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CONTINUING CARE
RESIDENTS ASSOCIATION

Introduction to Continuing Care Retirement Communities (CCRCs) in Washington State

July 2021

WACCRA in brief

Our purpose

Educating present and future residents on relevant Continuing Care Retirement Communities (CCRC) topics, supporting and collaborating with the CCRC executive teams to achieve our mutual common goals and advocating for CCRC resident's rights.

Key achievement to date

Orchestrated the initial 2016 Washington State law recognizing and protecting CCRC residents.

Beneficiaries of the new law

More than 8000 seniors in 23 CCRCs in Washington State and their families.

WACCRA members

Residents, relatives and other individuals who want to learn about CCRCs are WACCRA members. Members live at: Bayview, eliseo (formerly Tacoma Lutheran), Emerald Heights, Franke Tobey Jones, Horizon House, Mirabella, Panorama, Parkshore, Riverview, Skyline, Rockwood South Hill, The Hearthstone, Timber Ridge at Talus, and Wesley Des Moines.

CCRC Basics

- A CCRC, sometimes known as a life plan community, is a type of retirement community in the U.S. where a continuum of aging care needs—from independent living, assisted living, and skilled nursing care—can all be met within the community.
    - Some CCRCs provide these services from a single campus, others have contracts for these services with other entities off campus.
- Group living arrangements have been around for 100+ years but changing regulations and federal tax rules in the 1960s encouraged the development of CCRCs to address the needs of a growing elderly population in America.
- According to Washington State law (Chapter 18.390 RCW), “a Continuing Care Retirement Community is an entity that agrees to provide continuing care to a resident, for at least a year, under a residency agreement”.
    - In Washington, entities calling themselves a CCRC must register with the Department of Social and Health Services…DSHS and residents' complaints are handled by the Attorney General.
    - As of February 2021, Washington State had 23 CCRCs, home to more than 8000 residents.
- CCRCs can be not-for-profit or for-profit entities. The majority of CCRCs in Washington are not-for-profit entities.
- CCRCs offer a variety of contracts for their services and charge residents a very wide range of fees.
- Non-profit CCRCs, under tax rules, are not allowed to evict residents for non-payment of monthly fees if the resident runs out of funds through no fault of their own.

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CCRC Contract Types

Four types of residency contracts are offered through CCRCs - not every contract type is available from every CCRC.

- **Type A Contracts** - In return for an entry fee plus a monthly fee, the resident is guaranteed to pay roughly the same monthly fee (apart from ordinary inflation) for as long as the resident remains in the community, even if or when assisted living or skilled nursing care is needed.

- **Type B Contracts** – In return for an entry fee and monthly fees, residents can receive higher levels of healthcare at discounted rate <u>for a defined periods of time</u> before market rates are applicable.

- **Type C Contracts** - The entry fee and the monthly fee are usually considerably lower than in the case of the Type A or B contracts. However, when higher levels of healthcare are needed residents pay fees that escalate significantly toward market rates.

- **Type D Contracts** – With no entrance fee, these contracts are short-term rental agreements that a CCRC offers with a variety contract options. Typically, either party can terminate the contract without cause.

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Type A Contracts

In Washington State roughly a third of CCRC contracts are Type A, often informally called a "life care contract".

- Residents pay significant entrance fees which in Washington range from $100,000 to over $1.8 million.
  - Some contracts contain provisions to refund all or a portion of the entry fee upon the death of the resident - often refundable at the earlier of re-occupancy of the unit or, for contracts beginning after January 2021 no later than 24 months.
- Residents also pay monthly fees which vary widely depending on many factors such as apartment size, apartment location, urban versus rural setting for the CCRC and amenities offered. These monthly fees, often costing thousands of dollars, typically increase over time with inflation.
- Both entry fees and monthly fees are intended to provide sufficient on-going revenue to cover the operational expenses for residents, whether living in independent or assisted living, skilled nursing, or memory care.
- Residents purchasing Type A contracts are eligible for tax deduction for a portion of their fees as the IRS interprets them to be the pre-payment of medical expenses.

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Type B Contracts

In Washington State roughly a quarter of CCRC contracts are Type B contracts

- Residents pay entrance fees which are lower than Type A contracts because the contract does not guarantee unlimited healthcare for the lifetime of the resident
    - Type B contracts can contain provisions to refund the entry fee but may require the apartment to be re-leased prior to payment to the resident’s estate or for contacts after January 2021 within 24 months
- Residents also pay monthly fees which vary widely depending on many factors such as apartment size, apartment location, urban versus rural setting for the CCRC and amenities offered. These monthly fees, often costing thousands of dollars, typically increase over time with inflation
- Both entry fees and monthly fees are intended to provide for a time limited benefit for independent or assisted living, skilled nursing, or memory care at a discounted rate after which the resident pays market rates
- Residents purchasing Type B contracts are eligible for tax deduction for a portion of their fees as the IRS considers them to be the pre-payment of medical expenses

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Type C Contracts

In Washington State roughly a third of CCRCs contracts are Type C contracts.

