NaCCRA™

NATIONAL CONTINUING CARE RESIDENTS ASSOCIATION

CCRCs from 2010 to 2019 – A Missed Opportunity

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CCRCs FROM 2010 TO 2019 — A MISSED OPPORTUNITY

NATIONAL CONTINUING CARE RESIDENTS ASSOCIATION

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"CCRCs exist for one reason—to serve the needs of our residents."[1]

PROLOGUE

There are many CCRCs that are delivering on their promises, adapting to the trends, and satisfying their residents with good governance, financial acumen, and leadership. There is no intent to impugn their reputation. Our purpose is to observe that LeadingAge was created in 2010 to lead its members in responding to the coming of 78 million Baby Boomers. Given NaCCRA's purpose of promoting, protecting and improving the CCRC/Life Plan lifestyle, we offer our view as to why much of the industry has missed achieving the LeadingAge vision of 2010.

I. SUMMARY

During the 2010 National Continuing Care Residents Association (NaCCRA) meeting held concurrently with the American Association of Housing and Services for Aging (ASSHA) Annual Meeting and Expo in Los Angeles, ASSHA celebrated, with great fanfare, the coming of an unprecedented explosion in the aging population—spurred by the pending retirement of 78 million Baby Boomers. They will present serious challenges to both consumers and providers of long-term services and supports. The aging of the U.S. population will also give consumers and providers an unprecedented opportunity to create a consumer-responsive service and support system that meets the individual preferences of older citizens while facilitating healthy aging for all. To lead the way, AAHSA changed its name to "LeadingAge."

Fast forward to 2019. NaCCRA held another meeting concurrently with the LeadingAge Annual Meeting and Expo in San Diego. During the NaCCRA dinner meeting, keynote speaker Lisa

[1] 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.

McCracken of Ziegler described key senior living trends. During the LeadingAge educational sessions at least two sessions were based on one of the trends described by Lisa McCracken. Since 2010, there has been a trend of for-profit, no-entry-fee, rental facilities growing at an accelerating rate and gaining market share relative to the constant 2% per year growth for not-for-profit, entry-fee CCRCs. This trend contrasts sharply with the fanfare and celebration at the 2010 AASHA meeting over the growth LeadingAge foresaw with the coming of 78 million Baby Boomers.

NaCCRA members predominately reside in not-for-profit, entry-fee CCRCs. NaCCRA's mission is to collaborate nationwide with residents and prospective residents of Continuing Care Retirement Communities and allied organizations for the purpose of promoting, protecting, and improving the CCRC lifestyle.

With concern, NaCCRA Board Members took note of the not-for-profit, entry-fee CCRC industry loss of market share. Board Members reflected on what we, as residents, see as the reasons for the loss of market share with the hope that the not-for-profit CCRCs will take note and change their ways.

The modest growth by not-for-profit, entry-fee CCRCs is related to:

1. Failure to provide financial security for the substantial entry fees paid by elderly residents.
2. A failure of the passive approach to regulation of CCRCs recommended by the U.S Senate Special Committee on Aging and as implemented by states.
3. Issuance of Residency and Care Agreements and financial statements that are beyond comprehension by many, if not most, well-educated residents.
4. Trend of CCRCs moving away from Life Care (Type A contracts) and onsite skilled nursing.
5. Failure to recognize the interests of residents who have made CCRC their homes and provide the CCRCs with equity funding.

NaCCRA recommends not-for-profit CCRC management accept effective regulation to protect residents and plain-English financial and contractual documents intended to inform residents, contracts that convey equity ownership in return for entry fees and that convey control of the CCRC to residents, and embrace no-entry-fee senior living facilities because they are here to stay.

II. PURPOSE AND ORGANIZATION

NaCCRA's stated Mission reads, "NaCCRA collaborates nationwide with residents and prospective residents of Continuing Care Retirement Communities (CCRCs) /Life Plan Communities and allied organizations for the purpose of promoting, protecting and improving the CCRC/Life Plan lifestyle."[2]

At the concurrent meetings of NaCCRA and Leading Age during October 2019 in San Diego, California, at least three presentations, one in the NaCCRA meeting and two in LeadingAge educational sessions, included information that showed not-for-profit CCRCs had lost a substantial portion of the market for new homes and services for the aging over the preceding decade.[3,4,5] In their place, for-profit independent and assisted living facilities, which do not require an entry fee, have had accelerating growth rates. Indeed, the second presentation in an educational session during the LeadingAge meeting appeared to implore not-for-profit CCRCs to emulate the for-profit, no-entry-fee, independent living and assisted living rivals. The session showed how a not-for-profit, entry-fee CCRC might finance no-entry-fee expansions.

