 16-5N-16.		Effective 1997, amended 2005.	Added section for visitation; modified minimum standards.
Wisconsin	WIS. STAT. §§ 647.01-647.08.		Portions updated in 2004 & 2007.	No significant changes
Wyoming				
West Virginia				
Puerto Rico				
District of Columbia	D.C. CODE §§ 44-151.01 through 44-151.18.		Effective 2005.	

The CHAIRMAN. Thank you very much, Ms. Pearson.

Mr. Erickson.

DAVID ERICKSON, VICE PRESIDENT OF LEGAL AFFAIRS, COVENANT RETIREMENT COMMUNITIES ON BEHALF OF THE AMERICAN ASSOCIATION OF HOMES AND SERVICES FOR THE AGING, SKOKIE, IL

Mr. ERICKSON. Thank you, Chairman Kohl and members of the committee.

I am here testifying on behalf of American Association of Homes and Services for the Aging and Covenant Retirement Communities. Covenant Retirement Communities has 12 CCRCs in 8 States serving over 5,000 residents. Our primary contract has an entry fee and provides for modified life care.

Most of our residents choose a 2 percent per month declining refund option. We also offer 90 percent refunds, but less than 10 percent of our residents choose this option. We also offer full life-care contracts in two communities.

Let me begin by saying that Covenant Retirement Communities is not connected in any way to Covenant at South Hills. We happen to share the word "covenant" in our name, but beyond that, there is absolutely no connection.

We are, of course, very aware of the significant loss that the residents of Covenant at South Hills suffered from failure of that community. That bankruptcy, indeed any bankruptcy in our industry, is something we take very seriously.

CCRCs exist for one reason—to serve the needs of our residents. Anytime we fail to do that, it is a failure we collectively bear. We deeply regret that it happened.

There are nearly 1,900 CCRCs across the country. The vast majority remain financially strong and viable. We recognize that a small number of CCRCs are vulnerable, especially those that opened during the recession or are single-site campuses, and those are being carefully monitored by our lenders.

Notwithstanding the situation at Covenant at South Hills, there are relatively few CCRCs which have faced payment defaults or filed bankruptcy. Even in those rare cases, the CCRCs have done so without adverse impact to the financial security of their residents. The Covenant at South Hills was clearly an exception. Fortunately, the residents did retain their right to remain at the CCRC under new ownership and did not have to move.

Without question, the weak economy has impacted CCRC occupancies, particularly CCRCs located in regions of the country hardest hit by declining housing values. That said, occupancy rates of CCRCs overall continue to exceed those of free-standing assisted living communities, nursing homes, and even free-standing independent living retirement communities.

The ability of CCRCs to actually weather the economic storm as well as they have speaks volumes for the strong preference seniors have for a continuum of care lifestyle. Not coincidentally, the typical CCRC reports that resident referrals are the strongest source of leads.

I would like to briefly comment on two reports recently produced by a CCRC task force which I had the honor of chairing. It was

formed earlier this year and was comprised of leading experts in the CCRC operations, tax-exempt bond financing, and legal and regulatory requirements.

The first report is "Continuing Care Retirement Communities: Suggested Best Practices for CCRC Disclosure and Transparency." The second report is entitled "Today's Continuing Care Retirement Community: The Strengths of This Popular Senior Living Model, Its Stress Points and Challenges, and Outlook for Tomorrow." Both of these reports have been supplied to the committee.

CCRCs are an important option in living arrangements for seniors. Over the decades, CCRCs have successfully offered a continuum of care highly desired by seniors. The vast majority are financially stable and provide a style of living which emphasizes healthy aging, have numerous options of living and financial arrangements to meet a variety of consumer preferences, and promote an active and engaged lifestyle.

Unlike the housing market or equities market, where large numbers of seniors have had their portfolios affected, the vast majority of CCRCs have provided security and care for seniors who will know where they will live and receive care usually for the rest of their lives. CCRC residents have moved into communities where they have chosen a lifestyle that provides comfort for their families, who will not have to worry about what will happen to Mom and Dad as they age. As the "CCRC Story" reports, a common sentiment among CCRCs residents is that they wished they would have moved to the CCRC sooner.

CCRC providers recognize the importance and the need for effective State regulatory oversight of CCRCs. But we also believe the regulatory framework has to maintain a balance to provide adequate consumer protection without unreasonably restricting growth and development of CCRCs.

There is certainly a place for reasonable requirements, including disclosure requirements, capital reserves, and protections of refundable entry fees. However, if these requirements become too prescriptive, expansion of existing CCRCs and development of new ones will be slowed or halted, and seniors will lose the opportunity to move into a living environment they clearly prefer.

Excessive regulatory restrictions could also prevent CCRCs from offering the varieties of living arrangements that consumers seek. Similarly, requirements related to the operating and governance structure should be reasonable. For example, many CCRC sponsoring organizations, often not-for-profit religious and fraternal organizations, recognize a need in their local community for the types of services a CCRC provides, but lack the expertise to develop and operate the CCRC.

Third-party developers and operators fill this need, but that doesn't mean that the not-for-profit sponsor isn't an active partner in the operations of the CCRC. In fact, if you look at most of these types of operational structures, you will find an active and involved board of trustees.

Thank you for this opportunity to testify on behalf of CCRC providers across the country. We are proud of our longstanding history in serving seniors and stand by and ready to assist the efforts of this committee in any way we can. We will continue to work col-

laboratively with State regulators to support strong and effective State regulations and oversight.

[The prepared statement of Mr. Erickson follows:]

Testimony of David Erickson, Vice President for Legal Affairs, Covenant Retirement Communities

On behalf of the American Association of Homes and Services for the Aging (AAHSA)

Submitted to the U.S. Senate Special Committee on Aging

Hearing on *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?*

July 21, 2010

American Association of Homes and Services for the Aging
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Testimony for David Erickson

Thank You Chairman Kohl, Ranking Member Senator Corker and members of the committee.

My name is David Erickson; I am Vice President for Legal Affairs for Covenant Retirement Communities.

I am here testifying on behalf of the American Association of Homes and Services for the Aging and Covenant Retirement Communities.

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There are nearly 1,900 CCRCs across the country---the vast majority of which remain strong and financially viable. Notwithstanding the situation at Covenant at South Hills, there are relatively few CCRCs which have faced payment defaults or filed for bankruptcy. And even in those rare cases, the CCRCs have done so without adverse impact to the financial security of their residents—the Covenant at South Hills was clearly an exception. Fortunately, the residents did retain their right to remain at the CCRC under the new ownership and did not have to move.

Without question, the weak economy has impacted CCRCs' occupancies, particularly CCRCs located in regions of the country hardest hit by the decline in housing values. That said, occupancy rates of CCRCs overall continue to exceed those of free-standing assisted living communities, nursing homes, and even free-standing independent living communities. The ability of CCRCs to actually weather the economic storm as well as they have speaks volumes for the strong preference seniors have for a continuum of care lifestyle. Not coincidentally, the typical CCRC reports that resident referrals are the strongest source of leads.

I would like to briefly comment on two reports recently produced by a CCRC task force which I had the honor of chairing. It was formed earlier this year and was comprised of leading experts in CCRC operations, tax-exempt bond financing, and legal and regulatory requirements.

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Continuing Care Retirement Community (CCRC): The strengths of this Popular Senior Living Model, its Stress Points and Challenges...and Its Outlook for Tomorrow". Both of these reports have been supplied to the Committee.

The "Suggested Best Practices for CCRC Disclosure" was developed to help CCRCs in reviewing their individual practices for disclosure; to assist prospective residents in making as informed a decision as possible about moving into a CCRC; and to keep current residents informed. Most CCRCs strongly support disclosure and transparency and routinely disclose a significant amount of information to residents prior to move-in. The "Suggested Best Practices" publication was simply an effort to provide guidance and document these practices.

The other report prepared by the task force is entitled "Today's Continuing Care Retirement Communities." It presents a historical overview of CCRCs, describes the variety of services offered, and discusses the current financial outlook for CCRCs. This report was thoroughly researched and we believe is an accurate and fair analysis of CCRCs' financial performance and outlook for the future, which we believe is very strong. As shown in this report, CCRCs have evolved over the last decades, diversifying the types of services and amenities they offer in response to growing consumer preferences for choices.

CCRCs are an important option in living arrangements for seniors. Over the decades, CCRCs have successfully offered a continuum of care lifestyle highly desired by seniors. The vast majority are financially stable and provide a style of living which emphasizes healthy aging; have numerous options of living and financial arrangements to meet a variety of consumer preferences; and promote an active and engaged lifestyle. Unlike the housing market or equities market, where large numbers of seniors have had their portfolios affected, the vast majority of CCRCs have provided security and care for seniors who will know where they will live and receive care usually for the rest of their lives. CCRC residents have moved into communities where they have chosen a lifestyle that provides comfort for their families who will not have to worry about what will happen to Mom or Dad as they age. As the "CCRC Story" reports, a common sentiment of CCRCs residents is that they wished they would have moved into the CCRC sooner.

CCRC providers recognize the importance and need for effective state regulatory oversight of CCRCs. But we also believe this regulatory framework has to maintain a balance that provides for adequate consumer protections without unreasonably restricting growth and development of CCRCs. There is certainly a place for reasonable requirements including disclosure requirements, capital reserves and protections of refundable entry fees. However, if these requirements become too prescriptive, expansion of existing CCRCs and development of new ones will be slowed or halted and seniors will lose the opportunity to move into a living environment many clearly prefer. Excessive regulatory restrictions also could prevent CCRCs from offering the varieties of living arrangements that consumers seek.

Similarly, requirements related to the operating and governance structure should be reasonable. For example, many CCRC sponsoring organizations, often not-for-profit religious or fraternal organizations, recognize a need in their local community for the types of services a CCRC provides, but lack the expertise to develop and operate the CCRC. Third party developers and

operators fill this need, but that doesn't mean the not-for-profit sponsor isn't an active partner in the operations of the CCRC. In fact, if you look at most of these types of operational structures, you will find an active and involved Board of Trustees.

Thank you for this opportunity to testify on behalf of CCRC providers across this country. We are proud of our long-standing history in serving seniors across this country and stand ready to assist the efforts of this Committee in any way we can. We will continue to work collaboratively with state regulators to support strong and effective state regulations and oversight.

The CHAIRMAN. Thank you very much, Mr. Erickson.

We are joined today by Senator Franken from Minnesota to make what comments you would wish.

STATEMENT OF SENATOR AL FRANKEN

Senator FRANKEN. Thank you, Mr. Chairman, and thank you for holding today's hearing on this important issue to seniors in Minnesota and across the country.

I want to thank all of the witnesses for testifying today.

One of the biggest challenges facing Minnesotans today is figuring out how to make sure that they will have the services and the supports that they need to maintain the quality of life as they get older. For many Minnesotans, this means being able to live at home, maintain their independence, and be with their families.

But there are a lot of options for long-term services and supports out there, and it can be hard to know just which one to choose. This is especially the case when you don't know what your health needs or your spouse's health needs may be in the future.

Continuing care retirement communities are an attractive option for some seniors because they offer the opportunity to stay in their communities, even as their long-term care needs change. In many cases, these communities can provide the security and stability that many seniors are looking for.

But it is critical that seniors have access to all the information that they need to decide whether a continuing care retirement community is right for them, like information about the owners and the managers of the community and what financial risk there may be. It is also important that seniors have a voice and can play an active role in decisions about their care.

Thank you for your testimony. I read it last night, and I am looking forward to hearing your answers to questions as to how we can better enable seniors to be informed consumers and active decision makers when it comes to their long-term care options.

Thank you all for being here today again and for sharing your expertise.

Thank you.

The CHAIRMAN. Thank you very much, Senator Franken.

Ms. Pearson, when you talked about a bill of rights, would you expand on that a little bit?

