



WACCRA's Legislative Goals

presented to

**Vivid/ DSHS -
RCS/ OIC/ AGO**

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Agenda for Today

- Introductions
- Our History
- OIC Report Findings - Our Reactions and Legislative Asks
- Potential Regulatory Models
- Next Steps



WACCRA Introductions

- President and Project Champion – Laura Saunders
- Vice-President and Project Manager – Kim Hickman
- Legislative Committee Chairman – Carlos Caguiat
- Legislative Committee Members – Rick Hanson, Barbara Horrell, Donna Kristaponis, Steve Neville
- WACCRA Governmental Affairs Advisor – Donna Christensen, J.D.
- WACCRA Board of Advisors member – Katherine Pearson, J.D.



WACCRA History

- Established in 2012 as a grass-roots, volunteer-run, 501(c)(4) lobbying organization representing the consumer concerns of approximately 8,000 CCRC independent living residents in Washington State.
- Advocated for initial Washington CCRC legislation (RCW 18.390) in 2016.
- 2017 and 2019 WACCRA unsuccessfully attempted to pass a bill that would have brought some financial transparency for CCRC residents.
- Worked with LeadingAge through mediation in 2020 to develop a Commitment to Practices outlining processes for financial disclosures, entrance fee refunds and resident involvement in decision making – not uniformly adopted or implemented by CCRCs.
- Worked in 2020 – 2023 to fund further regulatory analysis of Washington’s need for consumer protection for CCRC residents.
- Currently represents approximately 1,200 members.



OIC Report Findings – Our Reactions and Legislative Asks



Our Involvement in OIC Report

- Brought concerns to OIC Staff.
- Provided education on issues faced by CCRC Residents.
- Shared legislative approaches used in other states.
- Facilitated funding for OIC to complete report.
- Supported report development.



Our Subsequent Action

- Shared OIC Report with interested legislators and WACCRA members.
- Worked with key legislators to fund additional study by DSHS, in conjunction with OIC and AGO, on appropriate CCRC consumer protections and regulation.
- Surveyed WACCRA members on key legislative concerns
- Continued to research existing and emerging CCRC legislative activity across the country.
- Developed a potential multi-agency model for Washington's consideration as an alternative to a single agency model.

Our Perspective – Strengths of Report

- Highlighted the importance of enforcement and the requirement for **“robust authorities and agency resources”**.
- Suggested legislation include a heightened review standard to include **“actuarial analyses and financial assessments”** be shared with regulators routinely to ensure financial stability of CCRCs.
- Stated the importance of balancing consumer protection, business interests and administrative oversight for the **sustainability of CCRCs**.



Our Perspective – Moving forward

- **Provide a legislative framework** that allows the Legislature to move forward with legislative changes to CCRC regulation in 2025.
- Identify areas requiring strengthening of Washington's RCWs **and provide recommendations regarding the content** of those enhancements.





Licensing of CCRCs

Licensure by the State

Why?	Marketplace confusion exists today with non-uniform identification of CCRCs
Rationale	<ul style="list-style-type: none"> • Licensure, rather than current self-elected registration, ensures that all CCRCs operating in the state are identified and properly regulated.
Legislative Ask	<ul style="list-style-type: none"> • Uniform definition of a CCRC based on the services provided to residents and the way they are purchased, not based on the provider's interest in advertising themselves as a CCRC. • Licensure should be required both initially and renewed periodically.
Reference	<ul style="list-style-type: none"> • Multiple States - Washington is the only state we are aware of that uses a simple registration process based on the entity's approach to marketing.
Priority and Protection	<ul style="list-style-type: none"> • High Priority • Medium Protection



Investigation and Enforcement of Consumer Complaints

Residents' Rights and Ombuds Support

Why?	89% of surveyed residents rated this as important.
Rationale	<ul style="list-style-type: none"> Residents deserve to have clearly defined rights as part of their CCRC contract – similar to those given to renters and long-term care residents - and have those rights supported and protected by the State without resorting to costly, independent legal action.
Legislative Ask	<ul style="list-style-type: none"> Complaints and grievances without concern of retaliation. Eliminate required arbitration. Transparency for residents regarding the financial condition of the CCRC as required by State. Notification in advance of Key Changes in the organization Contracts be in lay-person language and modified by mutual consent, subject to review and approval by State. Ability to organize and form a residents' association and elect a governing body to make recommendations and share concerns with provider and receive timely response.