- Residents pay entrance fees which are lower than Type A contracts because the contract requires the resident to pay any long-term care expenses.
  - Type C contracts can contain provisions to refund the entry fee but may require the apartment to be re-leased prior to payment to the resident's estate.
- Residents also pay monthly fees which vary widely depending on many factors such as apartment size, apartment location, urban versus rural setting for the CCRC and amenities offered. These monthly fees often cost thousands of dollars and typically increase over time with inflation.
- When assisted living, skilled nursing, or memory care is required, fees are based on market rates.
- Generally, no tax deductions are available as no healthcare expense is being pre-paid through the entrance fee.

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Type D Contracts

In Washington State fewer than 10% of CCRC contracts are Type D contracts and are considered rental agreements.

- Contract terms vary by CCRC.
- Residents pay monthly fees which vary widely depending on many factors such as apartment size, apartment location, urban versus rural setting for the CCRC and amenities offered.
- Any available assisted living, skilled nursing, or memory care are provided at market rates.
- Tax deductions may be available for healthcare expenses incurred.

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Summary of Contract Types

	TYPE A	TYPE B	TYPE C	TYPE D
Contract for life	Yes	Yes	Yes	In some cases
Entrance Fees	$100K – $1.8M A portion may be refundable on exit of the CCRC.	Entrance fee less than Type A. A portion may be refundable on exit of the CCRC.	Entrance fee less than Type B. Some part of it may be refundable on exit of the CCRC.	Minimal or no entrance fees.
Monthly Fees for Independent Living	Vary depending on CCRC and type of apartment or cottage.	Vary depending on CCRC and type of apartment or cottage.	Vary depending on CCRC and type of apartment or cottage.	Vary depending on CCRC and type of apartment or cottage.
IRS Tax Deductibility	Part of entrance fee and monthly fee is deductible.	Part of entrance fee and monthly fee is deductible.	Not applicable in most contracts.	Not applicable.
Long Term Care Costs	No additional cost beyond regular monthly fee.	Below market rate for healthcare OR time-limited reduced rate and then full market rate.	Market rate for all forms of healthcare.	Market rate for all forms of healthcare.

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CCRC Finances

- CCRCs are analogous to pension plans and insurance contracts in several aspects - revenues are received in advance for promised future benefits.
  - CCRC Type A and B entrance fees and ongoing monthly fees are meant to fund the future cost of healthcare as residents age in place. While all residents pay these fees, only those who become ill receive the long-term advanced care.
- Unlike qualified pensions and insurance contracts, CCRCs are primarily funded on a pay-as-you-go basis with little or no governmental requirement for secured reserves or funds.
  - Entrance and monthly fees must fund ongoing costs associated with real estate (maintenance, updates, etc.) and operating expenses subject to typical inflationary increases.
  - Hyper-inflationary long-term healthcare expenses are inadequately addressed.
  - Additionally, CCRCs face concerns regarding occupancy rates since much of their operational expenses are inelastic. COVID has impacted occupancy rates due to concerns about communal living.

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CCRC Finances (cont.)

- Contracts with refunding entrance fees almost always require the prior resident's unit be re-occupied before the fee is refunded. In Washington WACCRA and LeadingAge (www.leadingage.org) have an agreement that requires repayment in most cases within 24 months for new residents effective January 2021.
- Assets accumulated by the CCRC from resident's entrance fees provide a source of financial security to residents. However, CCRC managements claim the authority to divert those assets and have done so over the objection of residents.
- While several states are now requiring them, Washington does not require any actuarial analysis of the ability of CCRCs to meet their contractual obligations.

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Advantages of CCRCs

- Support an active retirement both within the CCRCs and the wider community, including a focus on wellness.
- Provide relief from the challenges and stresses of growing older – housekeeping, home maintenance, meal preparation – if desired.
- Assure a measure of financial security for future expenses to the resident and their family.
- Group life-style reduces loneliness and isolation associated with aging.
- CCRC contracts, depending on features, provide for potential skilled nursing, assisted living and memory care expenses.
- Often avoid separation of partners who face different healthcare needs.
- Often a variety of amenities are available – art studio spaces, interest groups/clubs, beauty/barber shops, excursions, shopping assistance.
- 24-hour security.