Ms. PEARSON. Yes. I think I have spent some time thinking about this. In essence, what we are talking about is when often the people who know best what the problems might be are the residents in a particular facility. When they want more information, sometimes there is a bit of stonewalling that goes on.

So I think what I am really talking about is a financial bill of rights, the ability to get more information when they feel it is necessary. There needs to be somebody to hear when they speak and when they want that information. Right now, that would be the State regulators.

So if a particular percentage of residents at a facility went forward to a State regulator and said we need more information about this particular topic, that percentage would trigger that actuarial inquiry. So I think what I am really talking about is a financial bill of rights.

The CHAIRMAN. That would give the residents or the potential residents what kind of information?

Ms. PEARSON. I think part of the challenge here is that as each facility adapts with time, adapts to financial circumstances with time, they get creative with their financing. I think that one of the things that happens is the residents begin to get a sense of that.

They see, for example, the use of contract management coming in, cutbacks in services, things like that, and they end up wanting to know what are the reasons for that, where is the money going? You know, the financial fees that we have paid, does it really have to be this way?

So I think that particularly with respect to actuarial soundness, when that type of inquiry comes about, the States could require a projected type of actuarial study and not simply what goes on in most States, unlike Florida. Florida does better at this. Most States simply require a point in time financial report, rather than an actuarial study.

The CHAIRMAN. All right. Mr. McCarty, how many of these facilities do you have in Florida?

Mr. MCCARTY. We have 73 licensed facilities in our State that cover the contracts A and B as described in the GAO report, where anytime you have to put up cash up front for the facility, it has to be regulated by the Office of Insurance Regulation. We share that responsibility with the Agency for Healthcare Administration, which does the quality control to ensure the quality of services, and the Department of Financial Services, which handles our complaints. That covers 30,000 residents in Florida.

The CHAIRMAN. Is it fair to say that Florida's CCRCs are under your supervision?

Mr. MCCARTY. Yes, they are under my supervision.

The CHAIRMAN. Do you regard that as being important?

Mr. MCCARTY. I believe it is a critical part of my responsibility and my mission to protect the solvency of the CCRCs. Yes, sir.

The CHAIRMAN. So you would recommend that CCRCs across the country should be regulated, based upon your experience in Florida?

Mr. MCCARTY. Based upon my experience in Florida, we have had a long tradition, since 1953, of regulation of CCRCs. That has been certainly accelerated in the 1970's and 1980's. I think that we have a very strong bias in our State for protecting what we believe are very vulnerable citizens, and we think that if you are protected in Florida, you should be protected in every State.

I certainly support what Ranking Member Corker has said about how a State-based regulatory system is a good system, and I think you can harmonize a State-based regulatory system with some minimum standards that may be established by the Congress. If, in their wisdom, they choose to establish those standards, you could use the Medicare supplement insurance model as one where you task the National Association of Insurance Commissioners, who are the experts in this area, to come up with national standards that States would have to abide by.

That may be one way of achieving those consumer protections with the least intrusion on the States' sovereignty.

The CHAIRMAN. How many of the residents of CCRCs in Florida or what percentage of the residents pay an upfront fee?

Mr. MCCARTY. Well, all of the ones pay an upfront fee that are going into our facilities.

The CHAIRMAN. They all do?

Mr. MCCARTY. They all do.

The CHAIRMAN. Some, many of them move out, have a change of idea, change of lifestyle?

Mr. MCCARTY. Yes.

The CHAIRMAN. Are there difficulties in getting the refund back?

Mr. MCCARTY. Refunds are governed by—governed under Florida law. They generally receive their refunds within 120 to 200 days.

The CHAIRMAN. So you have not experienced difficulty in getting their refunds back to those who decide to move away?

Mr. MCCARTY. No. Again, we have a very broad regulatory framework that looks at required minimum reserves. We require companies to escrow that money to protect that money in the event the consumers choose to exit and go to another facility.

The other thing I think is very important is, as a previous speaker has addressed is providing information and not just disclosure, general disclosure, but provide meaningful financial information. We understand that our elderly population is a vulnerable population, but they are also very intelligent. If you provide uniform input data points where they can readily compare one facility to another facility, we need to give them the tools to make those kinds of comparisons.

The CHAIRMAN. Good. Well, Mr. Prine, you didn't have that experience in Pennsylvania, did you?

Mr. PRINE. No, we did not. The information that is provided to the State of Pennsylvania is reviewed, I am sure, to some degree. But I don't think it is studied to the extent of really trying to take it all apart and see why it works or why not and project what would happen in the future.

One of the problems with all of these facilities is they may look good theoretically on paper, but this is a kind of business where if you get behind in the flow of income from new people coming in, if a place is slow to rent up, it starts to lose ground immediately. The taxes don't stop. The monthly bond payments don't stop.

Finally, you have to look around for other sources of funds. What happened in our situation is they immediately tapped, in effect, the residents' deposits and started using them. Even that couldn't catch up with how far behind they started to fall.

When we tried to get the State insurance department to intervene, they did meet with us. Mr. Johnson, the insurance commissioner for Pennsylvania, did come over to the Covenant. He explained very carefully that they never had a facility in the State of Pennsylvania ever go through a bankruptcy and close down, and he was sure things would work out in the long run and just be patient.

Well, they didn't work out in the long run. They just kept getting worse and finally got so bad that the bond holders ultimately forced a sale. But I would like to point out one thing about the new people that moved in, which shows the difference in the way a place could be operated poorly and a place could be operated well.

The new people put up cash to buy the place. They eliminated completely the $4 million a year in interest payments that were a noose around the neck, really, of the previous facility. They put their own money into it. They have a policy which is far different from using the residents' deposits. They put the deposits aside in an account.

Interestingly enough, if the value of that account, because of what it is invested in, decreases, they put more money in to keep it up to a balance that is equal to the potential deposit pay out. If they had to—if everybody at once left, they would still be able to return the deposits. This is an extremely conservative way of operating but it is the only really safe way to prevent this possible kind of disaster occurring elsewhere.

The CHAIRMAN. What happened to the fees? Did you say $26 million? What was that number?

Mr. PRINE. Twenty-six million dollars of resident deposits were lost completely. We didn't get one penny of that back.

The CHAIRMAN. So that was a disaster.

Mr. PRINE. That is the life savings of a lot of people. This ranged from somewhere about $90,000 to $300,000 per apartment.

The CHAIRMAN. That is a disaster.

Ms. Cackley, is that tremendously unusual? Do you have any way of indicating whether or not it is a problem across the country, or is it something that occurred as a sign to us never to see it happen again, but it doesn't happen hardly at all?

Ms. CACKLEY. It does not happen often, as best we have been able to tell. But it is certainly a disaster, and it is a risk that is of concern and needs to be paid attention to as we move forward. As more CCRCs come into existence, as our population ages and demand for such facilities increases, it is certainly something that is a concern and needs to be prevented in the future as well.

The CHAIRMAN. I suppose you would assure us or tell us with some level of certainty, Mr. McCarty, that that kind of a situation is most unlikely in Florida because of the regulation and oversight that you have?

Mr. MCCARTY. I would say that is generally true, sir. I believe that to be the case. I think that ensuring that you have close scrutiny of the financial statements and so that you can use your financial analyst to evaluate trends and conditions before they become a problem.

One of the things that we have been successful doing in Florida is identifying problems early on so that we can take a number of corrective action plans as necessitated by the financial condition of the company. That most oftentimes is bringing in a new purchase or acquisition, and that only works if you get involved in that process early enough in the deterioration of the financial condition of the company.

I can't predict what will happen in the future, and we certainly have some unique challenges today with the collapse of the marketplace. Many Floridians have purchased homes that are worth far less today than they were a few years ago. So, that is putting a tremendous—a lot of stress on new people moving into facilities. So, we still need to see how that is going to pan out.

But companies have been resourceful. They have been moving to providing other services where they can make profits, but they also are moving toward fee-for-service and rental beds, which augment the bottom—the balance sheet for the company.

The CHAIRMAN. Before we turn to Senator Franken, Mr. Prine, do you want to make a comment?

Mr. PRINE. Yes. One thing that I think would be very interesting—and it sort of follows up on the comments of some of the others here—is if the statements that these facilities produce would really show how much of the residents' deposit is still in the account and how much has been spent. I mean, this goes on, and they don't fold up necessarily, but they could be way behind.

If they had a run that several people moved out at once, they might have trouble immediately being able to pay everybody off and actually couldn't pay everybody off because they have used some of those deposits for other purposes.

There is only one safe way to do this, and that is to lock the deposits up. This is nothing wrong with using the interest of those deposits. That is the purpose of this type of financing. If you have $26 million, you get over $1.5 million in interest or something like that to operate the place. But then you shouldn't be allowed to dip into the principal.

When the principal goes way down, of course, the amount of interest that they are getting on it goes way down. So it keeps going further down. If you have very many people move out—and of course, in some places, they don't pay until somebody else moves in. We had a lot of people that moved out, and 2 or 3 years later, they still hadn't received a penny and never did get a penny of what they expected when they moved out.

There might have been good reasons for them to move somewhere else, to go somewhere where their kids lived or some other reason. This wasn't just a matter of dissatisfaction or something. Things happen in people's lives that they might have to change where they want to live.

But the refund money ought to be there, and it ought to be guaranteed that it is there.

The CHAIRMAN. Yes. Senator Franken?

Senator FRANKEN. Thank you, Chairman Kohl.

Commissioner McCarty, have you ever had a CCRC fold in Florida?

Mr. MCCARTY. Yes.

Senator FRANKEN. You have?

Mr. MCCARTY. It was 18 years ago.

Senator FRANKEN. OK. You know, it seems to me that when seniors put up a deposit to receive services in a continuing care retirement community, they expect that it will follow through as promised to provide them with services when they need them, and I just think that is a reasonable expectation.

It sounds, from Mr. Prine's experience, that there was no disclosure to the residents of what was going on. What, Commissioner, can we do to strengthen disclosure requirements so that seniors understand the financial risks that they may be taking on?

Mr. MCCARTY. Well, I think some of the members who have testified today touched on some of those concerns. I think it is critically

important that the contracts be reviewed so that they are clear and unambiguous as to the terms and conditions. The contract should spell out very specifically in clear, plain language how the refunds are calculated and how the monies will be retained.

I think there ought to be requirements to ensure that monies are escrowed and in an appropriate fashion so that there are still sufficient funds to run the facility, but that there is some guarantee that in a return or refund that those monies are available.

I think you need to have, again, as I stated before, a full complement that involves appropriate licensing, strict standards on how money is to be handled, disclosing to consumers information about their bill of rights and protection of them in the facility, but also their financial rights with regard to information about the financial standards and have appropriate resources on the State regulatory system to analyze the information that comes in.

Obviously, if you are getting financial trends, actuarial reports, or financial statements that are not reviewed and analyzed in the context of other facilities and trends and conditions, that information is not particularly useful. That information is necessary for you to have early detection. So early detection leads to early intervention to prevent future insolvencies.

Senator FRANKEN. Ms. Pearson, the culture of long-term care is changing. I think that is the word they use, "culture." As more options become available to seniors, I think the whole point is that the seniors play an active role in deciding how, when, and where they receive their care.

For example, there is a nursing home in Perham, MN, now where if a resident wants to stay up and watch a Twins game, he or she stays up and watches the Twins game. Then if he or she wants to sleep late, they sleep late. Everything isn't dictated by the meal, you know, breakfast at 6:30, lunch at 11, dinner at 4. I think sometimes we forget how important it is for people to decide, to make their own decisions on how they are living.

I was wondering about the boards, the governance of long-term care facilities. What do you think about Mr. Prine's proposal to require a certain percentage of CCRCs, CCRCs' board of directors to be made up of residents?

Ms. PEARSON. I am in favor of it. One of the things that the very first group of residents that contacted me asked me about was whether or not they could be on boards. Their particular facility was taking the position that there was a conflict of interest for residents to be on governing boards, which is kind of ironic in a way.