Residents' Rights and Ombuds Support (cont.)

Legislative Ask (cont.)	<ul style="list-style-type: none"> • CCRC facilitation and support of activities of interest to residents. • Provider will conduct biannual surveys to measure staff and resident satisfaction with results shared with residents. <ul style="list-style-type: none"> • Participate and comment on areas that need improvement. • Access to an independent ombuds to investigate and help facilitate resolution properly filed complaints.
Reference	Florida Section 651.083; California H&S Code Sections 1771, 1776, 1779, 1788, 1789, 1790; and North Carolina Public Act No. 15-115
Priority and Protection	<ul style="list-style-type: none"> • High Priority • Medium Protection

Overall Enforcement

Why?	There are no rights without a remedy
Rationale	<ul style="list-style-type: none"> Regulations without enforcement leave CCRC residents with only expensive legal approaches to ensure provider compliance with the law.
Legislative Ask	<ul style="list-style-type: none"> Include dedicated enforcement responsibilities with the agency(ies) responsible for governance of CCRCs. Provide for both civil and criminal penalties on providers for failing to comply.
Reference	Florida Statutes include both financial and criminal penalties.
Priority and Protection	<ul style="list-style-type: none"> High Priority High Protection



Increased Financial Protections

Periodic financial reviews by the State

Why?	94% of residents surveyed rated this as important
Rationale	<ul style="list-style-type: none"> • Mandatory reporting increases the transparency of the financial condition of CCRC. • Provides an early warning system for CCRC's facing financial difficulty or instability.
Legislative Ask	<ul style="list-style-type: none"> • Adoption of robust oversight and public disclosure. • Detailed financial reporting to State and residents including but not limited to: <ul style="list-style-type: none"> • Audited financial reports based on statutorily prescribed accounting principles. • Require notes to the financial report considered customary or necessary for full disclosure or adequate understanding of the financial report, financial condition, and operation. • Statement of any debt and projection of payments.
Reference	Florida statutes 651.018; 651.026; 651.0261; 651.028; 651.083; 651.085; 651.091; North Carolina. Proposed Bill - "§ 58-64A-205. Annual report. § 58-64A-210. § 58-64A-215. 58-64A-220. § 58-64A-225.
Priority and Protection	<ul style="list-style-type: none"> • High Priority • Medium Protection

Actuarial reporting review by the State

Why?	89% of residents surveyed rated this as important
Rationale	<ul style="list-style-type: none"> Residents are promised lifetime health care and need assurance that the CCRC has adequate assets held in appropriate reserves to provide for that care.
Legislative Ask	<ul style="list-style-type: none"> Comprehensive actuarial reporting required upon inception, at least every three years thereafter and upon request by the State: <ul style="list-style-type: none"> Financial and population flow projections. Formal actuarial opinion as to the financial condition of the CCRC including assumptions used and changes in assumptions from the previous submission as appropriate. Available to residents and prospective residents upon request. Reviewed by State upon submission. Robust enforcement of all CCRC financial requirements.
Reference	<p>California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 – 1792.10; North Carolina Proposed Bill - § 58-64A-23.14 - Actuarial Study; Actuarial Standard of Practice #3 "Practices Relating to Continuing Care Retirement Communities".</p>
Priority and Protection	<ul style="list-style-type: none"> High Priority High Protection