The Ziegler presentations at the 2019 concurrent meetings of the NaCCRA and LeadingAge presentations appeared to stand in sharp contrast to the presentation by the American Association of Homes and Services for the Aging (AAHSA), now LeadingAge, at its meeting in Los Angeles in 2010. At that meeting AAHSA foresaw great promise as 78 million Baby Boomers were reaching an age where CCRCs might be an attractive option. AAHSA also foresaw challenges and a need for its member CCRCs to change to meet Baby Boomer expectations.

The decade commencing with the calendar year 2010 was a challenging decade and a decade of change for the not-for-profit CCRCs industry. The United States was coming out of The Great Recession of 2008. During the Recession and for many years thereafter the industry was roiled by a troubling number of financially stressed CCRCs. There were many CCRC mergers, acquisitions, closures, and bankruptcies.

The decade of 2010 ended at the end of calendar year 2019 with a construction boom as CCRCs and other housing for seniors expanded to meet the needs of an expanding market. However, the expansion of not-for-profit, entry-fee CCRCs was mostly expansion of existing facilities and only at approximately 2% per year, the same as it had been for the entire decade. For-profit, no-entry-fee independent living and assisted living facilities expanded at an accelerating rate over the decade, ending the decade at growth rates of 13% and 8% per year, respectively.

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[2] National Continuing Care Residents Association Bylaws, Article II Mission.
[3] Lisa McCracken, *Key Senior Living Trends,* LeadingAge, NaCCRA Dinner, October 26, 2019.
[4] Toby Shea, Keith Robertson, and Rob Love; *Rental Vs. Entrance Fee: Responding to Consumer Preferences*, Leading Age Annual Meeting + Expo; October 28, 2019.
[5] Daniel Cinelli, Hellen Foster, Troy F. Bourne, and Bryan Schachter, *View from the Other Side: Learning from For Profits*, Leading Age Annual Meeting + Expo; October 27-30, 2019.

In the context of the NaCCRA Mission for promoting, protecting and improving the CCRC/Life Plan life style, the NaCCRA Board Members set out to identify, based on Board Member experiences, the cause for CCRCs to lose new market share. Board Members examined industry activity and trends during the decade from 2010 to 2019. NaCCRA's Financial Soundness Committee had been following distress in the CCRC industry since a U.S. Senate Special Committee on Aging held a hearing on July 21, 2010.

On July 21, 2010, to investigate problems in the CCRC industry that had commenced during the Great Recession of 2008, the U.S. Senate Special Committee on Aging held a Hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment*? The problems foreseen or foreseeable by the U.S. Senate Special Committee on Aging during their Hearing went unheeded by state legislatures and the CCRC industry.

The need for CCRCs to change to accommodate the demands of the Baby Boomers as foreseen by LeadingAge in 2010 at its Annual Meeting and Expo in Los Angeles also went unheeded by its member CCRCs.

This study identifies industry problems as viewed by the NaCCRA Board Members and the NaCCRA Financial Soundness Committee during the decade from 2010 to 2019.

The remainder of this study is organized by chapter as follows:

> **III. THE PROMISE AND ATTRACTION OF CCRCS—**are a beautiful CCRC, where residents can age in place on the same campus among familiar surroundings and friends from independent living through assisted living to skilled nursing, as might be required. Historically, CCRCs offered Life Care, Type A contracts, wherein there is little or no increase in monthly fees as a resident moves from independent living to assisted living and, if needed, to nursing care. Unfortunately, the number of CCRCs offering Life Care contracts is declining. Historically, and to a great extent currently, these facilities are sponsored by faith-based groups and to a lesser extent by fraternal organizations.
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> **IV. CCRC CHARACTERISTICS IN 2010—**as described in ***Today's Continuing Care Retirement Community (CCRC): The strengths of this Popular Senior Living Model, its Stress Points and Challenges…and Its Outlook for Tomorrow.***[6] This report was included by reference by David Erickson, testifying on behalf of AAHSA, in his testimony before the U.S Senate Special Committee on Aging on July 21, 2010. David Erickson testified, "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

[6] Jane Zaeem, Editor, *Today's Continuing Care Retirement Community (CCRC)***,** July 2010. This paper was developed by a task force of CCRC executives of both not-for-profit and for-profit communities, consultants, financial advisors and attorneys in cooperation with the American Association of Homes and Services for the Aging, American Seniors Housing Association and National Investment Center."

experts in CCRC operations, tax-exempt bond financing, and legal and regulatory requirements." The other report referenced by David Erickson was C*ontinuing Care Retirement Communities: Suggested Best Practices for CCRC Disclosure and Transparency*.