Certainly, other States have found that it is possible to have residents on boards and that it works quite well. It becomes a way of providing transparency of information, and it also eliminates one of the qualities that some residents have complained to me about—that notion that now that you are older, don't worry your graying head about how this facility is run. We will take care of it for you.

Well, these people are dynamic people. They don't like that paternalistic attitude, understandably so. One of the ways to do it is to provide residents a voice on the governing boards, and I think many healthy CCRCs do that. In fact, I think perhaps, Mr. Erickson, your CCRCs provide a governing board.

Senator FRANKEN. Could this be part of your bill of rights?

Ms. PEARSON. It certainly could be.

Senator FRANKEN. OK. Mr. Prine, speaking of transparency, in your testimony you mentioned you felt that the Covenant community was misrepresented to you.

Mr. PRINE. The Covenant community was misrepresented to us.

The Concordia community that owns the place now was very clearly represented to us because the president of that organization came and talked to our residents before they acquired it and wanted to be very sure that he had our support. He promised that they would have—the people we would have a voice on the board and things like that.

Whereas, when I indicated that there was misrepresentation that may have occurred with the Covenant people, a lot of that has to do with the way they marketed the place. They put their name out in front on their promotion material B'nai B'rith. Under the sign on the front of our building, it said "B'nai B'rith Senior Living Community."

Yet, when it came down to trying to deal with the B'nai B'rith people, they had a wall up there, and they said, no, you have got to deal with Covenant of South Hills, Inc. Well, the Covenant of South Hills, Inc., had seven directors, and all seven of them were employees or directors of B'nai B'rith. Yet they never met in our building. They never would meet with our Residents' Council.

We had limited communication. I had a couple of phone conversations with people, and there always was some sort of evasive answers of questions that I asked. I never felt I was getting to the bottom of anything. We just felt completely left out of it.

One of the problems is that when an organization like this promotes itself, particularly church-related organizations, there is a tendency on the residents' or the customers' part, you might say, not to question. I mean, you don't go question the clergy of your particular denomination or whatever it may be about things, about how a place is operated or for example. That is not something that people usually do. They think in terms, well, this is B'nai B'rith, and they advertised and promoted all the experience they had had internationally in housing and so forth.

But in the fine print, in the disclosure statement, the big, thick document, it does say somewhere in there that they had never run an assisted living—or they had never run a continuing care community themselves before. But everything else was promoted with the idea that they are the most experienced housing people in the country, and this is just going to be a wonderful thing.

There are many, many people—the people that are most seriously concerned about this are the people with strong religious affiliations who came in there because they thought B'nai B'rith would never let them down.

Senator FRANKEN. Well, that is a Shonda, as we say.

Mr. Erickson, in your testimony just now, you said you were kind of worried that regulatory requirements could impede the growth of the industry. But it sounds like what Mr. Prine's example shows us is that there does need to be regulation. Do you agree with the GAO finding that actuarial studies can provide information on long-term viability?

My question is how could anyone say it is unreasonable to require these communities to conduct regular studies and provide this basic information to residents?

Mr. ERICKSON. Yes, the providers support strong State regulations to protect residents, and we believe that, in turn, produces resident satisfaction and helps the industry on the whole.

With respect to your question about actuarial studies, one of the things that we put in the disclosure paper, that is the group that I chaired, in there as an area to be disclosed to prospective residents or applicants to a CCRC is the actuarial information, if it is applicable. Some of the CCRCs are the extensive care type of CCRCs where they have the contracts that provide for minimal increases of monthly fees as they progress through from assisted living to skilled nursing care. Those types of facilities are more heavily dependent on actuarial studies.

Other CCRCs are the type where they have a modified contract where there is a limited amount of healthcare benefit for residents that progress to the assisted living and also skilled nursing care. Those types of facilities do not need as extensive actuarial studies.

So we believe—in the group that I chaired, we did discuss actuarial studies in quite detail, and we believe that they can be helpful for CCRCs to ensure——

Senator FRANKEN. They are helpful, but not required?

Mr. ERICKSON. Yes. But not required because there are so many different models of CCRCs that to have one specific type of actuarial requirement, it might not fit the needs for the various types of providers that are out there.

Senator FRANKEN. Well, in your answer to me when I asked about regulation here, you said State regulation. What if a State, like, say, oh, I don't know, Pennsylvania, say, for example—I don't know why I came up with that—didn't provide regulation?

Mr. ERICKSON. There are 12 States that do not regulate CCRCs, and within those States, the providers—there is third-party oversight of the providers through the financing agreements that they enter into. So, within the financing agreements, there are reserves that are often required by the lenders. There is reporting requirements to the lenders and also ratios that providers must meet.

So, in the typical situation, there is a high level of lender involvement within a CCRC. In addition to that, several CCRCs have chosen to be rated by the rating agencies, and that provides another area of third-party oversight to the CCRCs.

Senator FRANKEN. Those are the ones that have chosen voluntarily.

Mr. ERICKSON. Right. Yes.

Senator FRANKEN. Well, we know how that works out sometimes.

Ms. Cackley, as you noted in your testimony, State regulations of these retirement communities may vary widely, and as Mr. Erickson just said, many States don't regulate CCRCs at all. What are your recommendations for Federal policies that could protect consumers from some of the risks that were highlighted today?

Ms. CACKLEY. GAO isn't making any specific recommendations at the Federal level right now. While we found—we found the possibility of risk for CCRCs and residents, we did not see a significant number of insolvencies or other problems. So we don't have a large

effect to point to. What we do point to is the concern for the future and the need for States to be vigilant.

So, right now, we are suggesting that States need to be paying attention. We certainly point to sort of the fundamentals of regulation that include things like licensing, like disclosures, ongoing monitoring, and then the actuarial analysis is certainly something that we are suggesting is important.

As Mr. Erickson said, there are some facilities that don't have fee structures that include the healthcare needs being the responsibility of the CCRC. They are still the responsibility of the resident. But for those facilities where the fee structure is what we consider either type A or type B, those are definitely situations where an actuarial study will help the CCRC understand what their obligations are going to be in the future and that they definitely need to be planning for.

Senator FRANKEN. But for now, you are not suggesting any Federal regulation?

Ms. CACKLEY. No, sir.

Senator FRANKEN. Well, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Franken.

Mr. McCarty, in Florida, are all those upfront fees kept separate and kept in escrow, kept in reserve?

Mr. MCCARTY. Parts of it. It is not all kept in reserve. Part of it is used after the establishment. One hundred percent of the money is kept in escrow as they do a demonstration on whether or not there is a feasibility study, and then part of that reserve is released on the issuance of a full certificate of authority.

But the ongoing concern, the companies have to maintain a full year of payments on their debt, and they have to maintain 15 percent of their operating cost. So that they have money so they don't dip into their reserves.

The CHAIRMAN. If you could tweak that in any way, Mr. Prine, do you think that is reasonable?

Mr. PRINE. I still would like to get back to the point that I believe and that it would be interesting if you could have an investigation by the GAO about all this. So what percentage of the deposits that totally could be due do the owners actually have on hand at any given time to pay?

The CHAIRMAN. That is a good question.

Well, you are from the GAO, Ms. Cackley. What can you tell us about that?

Ms. CACKLEY. Sir, we didn't look at all CCRCs across the country. We did detailed work in eight States. But I don't—off the top of my head, I couldn't tell you what the answer is to that question. I can certainly look into it, ask my staff to get me the information and get it back to you.

The CHAIRMAN. OK. Mr. McCarty, do you want to make a comment on that?

Mr. MCCARTY. I just want to go back to something that was said before. One of the things we want to make sure of is that we don't over-saturate the market. The way for these facilities to succeed is to ensure that they have a high occupancy rate.

If we are going to create a regulatory framework, one of the things we have to ensure is that a facility is able to demonstrate up front before construction that they are able to sell the units before construction begins. Because a recipe for disaster is to construct more facilities than you have demand for those facilities, and that is what causes the problem.

One of the conditions preceding any regulatory framework is to ensure that a feasibility study is done and actual contract sales are made to ensure—and those monies are put 100 percent in escrow so if we decide not to go through with it, all the monies are returned. But unless and until we control the numbers of those facilities, you can't guarantee that they are all going to be viable.

The CHAIRMAN. That is a good point. But it is also true, isn't it, that markets do decline, even when they are operating, as they have now in the last several years, right?

Mr. MCCARTY. Yes, they have in the market, and they have to respond to that. Particularly, the housing. That is a new wrinkle in this because it is making it harder for people to do. As I said before, some ways to deal with that is to go from a continuing care contract with upfront money to a fee-for-service rental bed.

The CHAIRMAN. Now, Mr. Erickson, do you think this "accredited" is a big thing? There are only 16 percent of these CCRCs that are accredited. Do you regard that as serious or just an evolving, developing phenomenon?

Mr. ERICKSON. We think it would be helpful for the providers on the whole that there is a higher number of accredited facilities. The company that I represent, all 12 of our facilities are accredited. The accreditation process is very rigorous, and it requires every 5 years for all aspects of the operations of the CCRC to be reviewed by peers.

So, just last year, we had all of our facilities reaccredited. I will say that it is an expensive process. I estimate that it cost our organization at least $100,000 to go through that process in terms of the time of our staff to prepare all the reports that were required for the accreditation process. But I believe it gives the consumers and also our residents a sense of that our facilities are financially strong.

The CHAIRMAN. Would you include that in your bill of rights, Ms. Pearson?

Ms. PEARSON. I think I would. In fact, I think Mr. Erickson's example reminds me of something that happens in Pennsylvania. Pennsylvania, by statute, has an every fifth year requirement that the State come in and take a look at the books of the facility. What that really amounts to is a checkbox exercise. Somebody is paid to come in and review the books. It takes time to do it. But they are not—they have no financial sophistication when they do it.

So it is something that is a cost to the facility. They are charged for that every fourth or every fifth year review, but it produces no useful information, as opposed to something like what Mr. Erickson just described, which is also expensive but provides useful information.

The CHAIRMAN. That is interesting. So you both believe that every institution across the country should belong or should be ac-

credited, which would mean that they have to go through a periodic examination. Is that right?

Ms. PEARSON. I guess what I am saying is that there should be periodic examination. Whether that is part of the industry accreditation process——

The CHAIRMAN. Right.

Ms. PEARSON [continuing]. Or part of a State regulatory process.

The CHAIRMAN. Right. You would agree with that, Mr. McCarty?

Mr. MCCARTY. Absolutely. There is no substitute for ongoing analysis on an ongoing basis and then onsite examinations. We provide onsite examinations every 3 years for unaccredited, every 5 years for accredited. But more importantly, because we watch trends on a quarterly and annual basis, and any change in that, we exercise our discretion to go onsite at will.

The CHAIRMAN. That is great.

All right. Any other comments, folks? This has been very useful. You have brought a lot of information and experience to the table here, and we will follow up.

Yes, go ahead, Mr. McCarty.

Mr. MCCARTY. I just wanted to emphasize a point that I made earlier, and I think Senator Franken made the same remark as about the culture. An important part of this is not just creating a regulatory framework and creating—all of that is important. An important part of this is to do an outreach to the senior communities, to establish advisory councils in each of these facilities so that these people in these facilities have a real voice and communication not only with the facility, but to their regulator.

One of the things—and having representation on the board is critical for people to feel they are being heard and having representation and not put in the sense where "don't worry, we are going to take care of your needs." Creating a culture of outreach where there is bilateral communication among and between the parties and also as evidenced in our consumer complaints.

If we have problems in a facility, we send people to the facility to see what we can do to reconcile those problems. We have had 22 complaints in 7 years, which I think is a remarkable testimony to the fact that in addition to a strong solvency regime, you have to have a people outreach program as well.

The CHAIRMAN. That is good. Any other comments from any of the panelists? Mr. Prine?

Mr. PRINE. I would like to second that comment about the resident involvement. We have found in our own experience a vast difference between the previous management and the current management in terms of responsiveness to our Residents' Council.