Additional Resident Protections

Board of Directors Representation

Why?	Because a CCRC resident group couldn't get the Board of Directors to respond to their financial and safety concerns for over two years
Rationale	<ul style="list-style-type: none"> • Residents are stakeholders with no recognized equity interest in CCRCs despite having placed their own significant wealth in the CCRC. • CCRC Boards have no direct resident voice in their decision-making processes. • Residents bring knowledge and expertise from successful careers in business, government and philanthropy.
Legislative Ask	<ul style="list-style-type: none"> • At least two residents be members of the Board immediately overseeing the CCRC. • Board nominations open to all residents and voted on by the residents. • Resident Board Members have the ability to place resident interests on par with the CCRC's and have full voting privileges. • Board meetings open and on-site for residents to attend.
Reference	California Code, Health and Safety Code - HSC § 1771.8 (2014).
Priority and Protection	<ul style="list-style-type: none"> • Low Priority • Low Protection

State oversight of and requirements regarding the use of a CCRC's funds

Why?	96% of residents surveyed rated this as important
Rationale	<ul style="list-style-type: none"> The only source of income to a CCRC are the monies paid by residents. Having those funds siphoned off to support other entities potentially puts current residents' services and premises at risk.
Legislative Ask	<ul style="list-style-type: none"> Funds paid by residents either as entrance fees or monthly fees are for the benefit of the residents. Use of these funds are reported annually to the State and shared with residents. Any of use of resident funds in other states or for other facilities than those from whom they are collected must be disclosed to residents and the reports must show plans for repayment of these funds to the facility originating them.
Reference	New York - Insurance Regulation Section 350.11
Priority and Protection	<ul style="list-style-type: none"> High Priority High Protection

Protection of resident contracts and entrance fees in bankruptcy

Why?	91% of residents surveyed rated this as important
Rationale	<ul style="list-style-type: none"> Resident claim for refunds of entrance fees and guarantees of medical care represent a major class of claims of the CCRC in bankruptcy but have a very low priority for repayment.
Legislative Ask	<ul style="list-style-type: none"> Provide for mandatory statutory liens or provide the regulatory authority with discretionary power to impose a statutory lien.
Reference	12 states including Minnesota Statute 149.960; Texas Health and Safety Code 246.111; Arizona Revenue Statute 20-1805; Florida Statute 651-071
Priority and Protection	<ul style="list-style-type: none"> Medium Priority Low Protection

Timely repayment of entrance fee refunds

Why?	100% of residents with a refunding contract are concerned about this issue.
Rationale	<ul style="list-style-type: none"> Agreement between WACCRA and LeadingAge Washington was reached on a policy regarding repayment of entrance fees in 2020. That agreement has not been universally implemented by the CCRCs and should now be codified in regulation to ensure uniform application
Legislative Ask	<ul style="list-style-type: none"> Codify the terms of the existing agreement into regulation. Add regulatory language that would provide that the entrance fees be repaid on a “First Out-First Paid” basis.
Reference	Commitment to CCRC Practices – 2020 45 N.J. Practice, Elder Law--Guard. & Conserv. § 28:2, First Out-First Paid
Priority and Protection	<ul style="list-style-type: none"> High Priority Medium Protection

Guarantee of promised lifetime care

Rationale	<ul style="list-style-type: none"> • CCRC promises for lifetime care (Assisted Living, SNF, Memory Care) to residents should have no less State protection than those provided to Long-Term Care or life insurance policy holders.
Legislative Ask	<ul style="list-style-type: none"> • Secure the CCRCs' promise of guaranteed future health care expenses. • Use the Washington Life and Disability Insurance Guaranty Association to protect these health care promises. • Alternatively, have CCRCs purchase surety bonds to ensure the future availability of health care funds and with bonds adjusted as new actuarial information is obtained.
Reference	Multiple states regulate CCRCs through their department of insurance. Florida law regulates continuing care contracts as a “specialty insurance product”.
Priority and Protection	<ul style="list-style-type: none"> • High Priority • High Protection