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Disadvantages of CCRCs

- Considerable upfront entrance fees are typical, plus high and escalating monthly fees.
- Significant barriers to leaving the CCRC, including non-refundable entrance fees.
- Dependence on CCRC management to maintain the quality of services.
- Potential retaliation against residents with complaints.
- Lack of guarantees on the long-term financial stability of CCRCs with associated risks:
  - Loss of refundable entrance fees.
  - Reduction in services provided.
  - Loss of skilled nursing, assisted living and memory care when needed.
  - Loss of housing.
- Residents, and any interest they have in a refundable entrance fees, are unsecured creditors in the case of bankruptcy.
- Compared to qualified pension and insurance plans, CCRCs lack federal or Washington State legislative oversight on CCRC operations and finances.

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Federal Interest in CCRCs

- No Federal legislation is in place governing CCRCs.
- The U.S. Senate Special Committee on Aging held a hearing in July 2010 regarding CCRCs. The committee was concerned with the financial stability of CCRCs particularly as a result of the recent economic downturn and found that five prominent CCRC provider companies experienced decreased levels of occupancy during the 2007-2008 economic downturn.
    - As part of their report, the Committee developed a checklist for state regulators who wish to expand or improve their oversight of CCRCs (see pages 13 and 14).
    - In preparation for the hearing, the Government Accounting Office surveyed CCRC regulatory oversight nationwide. 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 most states with regulations in place, CCRCs were regulated by the states' insurance department'.

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U.S. Senate Recommendations for Oversight

- **Licensing -** Requirements should be established for providing project financial information, cash flow indicators, occupancy data, actuarial, financial feasibility and market studies, the fee schedule, reserve levels, and escrow accounts.
- **Reserves -** Minimum reserve levels and escrow accounts should be prescribed.
- **Recurring monitoring and analysis -** Annual audited financial statements should be reviewed by the states, financial information and ratio trend data required, fee schedules monitored, financial projects required, and occupancy levels monitored.
- **Periodic reviews/examinations -** States should examine financial conditions every three to five years; periodic actuarial studies should be required; marketing, business practices, general operations and consumer complaints should be examined; status updates on financial and operational matters should be required.

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U.S. Senate Recommendations for Oversight (cont.)

- **Disclosures to consumers -** These should include audited financial reports, information on accreditation, key financial indicators, financial forecasts, occupancy trends, average length of time for entrance fee refund payments; financial condition disclosure; fee schedules, information on fee adjustment policies, reserve funding levels and sources; sources of funds for development, repair, or facility replacement, refund policies and revenue sources; and status of any resident claims on assets in cases of bankruptcy or insolvency.
- **Non-financial -** CCRCs should provide consumers with information about the provider and management, affiliations with religious or charitable groups, summaries of recent state examinations, description of the property and amenities and services, copy of the contract including termination provisions, information on financial assistance policies, requirements for admission or discharge from different levels of care, rules and regulations, policies regarding life changes such as marriage or death of a spouse, and annual or operating reports.