The current management has a representative of the senior staff attend our resident council meetings and hear the comments that people make right from their own voices at that meeting. Likewise, we are able to report back by having a representative of our residents on the board of the governing body. It is a two-way street, and it is working so far extremely well.

It is very reassuring to the residents to see this going on and to feel much more comfortable because they see the senior management in the building. Our new board of directors, even though the parent facility is 45 minutes away, the board has its meetings in

our building, and the people see them coming in. Last time we had an open house, there were several board members there at the open house, greeting people that were coming in to look at the facility.

This idea, the whole focus of all these facilities should be on the services that is being provided to the residents. That is what they are there for. It should not have to be so focused on the financial manipulations that go on to make some of these things work or not work.

I mean, that has to be worked out. But when you look at this bond issue, for example, that we had in our facility, the facility cost, including the architect's fees and so forth, $32 million to build. The bond issue was $62 million. What does that other $30 million go to?

Well, you have got all sorts of things—funded interest on the bond. So, in other words, they are borrowing money right from the start to pay themselves back, $9 million of that. Debt service reserve fund, another $5 million. Development costs, well, $5 million. That was for fees that went back to the people who were building the place, paying themselves development fees and so forth.

It shouldn't take a $62 million bond issue to build a $30 million building. If they did it for cash or a substantial portion of cash, the interest rates would have been a lot less, and there would have been a lot less chance of failure.

The CHAIRMAN. Right. What did Senator Franken say, a Shonda? Is that what he said? Do you know what "Shonda" means?

Mr. PRINE. I don't understand.

The CHAIRMAN. It is a shame. It is a true shame. Let us hope that it is an example that is publicized so well that it doesn't happen again. Your being here to talk about it is very instructive and very important. We thank you.

Mr. PRINE. Thank you.

The CHAIRMAN. We thank you all for being here.

Ms. CACKLEY. Thank you.

The CHAIRMAN. Thank you so much.

[Whereupon, at 2:48 p.m., the hearing was adjourned.]

APPENDIX

MS. CACKLEY'S RESPONSE TO SENATOR KOHL'S QUESTION ABOUT ENTRANCE FEE REFUND PRACTICES

Mr. Prine stated that his former B'nai B'rith CCRC used residents' entrance fees to keep their CCRC financially afloat, but eventually went bankrupt and was unable to pay entrance fee refunds it contractually owed residents. This resulted in a $26 million loss for residents. He suggested that CCRC providers should be required to hold entrance fees in escrow and only be able to use the interest from those funds. He also asked if it was known what percentage of the funds that residents had paid as refundable entrance fees were available to pay those refunds.

To answer this question, it is important to understand 1) how CCRCs generally pay for entrance fee refunds and what states generally require in terms of escrowing funds, and 2) whether setting aside funds for refunds or completely escrowing refund amounts is practical or possible for CCRCs.

With respect to making refunds, many CCRCs stipulate in their contracts with consumers that entrance fee refunds to residents' or their heirs will be made when the unit in question is resold and a new entrance fee is received. As a result, the source of entrance fee refunds comes not from liquid assets held by CCRCs, but by new entrance fees paid by incoming residents. CCRCs do not need to have enough cash on hand to pay all potential refunds at one time, and CCRCs generally do not have set-asides specifically for refund purposes.

Many states we reviewed have requirements to escrow resident deposits during the construction phase before residents move in, and escrow entrance fees once the CCRC is operational. These are aimed at ensuring the stability of a CCRC during construction and startup, as well as once CCRCs become operational and begin to provide services set out in contracts with residents. Six of the 8 states we reviewed required that CCRCs escrow consumer deposits or entrance fees received. These funds can be used by CCRCs for operational purposes, but are generally not released to the CCRC until certain benchmarks—such as a percentage of facility completion or long-term financing committed—are met.

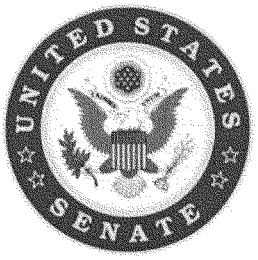
As additional protection, many, but not all, states we reviewed also required CCRCs to maintain financial reserves. According to regulators, the primary purpose of reserves is to ensure some time exists for a CCRC to address financial issues when distress occurs, but are not intended to ensure the long-term viability of CCRCs. Reserves can be used for debt service payments, paying operating expenses, or dealing with other contingencies. While some states may require specific reserves for facility repair and replacement, operating costs, or debt service, we did not see in the course of our work specific states requirements for CCRCs to set aside reserves for meeting entrance fee refunds. Table 3 of our report provides a summary of state actions to protect CCRC residents' deposits and fees.

With respect to question 2, completely escrowing entrance fees, or the refundable portion of entrance fees, may not be practical or financially possible for CCRCs. The general business model for CCRCs involves using entrance fee deposits for facility operations, including debt service payments, provision of residential and health care services, and facility repair and replacement. The feasibility of constructing and operating CCRCs would not be possible if CCRCs had to set aside and keep liquid enough funds to pay all refunds in full when due.

With respect to Mr. Prine's question, a central issue is whether a CCRC is able to pay the refundable portion of residents' entrance fees. In the regular course of business, the answer would depend on a CCRC's ability to sell vacated units—something that would be very difficult to measure. If one wanted to know whether a CCRC could refund the deposits in the event of a liquidation, as was the case with Mr. Prine's CCRC, one would need to determine if a CCRC's assets were equal to or greater than its liabilities. Liquidation is really only relevant after a CCRC's financial condition has significantly deteriorated, so it is likely that at the point li-

abilities would greatly outweigh assets. Whether the residents would actually maintain or receive their refundable deposit would generally depend on the ability find a buyer for the CCRC and that buyer's willingness to assume the refund obligations. Again, this would be very difficult to measure.

UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING



CONTINUING CARE RETIREMENT COMMUNITIES: RISKS TO SENIORS

SUMMARY OF COMMITTEE INVESTIGATION

MAJORITY STAFF

SENATOR HERB KOHL, CHAIRMAN

JULY 21, 2010

Continuing Care Retirement Communities: Risks to Seniors

Summary of Committee Findings

Background

Continuing care retirement communities (CCRCs) provide separate housing for seniors who are able to live independently, who require help in an assisted-living facility, and who require more intensive care in a nursing home. These communities appeal to seniors because they can enjoy an independent lifestyle with the expectation that they will be able to stay in the same community, with their spouse, as their health deteriorates in their later years. There are currently 1,861 CCRCs in the United States,[1] and the number of older adults living in CCRCs has more than doubled from 350,000 in 1997[2] to 745,000 in 2007.[3]

Seniors today look forward to living independently longer than previous generations, but they also worry about whether their assets and retirement income will cover the cost of care they may require in their later years. CCRCs provide a growing population of America's seniors with a convenient range of housing, supportive services, health care options and the ability to age in place. Many CCRCs require fairly large entrance fees (some can be in the five or six-figure range) and additional monthly payments. The fees cover housing costs and a range of care and services, including assisted living and skilled nursing. In addition, residents can purchase a meal plan, use a variety of on-site amenities and activities, and receive additional care which they can pay for out-of-pocket or have covered by insurance.

However, these arrangements are not without risks. The CCRC model is particularly vulnerable during economic downturns, as stagnant real estate markets drive down occupancy levels in independent living units, which serve as CCRCs' primary source of profit. Financial difficulties for CCRC providers could place a consumer's investment at risk and raise their monthly CCRC expenditures. In addition, according to the American Bankruptcy Institute Journal, "the CCRC industry is particularly vulnerable to insolvency, and several CCRCs have failed, primarily as a result of poor financial planning."[4] Several high profile bankruptcy filings over the past year have cast a spotlight on these risks.[5]

Furthermore, regulatory approaches and the agencies responsible for the oversight of CCRCs vary considerably among states – 12 states do not have any CCRC-specific regulations.[6] Thus, financial safeguards and protections, such as liquid asset reserve and escrow requirements

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[1] Ziegler Capital Markets. (October 2009). *Ziegler National CCRC Listing and Profile.*

[2] U.S. Government Accountability Office (1997). *How Continuing Care Retirement Communities Manage Services for the Elderly.* GAO/HEHS-97-36.

[3] Tumlinson, A., Woods, S., & Avalere Health, LLC. (January 2007). *Long-Term Care in America: An Introduction.* National Commission for Quality Long-Term Care.

[4] Peterman, N., Lannan, R., & Gregg, J. (March 2003). "Protecting Residents of Continuing Care Retirement Care Communities." *American Bankruptcy Institute Journal*, Volume XXII, No. 2.

[5] Hilzenrath, D. (2009). "You're Only as Secure as the Retirement Home." *The Washington Post.* Available at: http://www.washingtonpost.com/wp-dyn/content/article/2009/10/30/AR2009103004219.html

[6] U.S. Government Accountability Office (2010). *Continuing Care Retirement Communities Can Provide Some Benefits, But Not Without Some Risk.* GAO-10-611.

or certain disclosure requirements for CCRCs, vary considerably nationwide. For example, only 17 states require CCRCs to submit periodic actuarial studies to address risks to long-term viability.[7] In addition, only 294 CCRCs (roughly 16 percent) are voluntarily accredited by the Commission on Accreditation of Rehabilitation Facilities – Continuing Care Accreditation Commission, the only organization that provides accreditation services to CCRCs.

Finally, CCRC management and financial models are complex. Reliable information about a CCRC's financial condition and policies to provide consumer protections may not always be available to seniors to help them choose a CCRC wisely. Because of the complexity of many resident agreements, potential residents need to consult with independent counsel to understand the full implications of their resident agreements and fee structures.

Committee Investigation

To better understand what risks continuing care residents may face, the U.S. Senate Special Committee on Aging (Committee) initiated an investigation into the composition and business practices of CCRC providers. In February 2010, the Committee requested information from five CCRC companies about their business practices and how these providers educate seniors about potential risks of entering into an agreement with a CCRC. Specifically, the Committee requested information on their financial health and disclosure policies. The providers were selected based on the size of their assets under their management and the extent to which they were involved in a federal or state enforcement action. The information collected may not be representative of the entire CCRC industry.

The selected providers represent a mix of publicly-traded and privately-held entities. Together, the selected providers own, lease, and/or operate CCRC facilities nationwide, providing residency and care services for thousands of elderly individuals. However, the operating profile – or the structure and means of owning, leasing, or managing the underlying facilities – varies among the five CCRCs. The financial profile – or the means of financing the underlying facilities and operations – also varies. Finally, the types of contracts available to consumers within and among CCRCs vary as well. Within a given CCRC consumers must often choose between:

- Type A (extensive contract) – wherein a resident typically pays an upfront fee and ongoing monthly fee in exchange for the right to lifetime occupancy in the appropriate level of care without an increase in monthly fees as the resident moves between levels of care;
- Type B (modified contract) - wherein residents often have lower monthly fees than a Type A contract though the same housing and residential services are included, however, only some health care services are included in the initial monthly fee; and
- Type C (fee-for-service contract) – which typically requires an entrance fee, but does not include discounted health care services.

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[7] American Seniors Housing Association (2010). *Assisted Living and Continuing Care Retirement Community State Regulatory Handbook*. Washington, D.C.: Author.

The unique corporate/organizational complexity of CCRCs coupled with widely disparate means of delivering services between each of the five organizations makes direct comparison nearly impossible. Instead, it illustrates the complexities faced by a consumer when choosing a CCRC.