V. The Future as Seen in 2010 by AAHSA/LeadingAge—The expectations and challenges AAHSA foresaw with the aging of the Baby Boomers. At the concurrent meetings of NaCCRA and the AAHSA during October 2010, with much fanfare and celebration, AAHSA changed its name to LeadingAge to reflect the need for the industry to change to remain relevant to the 78 million Baby Boomers. These expectations and challenges are documented by the AAHSA Cabinet on Future Needs of Consumers in *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers,* dated June 2009.

VI. The Decade of 2010 to 2019—Data presented in various forums by Lead-ingAge, Ziegler, and others show that the not-for-profit, entry-fee CCRCs are not capturing the bulk of the 78 million Baby Boomers. In particular, two presenta-tion by Ziegler managers at the 2019 concurrent NaCCRA and LeadingAge meet-ings in San Diego vividly showed that not-for-profit, entry-fee CCRCs are losing market share to for-profit, no-entry-fee senior living facilities.

VII. WHAT Went Wrong, the NaCCRA Board Member Perspective— A review of the two U.S. Senate Special Committee on Aging Hearing on CCRCs foretold what could happen. The lessons learned, or which should have been learned, from the hearing helps to define what went wrong during the decade to follow. Following the hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?* held on July 21, 2010, before the U.S. Senate Special Committee on Aging and with the continuation of CCRC bankruptcy filings following The Great Recession of 2008, NaCCRA was compelled to form a Financial Soundness Committee. Observations by its members over the years are described. Entry fees, passive regulation, accounting, Residency and Care Agreements, and healthcare administration are generally not well understood by residents. Descriptive documents provided by some CCRCs appear to be deliberately designed not to serve residents well, if not to obfuscate.

VIII. NaCCRA— a national umbrella organization formed by state associations of CCRC residents' councils and serving the member state associations and CCRC residents.

IX. NaCCRA Financial Soundness Committee—formed during 2011 to respond to the ongoing bankruptcies commencing with The Great Recession of 2008.

X. Conclusions—In June 2009, the AAHSA Cabinet on Future Needs of Consumers, in *Who Decides? Imagining a Different Future: Planning Now for a*

New Generation of Older Consumers reported “Because future consumers will be different, providers of long-term services and supports must also be different. Instead of “serving” and “caring for” residents and clients, we must enable and empower them. This dramatic shift will surely disrupt our current ways of doing business. However, inaction is not an option. If we don’t offer abundant and meaningful choices to consumers – and work hard to foster consumer independence and autonomy – older people will find other providers who will.”

Ten years later, as predicted, older people have found other providers who meet their needs—for-profit, no-entry-fee providers.

NaCCRA’s purpose is promoting, protecting and improving the CCRC/Life Plan lifestyle. NaCCRA urges not-for-profit CCRCs to heed the recommendations of AAHSA Cabinet on Future Needs of Consumers in *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers* and work with your state associations of residents’ councils and residents to deliver on the promise that CCRCs can offer residents.

III. THE PROMISE AND ATTRACTION OF CCRCS

CCRCs cite a history of over 100 years, although their organization was different from today’s. During their early history, these homes were usually referred to as old people’s homes, usually operated by religious organizations and supported by charitable donations of people other than the residents, even if residents turned over their assets to the homes. Often the institutions were meant to support retired missionaries or the spouses of deceased clergy. This is important, because as the institutions evolved to become CCRCs funded entirely by those living within them, the governance structure did not evolve accordingly, resulting in the current paradox that the “resident-financiers” of today’s CCRCs have little or no say in governance. This pattern, unfortunately, was conveniently adopted even by those CCRCs that did not themselves start long ago as old people’s homes. “The term CCRC was first coined by Mr. Walter Shur, former Chief Actuary of New York Life Insurance Company, in a Pension Research Council textbook that I co-authored in 1981.”[7]

CCRCs hold great promise and attraction for seniors. As seniors enter their seventies and eighties, they realize the challenges of caring for their homes and themselves are increasing. They yearn for a better lifestyle. For most seniors, there is only a faint thought that they will eventually require increased levels of personal, nursing, and medical care. A minority will already be aware that they face medical challenges.