In Summary – WACCRA's Key Desired Consumer Protections

- Residents' Rights and Ombuds support.
- Periodic financial reviews, including actuarial reporting, to the State to ascertain the ability of the CCRC to meet both its short- and long- term commitments.
- State oversight of and requirements regarding the use of a CCRC's funds for services not directly related to CCRC members.
- CCRC resident-elected representation on the CCRC's Board of Directors.
- Protection of resident contracts and entrance fees in bankruptcy.
- Timely repayment of entrance fee refunds.
- Guarantee of promised lifetime care including assisted living, skilled nursing and memory care.
- **Meaningful and effective enforcement of CCRC regulations.**

See Appendix A, provided under separate cover, for additional information.



Potential Regulatory Models and Implementation Issues

Single Agency Regulatory Model

- Identified by OIC as having the “most potential for achieve(ing) additional consumer protections” with:
 - “administrative efficiencies”
 - “cohesive policies”
 - “stronger internal agency communication and coordination”

Pros	Cons
<ul style="list-style-type: none"> • Creates regulatory agency expertise, provides efficiencies in administration for providers, facilitates reporting of outcomes. 	<ul style="list-style-type: none"> • Currently no single agency in Washington has expertise in all aspects of CCRC regulation.
<ul style="list-style-type: none"> • Creates accountability and authority for ongoing enhancements of consumer protections as necessary. 	
<ul style="list-style-type: none"> • Enforcement is conjoined with regulatory expertise. 	

Multi-Agency Regulatory Model



- **License** CCRCs that meet enhanced regulator definition of CCRCs.
- Review and **approval of CCRC contracts**, marketing materials.
- License CCRC sales force.
- Oversee **management of changes in ownership**.
- Review and management of changes in services offered.
- Oversee **management of troubled CCRCs**.
- Management of CCRC **resident complaints**.
- Receipt of CCRC reporting forwarded to OIC for review.
- Maintenance of public CCRC financial information following OIC review and preparation.



- **Review, analysis and reporting of CCRC financials and actuarial reporting.**
- Identification of financially troubled CCRCs and reporting to DSHS.
- **Review of asset transfers** including identification of inappropriate asset transfers.
- Support of financial analysis required to support **change in ownership**.
- **Financial analysis** and support to DSHS on troubled CCRCs.



- **Enforcement** of CCRC Regulations, with both criminal and civil penalties.
- Review and pursuit of **resident issues** forwarded by DSHS.
- **Support as needed to DSHS** on legal issues related to:

Contracts and marketing materials	Unlicensed CCRCs
CCRC sales force enforcement	Financially troubled CCRCs
Inappropriate asset transfers	Changes in ownership

Implementation Issues

- Implementation timeline
 - Utilize a three - year implementation process:
 - Year One – Pass legislation and commence rule making
 - Year Two – Partial implementation of regulations
 - Begin licensure and renewals of CCRCs
 - Establish residents' rights and ombuds support
 - Articulate required financial/actuarial reporting requirements
 - Year Three – Full implementation of regulations
 - Begin financial and actuarial submissions and reviews
 - Begin managerial oversight
 - Begin enforcement

Implementation Issues (cont.)

- Concerns over funding for regulatory activity:
 - Providers have raised concerns about having to increase resident fees:
 - Majority of reporting requirements are already being completed by CCRCs for other purposes.
 - Thoughtful regulations will only result in small incremental cost increases per resident but provide significant consumer protection.
 - Better consumer protections have not impaired the CCRC marketplace in other states (New York, Florida, California, et al).
 - One approach to funding:
 - Fund financial and actuarial reviews through fees paid by CCRCs.
 - Fund licensure, management oversight, contractual reviews and enforcement through funding from the legislature.
- Application of new regulations to existing contracts in place for residents.
- Complications related to the differences presented by for profit and not for profit CCRCs.