Table 1

	Company A	Company B	Company C	Company D	Company E
Ownership	Publicly traded, NYSE. 33% owned by insiders and controlling interests.	Privately held Limited Liability Corporation (LLC); owned by a privately-held corporation.	Publicly traded, AMEX. 5% owned by insiders and controlling interests.	Privately held Limited Liability Corporation (LLC); owned by a privately-held Subchapter S corporation.	Publicly traded, NYSE. 10% owned by insiders and controlling interests.
Business Model	Develops, owns, and operates senior living communities, including CCRCs, with a mix of for- and non-profit CCRCs. Revenues from owned and leased facilities were 40% and 60%, respectively.	Develops/constructs retirement properties; with some owned by parent subsidiaries and others by the CCRCs, CCRCs are non-profit.	Grows by acquiring communities with an occupancy of at least 80% communities rather than developing new ones.	Develops and manages retirement communities, some owned, with a mix of for- and non-profit CCRCs.	For CCRCs owned by Parent, operating and capital expenses are paid by operating cash flow of the CCRCs. CCRCs are for-profit.
Fee Structure	Primarily fee-for-service but some using an entrance fees that may be fully, partially, or non-refundable.	Generally fee-for-service with refundable entrance deposits.	Primarily fee-for-service with 2 having entrance fee contracts.	Entrance fee, which may be fully or partially refundable, plus monthly fees.	Entrance fee, which may be fully, partially, or non-refundable, plus monthly fees.

Findings

Because potential CCRC residents often plan to live on the campus for the remainder of their lives, they expect that the CCRC will be able to sustain the same standard of services offered throughout their stay in the community. In order to achieve this stability, a CCRC must maintain a certain level of financial security.

Financial Health

Major downturns in the U.S. economy in two key segments, housing and the credit market, have increased pressure on the financial condition of the CCRC industry. Specifically, declining housing prices have slowed the pace at which seniors may feel comfortable selling

their homes and moving into retirement facilities. According to the National Investment Center for the Seniors Housing & Care Industry, CCRC occupancy rates have recently been on the decline.[8] Further, volatility in the stock and credit markets has disrupted most companies' ability to raise capital or borrow funds to finance new construction or acquisition. The inability to refinance operating loans or long-term debt may force a company into bankruptcy or increase borrowing rates to an unsustainable level.

Despite the differences among the CCRC providers surveyed by the Committee, the resulting financial condition of the five selected companies generally parallels the industry, in that all five of the entities are either experiencing cash flow problems, struggling with debt, or both. This may have stemmed from the drop in occupancy levels among the five companies surveyed by the Committee over the past three years, particularly at the independent living (new entrant) level, negatively impacting financial performance. For example, the cash balances of the five companies surveyed by the Committee appear strained with four of the five entities having on-hand resources to fund approximately two months or less of their operating expenses. In addition, three of the five entities have borrowed more money than they have in equity assets. One entity in particular holds refundable deposits which must be paid to residents or others that totals nearly eight times greater than the entity's net worth.

In addition, CCRCs may use different strategies to minimize their tax liability, which may put their financial business models at risk when state or federal authorities disagree with the CCRC's assumptions regarding their taxable status. For example, one CCRC company creates non-profit management firms that enter into direct agreements with residents, and then contract with the parent/developer company to lease property and provide services. These non-profits are closely aligned to the interests of their parent corporations, and allow them to issue low-interest tax-free bonds to raise capital.[9] At least one CCRC assumed its non-profit status would allow it to avoid property taxes, however the county court ruled it did not, and the CCRC eventually filed for bankruptcy.[10] Another CCRC has characterized its entrance fees as no interest loans from its residents, and therefore not subject to federal tax. However, the IRS recently stated that entrance fees are in fact rental income and should be noted as such in the year of receipt. On appeal, the IRS did not subject the CCRC to additional back taxes and penalties.[11]

Consumer Financial Disclosures

Evaluating the merits and judging the financial health of a CCRC is extremely challenging for an individual consumer without professional assistance. The complexity of

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[8] National Investment Center for the Seniors Housing & Care Industry (2010). *1Q10 Market Signal: Three Year Occupancy Performance by Property Type*. Available at: http://www.nic.org/research/signals/signal1q102.aspx

[9] Hilzenrath, D. S. (2010, April 4). "Charities boosted profits of Erickson retirement communities." *The Washington Post*. Retrieved from http://www.washingtonpost.com/wp-dyn/content/article/2010/04/03/AR2010040305010.html

[10] *The Covenant at South Hills, Inc. vs. Mt. Lebanon School District, Municipality of Mt. Lebanon and the County of Allegheny*. (2008). Retrieved from: https://dcr.alleghenycounty.us/DisplayImage.asp?gPDFOH=vol593%20%a20%a20%a20%20%20%20%20%20%20%20%20%20%20%20%20%20%200000045/A&CaseID=GD%2D04%2D028040&DocketType=MOTOR&SeqNumber=18

[11] Emshwiller, J. R. (2010, June 3). "Retirement-Community Operator Battles IRS Over Entrance Fees." *The Wall Street Journal*. Retrieved from http://online.wsj.com/article/SB10001424052748704515704575282362670440450.html

CCRC ownership structures is exemplified by the five companies the Committee surveyed. Each company includes a parent-level organization that is represented by a complex organizational maze of for- and not-for-profit subordinate CCRC and other related (ancillary service) organizations. Further, controlling ownership interest sometimes resides with few individuals, such as management and/or directors, or organizations such as Real Estate Investment Trusts (REITs), which themselves offer additional asset and tax protection for the parent organization. While it may be argued that this organizational complexity is good business, it can clearly add to confusion when a consumer attempts to evaluate the financial stability of a CCRC. Because the financial health of a parent firm impacts the financial health of individual CCRC facilities, it is important that consumers are aware of the ownership structure. While an informed consumer has the ability to analyze the financial condition and results of operations through regulatory reporting, audited financial statements, and other financial disclosures of a publicly traded organization, private entities without substantiated financial data may be less transparent to a consumer.

Entrance Fees

As previously described, there are varied types of CCRC contracts in which entrance fees and ongoing fees will vary. Entrance fees for CCRCs can range from an average fee of $143,000 for Type A contracts to an average fee of $91,200 for Type B and $97,749 for Type C contracts.[12] For many residents, the entrance fees paid to the facility represent their lifetime savings intended for their heirs. As such, residents may lack the resources to walk away from an unsatisfactory CCRC experience once he/she has entered into the community if the entrance deposit is non-refundable or otherwise unavailable upon departure. In effect, the CCRC entrance fee may prevent many CCRC residents from exiting their CCRC contracts.

In some cases, communities may promote entry fees as "100% Refundable," though residents are often not entitled to get their money back until management lines up a new tenant for the apartment and the new tenant posts a deposit. At least three of the five companies surveyed by the Committee included a provision where the return of the entrance fee, if part of a refundable plan, is contingent upon resale or reoccupation of the unit. In such circumstances, if the demand for apartments at the CCRC community is weak, the community may have an incentive to fill units that have never been occupied before it finds a new tenant for a recently-vacated unit. For example, the Committee has received complaints against one CCRC in California where a down real-estate market, combined with a state regulation that allows CCRCs up to 10 years to repay the entrance fees to residents, give the company little incentive to refund the entry fee deposits in a timely manner.[13]

Similarly, resident contracts examined by the Committee generally did not explicitly address the impact of a facility closure or insolvency on refundable entrance fees. Most

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[12] American Association of Homes and Services for the Aging (2005). *Continuing Care Retirement Communities: 2005 Profile, 1st Edition.*

[13] Emshwiller, J. R. (2010, June 3). "Retirement-Community Operator Battles IRS Over Entrance Fees." *The Wall Street Journal.* Retrieved from http://online.wsj.com/article/SB10001424052748704515704575282362670440450.html
After inquiries from the press and the Committee, the company recently agreed to refund several entrance fee deposits that were under dispute.

contracts, however, did disclose that the resident has no ownership or lien interest in the CCRC property. The importance of this information for consumers is exemplified by a 2009 class-action lawsuit filed by a group of CCRC residents in Pennsylvania against the former owner of their CCRC, seeking to recover hundreds of thousands of dollars in entrance fee deposits after the company went bankrupt. Residents were required to submit substantial entrance fee deposits in order to occupy an apartment, up to 95 percent of which were to be refunded when the resident vacated the unit and upon the unit being re-occupied. However, when the bankrupt company was purchased by a new entity, the new company did not assume the obligation of refunding the existing residents' deposits. Residents of the community later found out in bankruptcy court that their claims to a refund ranked behind those of banks and bondholders.[14]

While many states have some type of law regarding the escrow of entrance fee deposits, the factors taken into consideration for releasing the money from escrow accounts vary widely. Some companies may use the initial entrance deposits to finance development, make repairs, or repay other residents or beneficiaries rather than keeping deposits in the bank. For example, three out of the five companies the Committee surveyed use entrance fee deposits to repay construction loans. In the Pennsylvania case, residents believed their deposits were being held in safe escrow accounts, however, when the company went bankrupt, residents found that their money had already been spent.

Transitions of Care

CCRCs vary in their handling of resident transitions to higher levels of care. In some cases, transfers may be made against the wishes of the resident, if the CCRC determines the move to be necessary. These changes may be associated with different monthly fees. For example, some contracts reviewed by the Committee showed the change in monthly payment to be relatively minor, and only reflecting an increased cost due to the number of prepared meals consumed. Other contracts specified no change in monthly fees if the move was permanent, but required residents to pay for both their apartment *as well as* any fees associated with their new unit if the move is temporary, though some agreements specify a reduced monthly payment or "non-occupancy credit."

In addition, several companies surveyed by the Committee cited that residents may be moved to an off-campus facility if higher levels of care are full or if special care is needed beyond the scope of care provided on the CCRC's campus. While at least one contract specified that residents are not to incur extra costs beyond the terms of their contract if care is unavailable on-site, others specify that the resident has to pay the difference in cost between off-site services and those services the resident would have been able to obtain directly from their CCRC.

Conclusion

The CCRC industry promotes the ability for seniors to "age in place" with flexible accommodations that are designed to meet their health and housing needs as these needs change

[14] Hilzenrath, D. (2009). "You're Only as Secure as the Retirement Home." *The Washington Post.* Available at: http://www.washingtonpost.com/wp-dyn/content/article/2009/10/30/AR2009103004219.html

over time. However, unstable market conditions and poor financial planning have lead to financial difficulties or even insolvency among some CCRCs. In addition, choosing a CCRC can be extremely complex due to disparate state regulations, and variations in the type of contract that an individual can sign. Residents need to be aware of the risks that CCRCs pose and consider retaining independent counsel to review these complex agreements. Some of the key areas that a consumer may want to explore include: the CCRC's ownership and fee structures; financial performance and security measures; entrance fee refund policies; protections against involuntary transfers to different levels of care or to off-campus facilities; the extent to which residents are able to participate in management decisions; the methods available to residents to address their disputes and concerns with the CCRC; under what circumstances a resident can rescind or cancel his/her contract; and whether the CCRC is accredited.

The following resources can help potential CCRC residents determine information about CCRC policies, or assist CCRC providers who wish to strengthen their financial planning and management as well as disclosure and transparency practices:

- American Association of Homes and Services for the Aging (AAHSA) (2010). Continuing Care Retirement Communities – Suggested Best Practices for CCRC Disclosure and Transparency. Available online at: http://aahsa.org/article.aspx?id=11621

- American Seniors Housing Association (ASHA) (2010). Assisted Living and Continuing Care Retirement Community State Regulatory Handbook 2010.

- Commission on Accreditation of Rehabilitation Facilities – Continuing Care Accreditation Commission (CARF-CCAC) (2009). Accreditation Standards Manual.

- Commission on Accreditation of Rehabilitation Facilities – Continuing Care Accreditation Commission (CARF-CCAC) (2007). *Consumer Guide to Understanding Financial Performance and Reporting in Continuing Care Retirement Communities.* Available online at: http://www.olligmu.org/~docstore/200docs/1003-202-contining_care_financial_considerations.pdf

- National Senior Citizens Law Center. *Questions to Consider When Evaluation Continuing Care Contracts.* Available online at: http://www.nsclc.org/areas/long-term-care/Assisted%20Living/questions-to-consider-when-evaluating-continuing-care-contracts

- U.S. Government Accountability Office (2010). *Continuing Care Retirement Communities Can Provide Some Benefits, But Not Without Some Risk.* GAO-10-611.

