

**UNITED STATES SENATE
SPECIAL COMMITTEE ON AGING**



**CONTINUING CARE RETIREMENT COMMUNITIES:
RISKS TO SENIORS**

**SUMMARY OF
COMMITTEE INVESTIGATION**

MAJORITY STAFF

SENATOR HERB KOHL, CHAIRMAN

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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 1997² 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

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 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.

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

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%20%20%20%20%20%20%20%20%20%20%20%20000045A&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

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 led 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-continuing_care_financial_considerations.pdf
- National Senior Citizens Law Center. *Questions to Consider When Evaluation Continuing Care Contracts*. Available online at: <http://www.nslc.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.
<p>CCRCs should provide information about the financial condition of the CCRC to the consumer, including:</p> <ol style="list-style-type: none"> 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.
<p>CCRCs should provide information about the provider and management to the consumer including:</p> <ol style="list-style-type: none"> 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. 	
<p>CCRCs should provide information about affiliations with any religious or charitable groups to consumers.</p>	
<p>CCRCs should provide a summary of recent state examinations including health and safety inspections to consumers.</p>	
<p>CCRCs should provide a description of the physical CCRC property, including amenities and services to consumers.</p>	
<p>CCRCs should provide a copy of the CCRC contract including termination provisions to the consumer.</p>	
<p>CCRCs should provide information on financial assistance policies in the event that a resident has financial difficulties.</p>	
<p>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.</p>	
<p>CCRCs should provide rules and regulations of the CCRC to consumers.</p>	
<p>CCRCs should provide policies regarding life changes such as marriage or death of a spouse to the consumer.</p>	
<p>CCRCs should provide annual or operating reports to consumers.</p>	