[7] See Powell, Alwyn V (2010). "Actuarial risks not limited to Type A and B Contracts," Footnote 1, a featured article published in Z-NEWS, a Ziegler Capital Markets publication, July 30, 2010.

As stated by Senator Herb Kohl, Chairman, U.S. Senate, Special Committee on Aging on July 21, 2010, at the opening of the hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment* stated,

> "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 through 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 CCRC 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."

Historically, these facilities were sponsored by faith-based groups and to a lesser extent by fraternal organizations. Some CCRCs have ties to colleges, universities, or healthcare organizations. Such affiliations convey spiritual comfort, lifetime learning, healthcare, credibility, and other assurances that life will be good. Many of these facilities offer Life Care, Type A contracts, which have built in long-term care insurance that will allow costs to remain constant, except for inflation, regardless of the level of care required. Even if the resident exhausts his/her financial resources, residents will receive care through end of life. Nirvana!

What is foremost in the minds of many aging prospective residents is a great new life style that they will share with kindred contemporaries. Many CCRCs will advertise with pictures of couples at formal dining tables with glasses of wine in their hands and a magnificent background view, couples engaged in some active lifestyle activity, such as walking on the beach, or actively engaged in water aerobics. So prominent in the minds of aging Americans is this view that LeadingAge abandoned the term "Continuing Care" and replaced it with "Life Plan" as a term more in tune with current-day seniors. "It became clear that the name CCRC no longer did an adequate job of creating the best perception among tomorrow's older adults," said Leading/Age President and CEO Larry Minnix. "At the core of the decision to move to a community is having the right plan for what the next stage of life has to offer. We feel the 'Life Plan Community' name encompasses that very well."[8]

Although prospective residents might be attracted to a CCRCs for the lifestyle they offer, others realistically appreciate the value of onsite healthcare. Most prospective residents will not explore the adequacy and cost of healthcare. Many residents will eventually have a need for healthcare, and they will wish they had given more consideration to its adequacy and cost.

Some residents do not like the phrase *Life Plan* as they plan their own life and healthcare, and are not willing to delegate those decisions to a Life Plan Community. Further, the decision to adopt *Life Plan Community* to mean *CCRC* is too similar and too easily confused with the more

[8] LeadingAge Press Release, November 1, 2015

desirable *Life Care Community* which includes what is essentially long-term care insurance. This paper will use the traditional *CCRC*.

IV. CCRC Characteristics in 2010

As the decade of 2010 began, The Great Recession of 2008 was behind us. A report prepared for the American Seniors Housing Association, prepared by CCRC executives of both not-for-profit and for-profit communities, consultants, financial advisors and attorneys in cooperation with the American Association of Homes and Services for the Aging, American Seniors Housing Association, and National Investment Center characterized CCRCs as follows:

> "A CCRC is a residential alternative for older adults (usually age 65 and older) that provides flexible housing options, a coordinated system of services and amenities, and a continuum of care that addresses the varying health and wellness needs of residents as they grow older. The emphasis of the CCRC model is to enable residents to avoid having to move—except, perhaps, to another level of care within the community—if their needs change and they require health care and supervision. Remaining within the community allows the residents to continue their existing relationships with a spouse and friends, avoid the stress of a move, and receive health care, should it be needed, in an environment they know and trust."
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> "A CCRC typically includes apartment or cottage living units (independent living), assisted living units, and skilled nursing care in a campus-style setting. Residents have lifetime access to the community's continuum of care. Typically, all of the living options (independent living, assisted living, and nursing) of the CCRC are on a single campus. As care and services for older adults continue to evolve, CCRCs have been adding additional components, such as memory support and wellness programs, to their services mix."
>
> "The CCRC's services and associated charges are contained within a contract that specifies if and how charges will change as a resident's health and social needs change over time. An estimated 65% to 75% of CCRCs offer contracts that include a lump-sum initial payment (entrance fee), and the large majority of these offer some degree of refundability or repayment of the entrance fee to the resident if the resident moves out of the community or to the resident's estate if the resident dies. The amount of the entrance fee typically varies based on the size and type of living unit. Residents also pay a monthly fee. The entrance fee, if required, and monthly fee give the resident the right to live in his or her unit and receive services such as meals, housekeeping, repairs and maintenance, and the use of community facilities, activities, and other amenities."
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> "The CCRC model has evolved over a very long period of time, with some dating back more than a century. In fact, 25 of the AAHSA Ziegler 1001 senior living systems operate CCRCs that were founded more than 100 years ago."
>
> "The majority of CCRCs in operation today were purpose-built. Roughly half are faith-based; a university, health system, military group, or fraternal organization