Finally, the Committee has put together the following checklist for state regulators who wish to implement a new CCRC law or update/strengthen an existing CCRC law:

KEY REGULATORY AREAS FOR STATE CCRC LEGISLATION	
1. Licensing	**Example of Requirements/Function**
a) Project financial information	States should require CCRCs to submit financial statements with projections of at least five years.
b) Cash flow indicators	States should require CCRCs to submit cash flow statements with projections of at least five years.
c) Occupancy data	States should require CCRCs to provide current and estimated projections of the number of CCRC residents.
d) Actuarial study	States should require CCRCs to conduct an actuarial study which projects the financial condition and long-term viability of a CCRC many years into the future by projecting factors such as occupancy rates, mortality and morbidity risks, and medical costs to help determine appropriate pricing.
e) Financial feasibility study	States should require CCRCs to conduct a financial feasibility study which provides the financial components of a new CCRC including construction costs, operational costs, and debt service costs. It should also provide estimates of revenue such as pre-sale deposits, entrance fee revenue, and loans or debt.
f) Market study	States should require CCRCs to conduct a market study to assess market area characteristics and likely demand for a new CCRC in a given location.
g) CCRC fee schedule	States should require CCRCs to develop a fee schedule which determines price points, taking into account market characteristics and factors such as occupancy and cost estimates.

2. Reserves	**Example of Requirements/Function**
a) Reserve levels	States should require a minimum level of reserves that is tied to estimated costs for a period of time (e.g. one year of debt service, one to two months of operating expenses, and one year of repair and replacement costs).
b) Escrow accounts	States should prescribe the manner in which funds should be set aside for reserve purposes.
3. Recurring Monitoring and Analysis	**Example of Requirements/Function**
a) Annual audited financial statement	States should review annually CCRCs' audited financial statement with information about the financial condition of the CCRC.
b) Financial information and ratio trend data	States should require CCRCs to provide current and past liquidity, margin, and capital structure ratios which should be used to assess the financial condition or trajectory of a CCRC over time.
c) Fee schedules	States should monitor fee schedules to assess changes in fees overtime.
d) Financial projections	States should require financial projections that include estimates and assumptions for many years into the future.
e) Occupancy levels	States should monitor the estimated number of CCRC residents or occupancy rate projections.

4. Periodic Reviews/Examinations	**Example of Requirements/Function**
a) Periodic or as-needed financial examination	States should require financial examinations to be conducted every three to five years to assess CCRC solvency.
b) Periodic actuarial study	States should require CCRCs to conduct an actuarial study every three or five years to assess the financial condition and long-term viability of a CCRC.
c) Market conduct review or examination	States should examine CCRC marketing and business practices, general operations, and consumer issues or complaints.
d) As-needed communication between regulatory staff and CCRCs	States should require CCRCs to provide a status update on financial and operational matters to regulators, enabling them to assist in early identification of financial challenges and risks to residents.

5. Disclosure to Consumers	
a) <u>Financial</u>	The following examples of financial disclosures can help provide consumers with information to better understand the short- and long-term financial condition of CCRCs, which should be readily accessible in company materials.
CCRCs should provide information about the financial condition of the CCRC to the consumer, including: 1) audited financial reports; 2) information on accreditation, if applicable; 3) key financial indicators on the ability of the CCRC to meet obligations to residents (i.e., debt levels and debt service, liquidity, capital for improvements, etc); 4) financial forecasts for future years, including financial statement projections and actuarial studies; 5) occupancy trends; 6) average length of time for payment of entrance fee refunds; and 7) a narrative disclosure from the CCRC regarding its financial condition, including an explanation of complex financial terms and concepts and an in-person meeting session with residents to discuss and allow for questions and answers.	
CCRCs should provide fee schedules to consumers, including entrance fees, monthly fees, and fees for other CCRC amenities.	
CCRCs should provide information on fee adjustment policies to consumers, including the manner in which increases occur and increase trends.	
CCRCs should provide their reserve funding levels and sources to consumers.	
CCRCs should provide their expected source of funds for development, repair, or replacement of facilities to consumers.	
CCRCs should provide their refund policies and revenue sources to consumers.	
CCRCs should provide the status of a resident claim on CCRC assets in case of bankruptcy or insolvency to consumers.	

b) <u>Non-financial</u>	The following examples of non-financial disclosures can help provide consumers with information on contractual, operational, policy, and other issues relevant to the CCRC, which should be readily accessible in company materials.
CCRCs should provide information about the provider and management to the consumer including: 1) governing structure and ownership; 2) names of board members/trustees; 3) history of the CCRC; 4) for- or non-profit status; and 5) relationships with any outside companies for management or other reasons.	
CCRCs should provide information about affiliations with any religious or charitable groups to consumers.	
CCRCs should provide a summary of recent state examinations including health and safety inspections to consumers.	
CCRCs should provide a description of the physical CCRC property, including amenities and services to consumers.	
CCRCs should provide a copy of the CCRC contract including termination provisions to the consumer.	
CCRCs should provide information on financial assistance policies in the event that a resident has financial difficulties.	
CCRCs should provide information about requirements for admission or discharge from different levels of care (i.e., independent living, assisted living, and nursing facility), including policies on involuntary transfers to a higher level of care.	
CCRCs should provide rules and regulations of the CCRC to consumers.	
CCRCs should provide policies regarding life changes such as marriage or death of a spouse to the consumer.	
CCRCs should provide annual or operating reports to consumers.	

Testimony Submitted for the Record
By
B'nai B'rith Housing, Inc.

To the Senate Special Committee on Aging

For the hearing titled "Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?"

July 21, 2010

Chairman Kohl, Ranking Member Corker and members of the Special Committee on Aging, thank you for the opportunity to submit testimony for the record as part of your hearing regarding Continuing Care Retirement Communities or CCRCs. B'nai B'rith Housing, Inc. welcomes the efforts of the Committee and the Government Accountability Office (GAO) to gather more information on potential risks in the CCRC industry.

Through a network of local non-profit owners, B'nai B'rith Housing, Inc. (BBHI), a non-profit entity affiliated with B'nai B'rith International, is the largest Jewish sponsor of subsidized housing in the United States. For almost 40 years, BBHI's affiliates, in cooperation with the Department of Housing and Urban Development, have made rental apartments available for senior citizens with limited incomes. The B'nai B'rith Senior Housing Network in the United States consists of 37 apartment buildings in 27 communities – serving more than 7,000 people without regard to race, religion or ethnic background. BBHI remains dedicated to facilitating these essential services, which might otherwise be out of reach for literally hundreds of thousands of elderly Americans.

BBHI assisted in establishing The Covenant at South Hills, Inc. ("TCSHI"), a Pennsylvania non-profit corporation that owned a CCRC in suburban Pittsburgh, the Covenant at South Hills ("Covenant"). The Covenant was planned and developed by Greystone Development Company, then one of the most experienced and reputable developers of CCRCs in the United States. A related company, Greystone Management Services, initially operated the Covenant. Fully licensed and regulated by the Pennsylvania Insurance Department, Covenant offered 126 independent-living apartments, 60 assisted-living suites and 46 nursing beds.

Initial financing for the project was secured through the sale of tax-exempt bonds by Herbert J. Sims and Company, one of the most respected investment banking firms specializing in senior housing. The bond offering was supported by a feasibility study performed by BDO Seidman, LLP, Healthcare Advisory Services, a group that is a renowned expert in the field, which attested to the viability of the project. After a thorough review of the project and Greystone's projections, Key Bank provided a $10 million letter of credit to support the bonds. Effectively, the offering paralleled other offerings that Sims, working with Greystone, had successfully placed on the market in the past. When initially sold, the bonds that financed the Covenant were

widely disseminated to both individual and institutional investors. Among the purchasers of the bonds were sophisticated investment funds, whose managers determined that the purchase of Covenant bonds was, in fact, a prudent economic investment.

For a variety of reasons, including unfavorable economic conditions, the Covenant failed to meet all of its pro-forma projections. While the directors of TCSHI devoted countless hours to improving operations and occupancy, the large amount of debt that burdened the facility remained as the most critical obstacle to the future of the Covenant.

TCSHI diligently pursued discussions with the largest bondholder fund, which appeared promising until that investor, despite repeated assurances to the contrary, sold its bonds (approximately 25% of the total debt) to a hedge (or "vulture") fund. The vulture fund moved the discussion from restructuring the debt for the long term viability of the Covenant, to requiring a sale of the property that ultimately failed to close. In an effort to prevent the threatened shutdown of the facility through foreclosure, TCSHI ultimately was forced to file for bankruptcy protection. Despite TCSHI's best efforts, the Covenant was sold to a buyer that did not assume the obligation to refund the residents' deposits.

While BBHI and TCSHI understand the disappointment of many of the Covenant's residents, TCSHI fully disclosed the risks that unfortunately came to be realized, including that TCSHI had discretion to spend resident deposits for capital and operating needs, that no reserve funding was established for resident deposits, and that resident's interests in the deposits were subordinate to those of TCSHI's secured creditors. TCSHI fully complied with Pennsylvania's statutory requirements concerning the contents of both residency agreements and resident disclosure statements. TCSHI also disclosed that it did not have prior experience in developing and managing CCRCs, and was relying on the expertise of Greystone and other well-qualified professionals.

We are aware that the testimony of one of the Covenant residents suggests that TCSHI intentionally shunned resident input and ignored the concerns of residents. We respectfully disagree with this assessment. To the contrary, officers and directors of TCSHI participated in many personal visits, town-hall style meetings, and teleconferences, all of which gave the residents a forum to share concerns. A representative of BBHI also made frequent visits to the Covenant to meet with residents. In addition, TCHSI made certain that representatives from the management company (initially Greystone Management Services and, subsequently, Life Care Services) were at the site at all times, and that the Executive Director of the Covenant personally attended Resident's Council meetings and provided detailed reports to the TCSHI Board at its regular meetings. This level of active involvement by the management company and TCSHI representatives reflected TCSHI's desire to be kept fully informed of the operations of the Covenant and, in particular, of resident concerns.

TCSHI's experience with the Covenant CCRC demonstrates the extent to which CCRCs are subject to the forces of financial markets and economic conditions generally, which can adversely affect the seniors who seek the many advantages of a CCRC lifestyle. Unfortunately, the licensing and enforcement authority of Pennsylvania CCRC regulators, which is highly

relevant to an operator of such a facility, had little influence over speculators interested in foreclosing and liquidating assets for a quick profit.

B'nai B'rith welcomes insight from GAO and the Committee on how to better balance the availability and affordability of CCRC housing with greater protection for those served by such communities. Should the Committee or its members seek to reform CCRC financing, BBHI would be pleased to offer input based upon TCSHI's experience.

Thank you again for the opportunity to provide testimony for the record of this important hearing.

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Testimony for the Written Record of

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on

"Continuing Care Retirement Communities: Secure Retirement or Risky Investment?"

Senate Special Committee on Aging

Dirksen Senate Office Building, Room 106

July 21, 2010

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Chairman Kohl, Ranking Member Corker, and Distinguished Members of the Senate Special Committee on Aging:

Thank you for the opportunity to address this Committee on the issue of quality and accountability in Continuing Care Retirement Communities (CCRCs). We believe that private, non-profit accreditation is a highly effective mechanism to ensure accountability, financial transparency, and reliability in CCRCs.

Founded in 1966 as the Commission on Accreditation of Rehabilitation Facilities, CARF International is an independent, non-profit organization that accredits a wide array of health care programs in a variety of settings, including in the area of Aging Services. Within Aging Services, CARF has developed quality standards for adult day services, assisted living, nursing homes, aging services networks, home and community services, and dementia care programs. Through the CARF-CCAC program within Aging Services, CARF offers accreditation for continuing care retirement communities. The CARF family of organizations currently accredits more than 42,000 programs in the United States, Canada, Western Europe, South America and the South Pacific. 8.3 million persons worldwide are served annually by CARF-accredited service providers.