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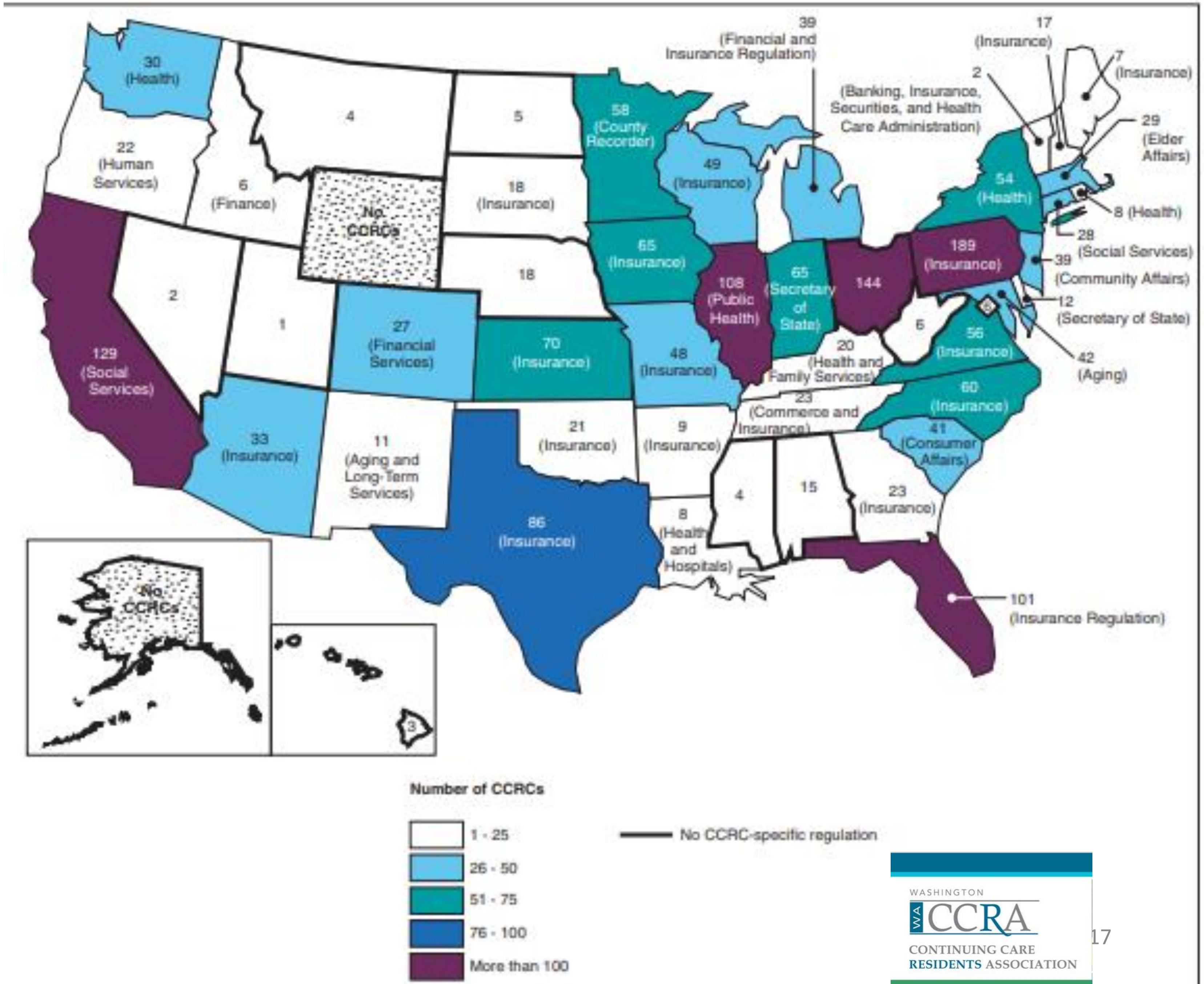
2010 GAO Survey of States' Regulations

Number of CCRCs and Regulatory Departments Used for State Oversight of CCRCs



From the United States Government Accounting Office report to the Senate Special Committee on Aging – June 2010. [GAO-10-611, OLDER AMERICANS: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk (senate.gov)]

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Regulatory Environment in Washington

- Washington Legislation –
  - Washington State law (Chapter 18.390 RCW) oversees CCRCs in Washington State.
  - Registration of CCRCs falls to the Department of Social & Health Services (DSHS) with consumer complaints handled by the Attorney General.
  - Regulations reflect:
    - Statutory requirements for filing and distribution of financial information.
    - Required financial disclosures to prospective residents.
    - No oversight unless the Attorney General, often upon complaints by multiple residents, elects to act as permitted by the Consumer Protection Act.
    - No requirement to fund reserves. Financial statements show "reserves“, but the CCRC has no statutory requirement to maintain dedicated funds for those obligations.

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Additional Information and Resources

- Howard E. Winklevoss; Alwyn V. Powell (1984). "Continuing Care Retirement Communities: An Empirical, Financial, and Legal Analysis. Chapters 1 and 2" (PDF). *pensionresearchcouncil.wharton.upenn.edu*. Retrieved 20 February 2017. Accessed June 2021.
- United States Senate Special Committee on Aging – July 2010 Hearing. "Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?" Hearing | Hearings | United States Senate Special Committee on Aging . Accessed June 2021.
- United States Government Accounting Office report to the Senate Special Committee on Aging – June 2010. GAO-10-611, OLDER AMERICANS: Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk (senate.gov) . Accessed July 2021.
- Washington Continuing Care Resident Association web site. "Consumer Guide to Continuing Care Retirement Communities in Washington State". GUIDE CCRC (waccra.org) . Accessed July 2021.
- American Association of Homes and Services. "The Continuing Care Retirement Community – A Guidebook for Consumers". Consumer_Continuing_Care_Retirement_Community_Guidebook_000.pdf (leadingagewa.org) . Accessed July 2021.

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