> may sponsor others; and a small number have emerged from interested citizens who have come together with the sole common interest of establishing a CCRC. Whether they are for-profit or not-for-profit entities, the majority of CCRCs today are part of a multisite system."[9]

Today's Continuing Care Retirement Community (CCRC) report continued,

> "Only about 18% of the CCRCs currently in operation have for-profit ownership, according to the *Ziegler National CCRC Listing and Profile*, a report published by Ziegler Capital Markets in November 2009."
>
> "Approximately half of all CCRCs are affiliated with faith-based organizations; among those affiliations, 21.1% are Lutheran, 17.6% are Methodist, 13.8% are Presbyterian, and 12.8% are Roman Catholic."[10]

In 2009, there were 1,861 CCRCs.[11]

The report went on to characterize *Residency and Care Agreements.*

> "A number of the more than century-old CCRCs had their roots in residences established to meet the needs of widows and orphans resulting from the casualties of the Civil War. The needs of the elderly were heightened during the Depression, and "old age homes" sponsored by faith-based, not-for-profit organizations emerged as a response. Contracts in those early days of the CCRC (if contracts existed at all) required prospective residents, as a condition of moving in, to turn over their assets in return for a promise of care for life, highlighting the trust level and expectation among these early CCRC residents that the move was a commitment for the remainder of their lives."
>
> "Today, CCRCs and the individual or couple entering the community also enter into a formal contract or resident service agreement that details the charges, along with the level of services that will be provided either at and/or by the community. Most new CCRC residents begin by living in an apartment or cottage, and the community may offer an entrance-fee contract, rental contract or, in relatively rare cases, an ownership option for those living accommodations."
>
> *"Entrance-Fee CCRCs*. When the CCRC model began growing in the 1960s and 1970s, entrance-fee CCRCs typically provided an extensive resident service package that included little (if any) additional charge if the resident transferred to areas of the community that offered higher levels of care. As CCRCs evolved, additional contract types were developed to provide choice for prospective residents

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[9] Jane Zaeem, Editor, *Today's Continuing Care Retirement Community (CCRC)***,** July 2010, p. 4–5 and frequently included information from Ziegler National *CCRC Listing & Profile*, 2009.

[10] Ziegler National CCRC Listing & Profile, 2009, as quoted in Jane Zaeem, Editor, *Today's Continuing Care Retirement Community (CCRC)***,** July 2010, p. 5–6.

[11] The Ziegler National CCRC Listing & Profile, 2009 lists a total of 1,861 CCRCs, as per Jane Zaeem, Editor, *Today's Continuing Care Retirement Community (CCRC),* July 2010, p. 5, Footnote 2.

> and options for the providers. Today, the type of contract available to a prospective resident may depend on his or her health condition or history and the related risk of overutilization of health services."[12]

For perspective, during the summer of 2015, Ziegler and Love & Company collaborated on a research project to study current trends and practices in CCRC pricing strategies by surveying Chief Financial Officers of CCRCs throughout the United States.[13] Because only 89 communities responded, the study is not statistically representative of the industry, but it provides an indication of industry characteristics. The types of contracts offered and their "refundability" as summarized in Table 1. Columns and rows can exceed 100% because many CCRC offer more than one contract type and refund provision. The study found contracts offering refunds other than those listed in Table 1, but they were in the minority. The contract types are described in **APPENDIX A.**

Table 1. Type of Contract and Entry Fee Refundability for Independent Living by Community					
Type of Contract →	A	B	C	Rental	Equity
CCRCs Offering This Contract, %	39	61	43	45	0
No Refund	32	19	15	N/A	N/A
Declining Balance	49	66	53	N/A	N/A
50% or 55%	41	21	29	N/A	N/A
90% or 95%	46	60	50	N/A	N/A
100%	3	0	26	N/A	N/A