Continuing Care Retirement Communities can provide many older persons with numerous benefits, including housing and healthcare services, meals, transportation, housekeeping, recreation and social interaction. But selecting a CCRC can carry significant lifestyle and financial risks. CARF can and does mitigate these risks by establishing field-reviewed standards for CCRCs, monitoring implementation and assessing conformance with these standards through on-site survey and ongoing reporting, and providing important information to residents and potential residents of CCRC services.

When choosing a continuing care retirement community, many factors should be considered, including the CCRC's financial status, location, and amenities; quality of care provided; and the culture of the community. One of our most accessible resources for consumers is the "Consumer Guide to Understanding Financial Performance and Reporting in Continuing Care Retirement Communities." We have shared a copy of this guide with Committee staff.

CARF-CCAC

CARF-CCAC (CARF-Continuing Care Accreditation Commission), part of CARF International, specializes in the accreditation of CCRCs, and our testimony highlights the insight into these communities that we have gained through our long-standing work in this area. In fact, CARF-CCAC is the only accreditation organization that accredits CCRCs, but the percentage of CCRCs who avail themselves of accreditation in a market where accreditation is not generally mandated is quite low. Currently, approximately 300 CCRCs are accredited throughout the United States and Canada. While accreditation does not signify a guarantee of a quality organization, it does serve as an assurance to persons seeking services that a provider implements internationally accepted standards and has demonstrated this implementation to a third-party. In this manner, accreditation is a highly effective tool to help ensure that consumers are protected and receive optimal care from CCRCs.

CARF-CCAC uses a field-driven consistent program description to identify CCRCs. As part of the accreditation process, the CCRC uses CARF guidance to conduct internal self-assessments. In addition, CARF conducts on-site surveys to monitor and measure the level of conformance to standards, policies and procedures. CARF-CCAC accreditation, therefore, is a consultative process designed to improve performance, quality, and accountability for the benefit of the end user of services, what CARF refers to as "persons served." All of CARF-CCAC's standards are created to address the ultimate needs of persons served.

CARF's Standards for CCRCs

Choosing a CCRC involves a long-term commitment from the individual and family involved. During this process, it is important to evaluate the ability of the community to provide housing and health care in the future. To provide housing, health care, and other services to its residents, a CCRC must operate based on sound business practices. Income must be adequate to cover expenses as well as provide for the future repair or replacement of buildings and equipment. One way to assess the financial strength of a CCRC is to review the organization's financial statements, including the statement of financial position, statement of operations, and statement of cash flow.

CARF–CCAC accreditation offers assurance that the organization has developed processes for financial planning and management and review of its financial performance on a regular basis. The standards also require the organization to evaluate its fee structure, profitability, cash management, and investment strategies. CARF–CCAC reviews these annual financial audit reports and evaluates margin/profitability ratios, liquidity ratios, and capital structure ratios for all accredited CCRCs. In fact, CARF has a comprehensive set of standards specifically designed for CCRCs[1] that include detailed requirements in the following categories:

- Leadership
- Governance
- Strategic Planning
- Input from Persons Served and Other Stakeholders
- Legal Requirements
- Financial Planning and Management
- Long Term Financial Planning
- Risk Management
- Health and Safety
- Human Resources
- Technology
- Rights of Persons Served
- Accessibility
- Information Measurement and Management
- Performance Improvement
- Care Process for the Person Served
- Dementia Care and Stroke Care

[1] See attached comprehensive summary of CARF-CCAC standards for Continuing Care Retirement Communities.

To help consumers assess the quality and stability of a CCRC, CARF also requires accredited CCRCs to submit the following information during the term of accreditation:

- Annual Conformance to Quality Report (ACQR)
- Updated Quality Improvement Plan (QIP) - Annual
- Audited Financials and Ratio Pro – Annual within 150 days of the fiscal year-end
- Information from CMS state surveys – ongoing for annual, complaint, and follow-up surveys
- Any other information required by CARF-CCAC each year to demonstrate continued conformance to standards

Experiences from Accredited CCRCs

One of CARF-CCAC's accredited organizations is ACTS Retirement-Life Communities (ACTS), one of the nation's largest not-for-profit continuing care retirement community organizations. ACTS has a national reputation for its high quality and innovative senior living services. ACTS serves nearly 9,000 seniors through its family of 23 life care communities in eight states and employs more than 6,000 people. ACTS communities provide a mix of independent living, assisted living and skilled nursing care residences on the same campus to accommodate a variety of retirement lifestyle preferences and needs.

ACTS is a true accreditation leader in the CCRC field. All of its eligible communities are accredited and meet the highest standards in retirement living services and operations, including standards to ensure it is financially secure with a consistent focus on performance improvement. An organization that meets CARF standards, such as ACTS, is an organization striving for excellence, accountability, financial transparency in its operations, and high quality in its services, ensuring that its programs and practices are innovative, and following an appropriate and achievable plan for the future.

The importance of CCRCs' financial stability cannot be overstated. As Aaron Rulnick, Executive Vice President of Herbert J. Sims & Company of Potomac, Maryland (an investment banking firm) stated, "Residents of senior living communities have a vested interest in the financial health of their communities. In today's environment, financial transparency is vital. We at Sims view CARF–CCAC accreditation as a key credit strength." To this end, Amy Hayman, Managing Director, Cain Brothers & Company of Chicago, IL (an investment banking firm) stated, "CARF-CCAC accreditation makes a positive difference in CCRC governance practices, disclosure, performance measurement, and long-range financial planning. In working with both accredited and non-accredited organizations, I have seen that accreditation is viewed as a credit strength." These sentiments are strong evidence that CARF accreditation is an important mechanism to help address the Committee's concerns regarding the financial stability of Continuing Care Retirement Communities.

Conclusion

CARF's accreditation program serves as a complement to existing regulations for the CCRC sector because it focuses on many aspects of business operations, governance practices, resident rights, quality of service

delivery, and demonstrated ongoing performance improvement. Through comprehensive standards and ongoing review of CCRCs, accreditation has contributed to some measure of stability in the CCRC sector since there are standards that apply across the field and there are financial indicators tied to key financial standards. The CARF-CCAC accreditation program also offers consumers a method by which to identify CCRCs that have voluntarily met rigorous, comprehensive standards. Wider adoption of private accreditation in the CCRC field would lead to greater stability and more accountability in the CCRC market and, therefore, Congress should consider ways to encourage and even incentivize accreditation.

Thank you, Mr. Chairman, for the opportunity to submit this testimony for the written record and for the Committee's consideration.

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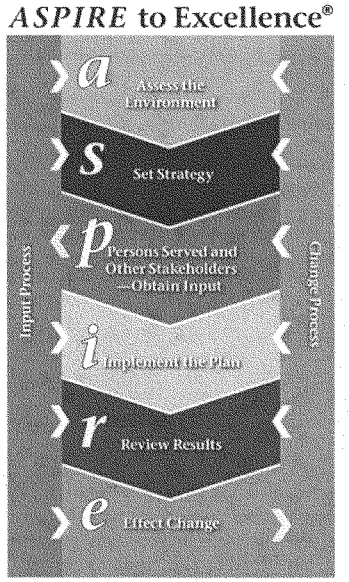
ASPIRE to Excellence Overview: Standards for CCRCs

The ASPIRE to Excellence™ quality framework aligns CARF's business practices standards with service delivery standards to provide a logical, action-oriented approach to holistic continuous quality improvement.



ASSESS THE ENVIRONMENT
- Leadership
- Governance

SET STRATEGY
- Strategic Integrated Planning

PERSONS SERVED & OTHER STAKEHOLDERS – OBTAIN INPUT
- Input from Person Served and Other Stakeholders

IMPLEMENT THE PLAN
- Legal Requirements
- Financial Planning and Management
- Risk Management
- Health and Safety
- Human Resources
- Technology
- Rights of Persons Served
- Accessibility

REVIEW RESULTS
- Information Measurement and Management

EFFECT CHANGE
- Performance Improvement

The following topics in standards are applied to all CCRCs that pursue CARF-CCAC accreditation from CARF International. Assessment of conformance to standards is conducted through review of required documents, interviews with residents, families, board members, staff, volunteers and other stakeholders. Tour of the campus and observation of practices is also conducted.

CCRC Standards	Topics Addressed in the Standards
Leadership	▪ Leadership structure and corresponding leadership roles ▪ Person-centered philosophy guiding service delivery ▪ Leadership guiding mission, and direction of organization, financial solvency, compliance with

CCRC Standards	Topics Addressed in the Standards
	insurance and risk management, performance improvement, compliance with all legal and regulatory requirements ▪ Responding to diversity of organizational stakeholders ▪ Corporate responsibility efforts including written ethical codes of conduct in at least the following areas: business, marketing, service delivery, professional responsibilities, and human resources. Education is implemented to personnel and other stakeholders on codes of conduct ▪ Procedures to deal with violations of ethical codes, policies and procedures regarding waste, fraud, abuse and other wrongdoing are implemented ▪ Advocacy efforts are conducted on behalf of persons served ▪ Demonstration of corporate citizenship ▪ Corporate compliance policy and designation of staff regarding matters of corporate compliance ▪ Leadership providing resources and education for personnel to stay current on accepted practices in the field based on current research and/or evidence-based practices
Governance	▪ Governance policies to facilitate ethical governance practices and ensure that board is active, accountable in the organization, meets legal requirements of governance ▪ Governance policies and practices include policies on selection and composition of the board, leadership of the board, board structure and performance, definition of unrelated and independent representation, duration of board membership, financial matters between the organization and individual board members, use of external advisors to the board ▪ Annual self-assessment of entire board, periodic self-assessment of individual board members ▪ Annual signed conflict of interest declaration and ethical code of conduct declaration ▪ Policies regarding external links or interactions outside of the organization ▪ Board's relationship with executive leadership ▪ Board processes: agenda planning, meeting materials, overseeing committee work ▪ Governance policies addressing executive leadership development and evaluation, succession planning, and executive compensation ▪ Annual review of all governance policies
Strategic Planning	▪ Ongoing strategic planning process and various sources of planning information to be included ▪ Written strategic is developed and reflects current and projected financial position, sets goals, is implemented and shared with persons served and other stakeholders ▪ Strategic plan is reviewed and updated
Input from Persons Served and Other Stakeholders	▪ Organization obtains input on an ongoing bases from persons served, personnel, and other stakeholders using a variety of methods ▪ Leadership analyzes input and uses input in strategic planning, performance improvement, program planning, organizational advocacy, financial planning, resource planning
Legal	▪ The organization demonstrates a process to comply with legal and regulatory requirements

CCRC Standards	Topics Addressed in the Standards
Requirements	regarding rights or persons served, confidentiality, reporting requirements, contractual agreements, licensing requirements, corporate status, employment practices, mandatory employee testing, privacy of the persons served, all others, as applicable ▪ Organization implements written procedures to guide personnel in responding to subpoenas, search warrants, investigations, other legal action
Financial Planning and Management	▪ Financial planning and management activities are designed to meet established outcomes for persons served, organizational performance objectives ▪ Prior to FYE, budgets are prepared that include reasonable projections of revenues and expenditures, input from stakeholders, comparison to historical performance ▪ Budgets are disseminated to appropriate personnel, other stakeholders ▪ Budgets are written and approved by appropriate authority ▪ Actual financial results are compared to budget, reported to personnel, persons served, other stakeholders, and reviewed at least monthly ▪ Organization identifies revenues and expenses, internal and external financial trends and challenges, industry trends, management information ▪ The organization identifies financial solvency with the development of remediation plans ▪ If organization has related entities, it identifies the types of relationships, financial reliance on entities, legal and other responsibilities between related entities and the organization, contractual responsibilities between related entities and the organization, and any material transactions ▪ The organization establishes and maintains fiscal policies and procedures including internal control practices ▪ The organization provides initial and ongoing training on fiscal policies and procedures for personnel with related responsibilities ▪ If the organization bills for services, a review of a representative sampling of records of the persons served is conducted ▪ The organization identifies the basis of its fee structure and demonstrates review, comparison, and modification of fee structures ▪ Disclosure occurs to the persons served for all fees for which they will be responsible ▪ There is evidence of an annual review or audit of the financial statements of the organization conducted by an independent certified public accountant, chartered accountant, or similar accountant ▪ Financial audit is completed in accordance with generally accepted auditing standards, within 120 days of FYE ▪ If the review/audit generates a management letter, the organization provides the letter during the survey for review and provides evidence of correction of material matters or reasons why material matters will not be corrected ▪ If the organization takes responsibility for the funds of persons served, it implements written procedures that define how persons will give informed consent for expenditure of funds; how the person will access records of their funds; how funds will be segregated for accounting purposes; safeguards in place to ensure that funds are used for the designated and appropriate purposes; how interest will be credited to the accounts of the persons served; and how monthly account reconciliation is provided to persons served