V. THE FUTURE AS SEEN IN 2010 BY AAHSA/LEADINGAGE

AAHSA prepared a very fine study entitled, *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers*[14] which found a need for AAHSA and its member CCRCs to change. AAHSA signaled this need for change with a change of its name to LeadingAge with great celebration and fanfare at the AAHSA Annual Meeting and Expo during October 2010. LeadingAge wanted to remain relevant and to provide leadership to the Baby Boomers, who are coming. A few selected excerpts from the study follow,

> "An unprecedented explosion in the aging population–spurred by the pending retirement of 78 million Baby Boomers–will present serious challenges to both consumers and providers of long-term services and supports. Yet, the aging of America will also give consumers and providers an unprecedented opportunity to create a consumer-

[12] Jane Zaeem, Editor, *Today's Continuing Care Retirement Community (CCRC)***,** July 2010, p. 6–8 and included information from Ziegler National *CCRC Listing & Profile*, 2009.

[13] Rob Love and Jen Adelman, *2015 CCRC Consumer Contract Preferences & Buying Behavior Study*, The Love Report, Fall 2015, p. 4.

[14] *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers,* AAHSA Cabinet on Future Needs of Consumers, June 2009, pp. 4, 5, 6, 8, 9, 10, 11 & 14.

responsive service and support system that meets the individual preferences of older citizens while facilitating healthy aging for all."

"Baby Boomer characteristics. Research shows that the next generation of older people will be ethnically, economically, physically and educationally diverse. Many older consumers will enjoy financial security. But others–including women, members of minority groups, and those with inadequate retirement savings – could face serious financial challenges. High rates of disability and chronic disease, predicted by some health experts, will complicate the retirement picture for many future consumers."

"A different kind of consumer. Fortunately, there are many reasons to believe that Baby Boomers will help us creatively manage the challenges ahead. These older people will be well educated, technologically savvy and eager to work hard for social change. Most important, they will want to take charge of their own aging experience. Future consumers will not trust providers to make decisions for them. Already accustomed to having abundant choices in many aspects of their lives, they will demand the same range of choices from us."

"Because future consumers will be different, providers of long-term services and supports must also be different. Instead of 'serving' and 'caring for' residents and clients, we must enable and empower them. This dramatic shift will surely disrupt our current ways of doing business. However, inaction is not an option. If we don't offer abundant and meaningful choices to consumers–and work hard to foster consumer independence and autonomy–older people will find other providers who will."

"Need for inclusive planning. How can we prepare for this inevitable shift? First, we must ask consumers to tell us how they want to age – and we must listen carefully to their answers. Then we must work, as equal partners with consumers and local stakeholders, to create community-wide service and support systems that meet consumers' stated expectations. Such systems would offer consumers full and open access to information, services and supports; varied transportation, home care and universal design options; and strategies for disease prevention and management. They would also:

- Recognize the abilities and interests of older consumers.
- Offer full information and transparency, with appropriate privacy safeguards.
- Emphasize flexibility, choice, freedom and accessibility.
- Integrate and coordinate services and supports across settings.
- Provide customized and personalized services that respect consumer diversity.
- Empower consumers to make decisions and take informed risks.
- Ensure provider accountability through consumer protections and quality review.

- Offer a quality consumer experience, designed by and with consumers.
- Provide ample opportunities for social interaction and meaningful activity."

"Conclusion. The coming shift in the relationship between consumers and providers of long-term services and supports will require that AAHSA members adopt a different approach to the good work they do. Many of us will find it challenging to make the changes necessary to attract a new kind of older consumer to our services and supports. Yet, AAHSA members have a unique ability to lead and learn. Our desire to innovate, and our willingness to share what we have learned, is imbedded in the nonprofit culture. Both characteristics will help us imagine a different future for a new generation of older consumers."

"A Shift in Power. We simply do not know what consumer expectations of aging service providers will be in a decade. We also don't clearly understand how consumer behavior will affect the way we do business. What we *do* know is that consumers are changing."

"The residents and clients we will serve in the next 10 years will be different from the residents and clients we serve now or those we have served during the past 10 years. Based on our research and discussions, the AAHSA Cabinet on Future Needs of Consumers concludes that:

- ***Future consumers will no longer trust providers to make decisions for them.***
- ***Future consumers will expect choice in long-term services and supports.***
- ***In order to be meaningful,* consumer choice *must ultimately lead to* consumer control*"***

"Responding to the Consumer: Guiding Principles

- ***Recognition of the abilities and interests*** of older consumers and a willingness to design programs that empower consumers to continue using their abilities and pursuing their interests.
- ***Full information and transparency*** that is provided to all consumers, with appropriate privacy safeguards.
- ***Robust and strong programs*** that offer flexibility in scheduling, geographic choice, freedom for consumers, and full accessibility.
- ***Seamless integration*** and coordination of services and supports across settings.
- ***Customization and personalization*** of services and supports, designed with and by consumers, with sensitivity to the diversity of consumers.
- ***Consumer empowerment*** to make decisions, including the individual's right to take informed risks.

- ***Accountability*** on the part of providers, including appropriate consumer protections and public quality measurement and review.
- ***A quality consumer experience***, designed by and with consumers.
- ***Ample opportunities for social interaction,*** meaningful activity and inter-generational contact within a community."

Importantly, ASHAA emphasizes the need going forward for change in many different ways from where CCRCs were. That is a very significant point and needs to be noted. That the report did not go far enough in what specific changes needed to be made does not detract from the value of the ASHAA report at the time. AAHSA knew that changes needed to be made.

VI. The Decade of 2010 to 2019

Commencing at the start of the decade, for-profit, independent-living construction vs. inventory grew at an accelerating rate from approximately 2% per year at the beginning of the decade to 13% per year at the end of the decade (see Figure 1). For-profit, assisted living construction vs. inventory grew at an accelerating rate from approximately 2% per year at the beginning of the decade to a peak of 11% per year before declining to 8% at the end of the decade. Not-for-profit CCRC construction vs inventory remained at a growth rate of only 2% per year. Most of the new inventory of for-profit facilities was new construction. Most of the not-for-profit new construction was expansion of existing sites. Figure 1 was part of a Ziegler presentation of *Key Senior Living Trends* at the NaCCRA Dinner and also at a LeadingAge educational session entitled *Rental Vs. Entrance Fee: Responding to Consumer Preferences*.[15,16] From the context of the presentations, the CCRCs are not-for-profit, entry-fee CCRCs while the independent and assisted living units are for-profit, no-entry-fee.

From the presentation *Key Senior Living Trends* the following additional observations can be made:

- For-profit independent living and for profit assisted living construction as a percent of inventory has grown at accelerating rates through 2017.
- For-profit living has continued to grow at an accelerating rate through 3rd quarter 2019 reaching 13% per year.
- For-profit assisted living reached a peak growth rate of almost 11% per year in during 2017 and has since declined to an 8% per year growth rate in 3rd quarter 2019.
- Not-for-profit growth has remained flat at approximately 2% per year since 2010.

[15] Lisa McCracken, *Key Senior Living Trends,* LeadingAge, NaCCRA Dinner, October 26, 2019, pp. 13 & 24.
[16] Toby Shea, Keith Robertson, Rob Love; *Rental Vs. Entrance Fee: Responding to Consumer Preferences*, Leading Age Annual Meeting + Expo; October 28, 2019; p. 6. & 7.