CCRC Standards	Topics Addressed in the Standards
Long Term Financial Planning	▪ The organization addresses margin/ profitability including revenues and expenses, ancillary revenue, and expense management; liquidity; capital structure to ensure financial flexibility and ability to meet the needs of persons served ▪ If the organization has material investments, there is an investment policy that addresses portfolio return and risk and restricted cash reserves ▪ The organization has a cash management strategy that addresses accounts receivable and accounts payable and working capital management ▪ The organization evaluates performance indicators that include contract types identified by level/type of care and number of residents per contract type ▪ Audited financial statements and footnotes are made available to prospective and current residents and other stakeholders ▪ The organization has a capitalization plan addressing both equity and capital that includes documentation of bond covenant compliance as applicable, management of assets and liabilities, financial ratio management, fixed asset management, review of debt management plan risks, annual management review of the capitalization plan and cash reserves available for capital needs; policy related to swaps; information on new real estate development; disclosure of information contained in the capitalization plan
Risk Management	▪ A risk management plan is implemented that includes identification and evaluation of loss exposure, implementation and monitoring of actions to reduce risk, reporting results of actions to reduce risk and inclusion of risk reduction in performance improvement activities ▪ The insurance coverage of the organization is reviewed annually for adequacy and it includes property, liability and other coverage as appropriate ▪ A policy and procedure regarding media relations is implemented
Health and Safety	▪ The organization has written procedures to promote safety of persons served and personnel ▪ Persons served receive information and training to reduce identified risks ▪ Personnel receive competency-based training that is documented upon hire and annually on health and safety practices, identification of unsafe environmental factors, emergency and evacuation procedures, identification and reporting of critical incidents, medication management, reducing physical risks ▪ There are written emergency procedures for fires, bomb threats, natural disasters, utility failures, medical emergencies, safety during violent or other threatening situations that satisfy requirements of applicable authorities and that address evacuation ▪ There is immediate access to first aid expertise, equipment and supplies, relevant emergency information ▪ The organization has written procedures on critical incidents that include prevention, reporting, and remedial action ▪ A written analysis of critical incidents is provided to or conducted by the leadership annually that addresses causes, trends, actions for performance improvement, results off improvement actions, necessary personnel education, prevention of recurrence, and reporting requirements ▪ The organization implements infection control activities ▪ Transportation services demonstrate compliance with all applicable legal and regulatory

CCRC Standards	Topics Addressed in the Standards
	requirements, appropriate licensing of drivers, review of driving records, insurance coverage, safety features and equipment in vehicles, driver training, written emergency procedures, communication devices, road warning/hazard equipment, first aid supplies, maintenance records of vehicles ▪ Comprehensive health and safety inspections are conducted at least annually by a qualified external authority and result in a written report that identifies areas inspected and recommendations for areas needing improvement and actions taken regarding recommendations ▪ Comprehensive health and safety self-inspections are conducted semi-annually on each shift and result in a written report that identifies areas inspected and recommendations for areas needing improvement and actions taken regarding recommendations ▪ Unannounced tests of emergency procedures are conducted at least annually on each shift and result in performance improvement ▪ Persons served are provided with education about all emergency and evacuation plans ▪ Evacuation routes are accessible and understandable
Human Resources	▪ There are an adequate number of personnel to meet established outcomes of persons served, ensure safety, deal with unplanned absences, meet performance expectations of the organization ▪ Background checks including criminal history, immunizations, fingerprinting, drug testing and credential checks are completed for all applicable personnel prior to delivery of services and at stated intervals throughout employment ▪ Recruitment and retention efforts are implemented ▪ Orientation and ongoing training occur for all personnel ▪ Performance management system is implemented including current job descriptions, promotion guidelines, personnel evaluation processes, and reviews of all contract personnel ▪ If students or volunteers are used, the organization implements a signed agreement, identifies duties, provides orientation, assesses individual performance, implements policies and procedures for dismissal, confidentiality, and background checks ▪ Personnel policies are maintained and shared ▪ The organization ensures that individuals on the service delivery team provide services consistent with state practice acts, licensing/registration requirements, certification, professional degrees, professional standards of practice
Technology	▪ The organization has a technology and system plan that includes hardware, software, security, confidentiality, backup, assistive technology, disaster recover preparedness, and virus protection
Rights of Persons Served	▪ Rights of persons served are communicated in a way that is meaningful prior to the beginning of service delivery and/or at initiation of service delivery as well as annually for persons in the organization for longer than a year ▪ Rights information is available at all times for review and clarification ▪ Policies promoting the following rights are implemented: confidentiality of information, privacy, freedom from abuse, financial or other exploitation, retaliation, humiliation, neglect, access to

CCRC Standards	Topics Addressed in the Standards
	information to facilitate decision-making, informed consent and refusal regarding service delivery, release of information, composition of the service delivery team, involvement in research projects if applicable ▪ Policies are implemented regarding access or referral to legal entities for appropriate representation, access to self-help and advocacy support services, adherence to research guidelines and ethics when persons served are involved in research ▪ Policies are implemented regarding investigation and resolution of alleged infringement of rights ▪ The program demonstrates knowledge of legal status of the persons served and the provision of information to the person served regarding resources related to legal status ▪ The organization implements a policy by which persons may formally complain to the organization and implements a written procedure to follow-up on such complaints. The procedure specifies that the action will not result in retaliation or barriers to service, how efforts will be made to resolve the complaint, levels of review including external review, timeframes for prompt consideration and that result in timely decisions for persons served, procedures for written notification regarding the actions to be taken to address the complaint, the rights and responsibilities of each party, the availability of advocates or other assistance. ▪ The complaint procedures and any applicable forms are readily available to and understandable to persons served ▪ A review of formal complaints is conducted annually to determine trends, areas needing improvement, and actions to be taken ▪ The following topics are addressed in policy: advance directives, provision of sufficient information for decision-making; right to refuse resuscitation; any legal requirements related to advance directives; resuscitation; informing the person served and their support system of the organization's procedures concerning advance directives
Accessibility	▪ Leadership demonstrates accessibility planning that addresses the needs of persons served, personnel, and other stakeholders ▪ Accessibility plan(s) address identification of barriers in the domains of architecture, environment, attitudes, finances, employment, communication, transportation, community integration, any other barrier identified by the person served, personnel, and other stakeholders ▪ Accessibility plan(s) include timelines for removal of identified barriers and actions for removal of identified barriers ▪ A written accessibility status report about the removal of barriers is prepared annually and includes progress made in the removal of identified barriers and areas needing improvement ▪ Requests for reasonable accommodations are identified, reviewed, decided upon, documented
Information Measurement and Management	▪ Data are collected that provide information on the needs of persons served and other stakeholders as well as the business needs of the organization. The data collected allow for comparative analysis ▪ The organization demonstrates how it addresses data reliability, validity, completeness, accuracy

CCRC Standards	Topics Addressed in the Standards
	▪ For business improvement, the organization sets and measures performance indicators, utilizes data from the following in setting and measuring performance indicators: financial information, accessibility, resource allocation, surveys, risk analysis, governance, human resources, technology analysis, environmental health and safety, field trends, and the service delivery system ▪ For service delivery improvement, the data collection system includes characteristics of the persons served, collects data on the person at beginning of services, at appropriate intervals, the end of services, and point(s) in time following services ▪ The service delivery data collection system measures indicators in each of the following areas: effectiveness of services, efficiency of services, service access, satisfaction and other feedback from the person served and other stakeholders
Performance Improvement	▪ An analysis is completed at least annually that reviews performance indicators in relation to performance goals including business functions, service delivery including effectiveness, efficiency, service access, and satisfaction and other feedback from persons served and other stakeholders ▪ The performance analysis identifies areas needing improvement and it results in an action plan to address improvements needed to reach established or revised performance goals ▪ The analysis also outlines actions taken or changes made to improve performance ▪ Information is used to review the implementation of the mission and core values of the organization, improve quality, facilitate organization decision-making and strategic planning ▪ Performance information is shared in formats that are useful to the persons served, personnel, other stakeholders
Care Process for the Person Served	▪ Each program documents and shares the following information regarding the scope of its services: population(s) served; settings; hours, days, and frequency or services; payer sources; fees; referral sources; specific services offered including whether the services are provided directly or by referral ▪ Scope of service information is shared with the person served, families/support systems in accordance with choices of persons served, referral sources, payers and funding sources, other relevant stakeholders, the general public ▪ The organization reviews the scope of services annually and updates as necessary ▪ Based on its scope, the organization documents entry, transition, and exit criteria ▪ The written agreement is presented in a format and language that are appropriate to the person served. A copy is provided to the person served for review prior to entry into the program and after it is signed by all appropriate parties ▪ The written agreement is available for review by the person served. It is signed by the person served and the program's representative ▪ The written agreement contains information regarding entry criteria, transition criteria, exit criteria, scope of services that will be provided, fee schedule, responsibility for payment of fees, refund policies, requirements for services arranged by the person served, resources to address program or payer limitations ▪ Role and composition of interdisciplinary team and changes to the team over time ▪ Family/support system discussions

CCRC Standards	Topics Addressed in the Standards
	▪ Process and information sharing regarding ongoing screenings and assessments that may occur ▪ Person-centered care approaches to care delivery and respecting rights of the individual in those practices at all levels of care ▪ Written procedures for transfers between levels of care ▪ Smoking policies ▪ Health and wellness philosophy and comprehensive services focused on holistic wellness including spiritual, educational, social, etc. ▪ Dining services: choice regarding food and when/where to dine, nutrition, sanitary preparation practices ▪ Pets policy: visitation, residing in the organization, involvement of pets in activities, care of pets, safety ▪ Persons served have opportunities to engage in recruitment of personnel to work in the organization ▪ Consistent assignment of caregiver personnel ▪ Positively managing challenging behavioral situations and learning for performance improvement regarding how various techniques and interventions benefit individuals ▪ End of life – appropriate care practices, rights of persons served, expressing choice, remembrance ▪ Program demonstrates efforts to preserve the natural environment that involve education for persons served, personnel, and stakeholders ▪ Service delivery planning considers changing needs of individuals and responds to those changes ▪ The program provides, arranges for or assists with arrangements for various health-related, rehabilitation, social, housekeeping, transportation, laundry, and security services ▪ If the person served contracts for their own outside services to be delivered in the CCRC, policies and written procedures are implemented to address safety, information exchange, and liability issues ▪ Rights, privacy, and safety features of individual residences and rooms as the individual moves through levels of care ▪ Information and policies regarding medication administration/assistance, dispensing, disposal, documentation, errors, side effects, storage, regimen reviews, personnel training ▪ Restraint use ▪ The record of each person served: what is included, who has access, how it is maintained ▪ Current emergency information for each person served maintained and accessed
Dementia Care and Stroke Care	▪ Specialization standards that address unique care approaches, rights, and personnel ongoing education for specialized populations based on current research and/or evidence-based practices in the field