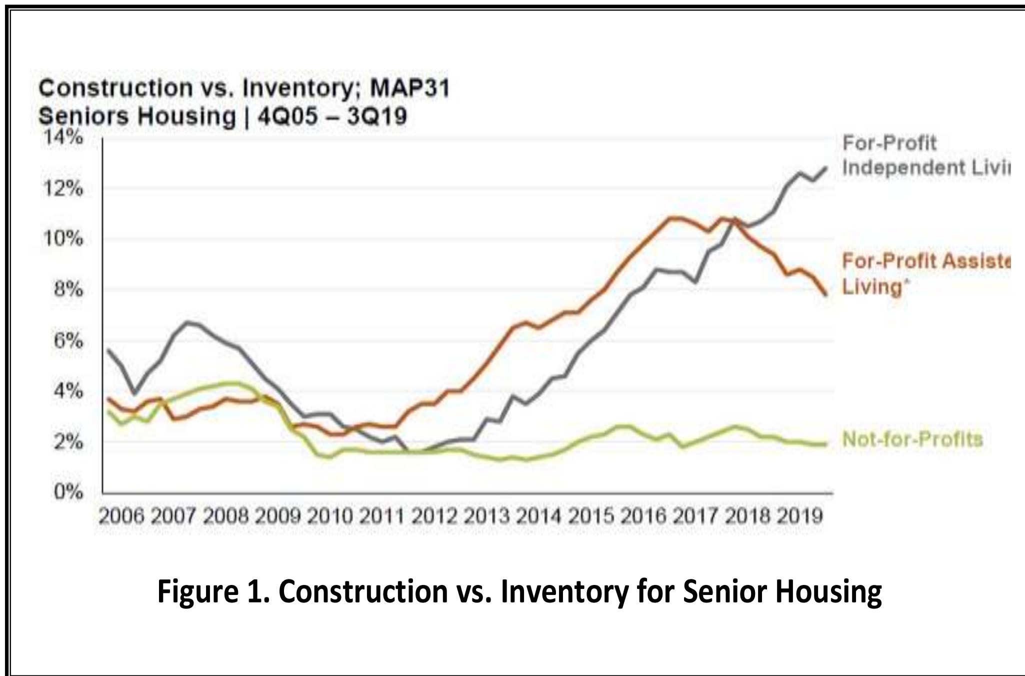

Figure 1. Construction vs. Inventory for Senior Housing

- Not-for-profit growth has been through affiliation, acquisition and expansion on existing campuses.
- Publicly announced senior housing and long-term care projects January 2019 through August 2019: for-profit owners reported 243 new campuses and 27 expansion or repositions versus 14 and 14, respectively for not-for-profit sponsors."

Not-for-profit, entry-fee CCRCs are losing market share. What went wrong?

VII. What Went Wrong, the NaCCRA Board Member Perspective

As early as May 25, 1983, the U.S. Senate Special Committee on Aging held the hearing, *Life Care Communities: Promises and Problems,* which suggests history in the period of 2010 to 2019 repeated earlier history. The promises of CCRCs providing residents an ideal retirement environment remains an unfulfilled promise.

In that hearing, Chairman John Heinz summarized the then current situation with these words,

> "Those who support life care are convinced that it is a concept whose time has come; that it can be of value to millions of Americans, and that public policy should support this industry's growth. Early studies have shown that life care residents are hospitalized less frequently and enjoy better health than others in comparable circumstances-at least in part because of the advantages that come with a convenient and affordable system of prepaid health and supportive care. But with the promise of life care have come problems associated with the financial risks inherent in making lifetime commitments of care. These risks are so

> serious that individuals who wish to enter life care facilities, and Government officials charged with protecting the public interest, should exercise extreme caution and close scrutiny in regard to them. The promise of life care has too often been thwarted by inept management, mismanagement, and outright fraud. As a result, in recent years, scores of life care facilities have been forced to declare bankruptcy."
>
> "Those who urge caution also point to other dangers and concerns: Residents of life care communities are given no equity interest in the facility. When bankruptcy occurs, the senior citizen residents have no standing and lose all of whatever they have paid in to the home. Many life care communities are financed as real estate ventures with endowment fees being used to cover initial construction costs. Reserves are either not established or they are set too low to cover future needs. Some life care communities are not actuarially sound and projections of future revenues and costs are incorrect. Some homes use a "cash" accounting system rather than an "accrual" system thereby grossly inflating their cash position and misrepresenting their solvency. Some life care communities represent themselves as being affiliated with a religious denomination or church, giving the impression that those entities would back the operation if any serious financial problem should develop. Quite often this claim has turned out to be false. Some contracts are written in such a way that if a person decides, even within a reasonable period of time, that he or she does not want to stay at the facility, the entire endowment is lost and not returned even on a prorated basis."
>
> "Instances have occurred where residents have not been told that the operating company was paying inflated prices for goods and services it purchased from other related-nonarms-length corporations."
>
> "As chairman of the Special Committee on Aging, I am concerned that the credibility of life care, which appears to be an attractive option for millions of older Americans, may be damaged by inept and fraudulent actions by a few. I am concerned that only 11 of our 50 States have laws governing the operation of life care facilities, and that these have often proven inadequate."
>
> "We stand today at a critical point in the development of this concept, a point at which we must inquire whether the problems we have seen can be remedied and prevented, so that its promise may be realized."[17]

Twenty-seven years later, while some of the outrageous problems which existed in 1983 have been addressed and there are more states with more laws regulating the industry, there remain serious systemic problems with the CCRC industry as viewed by residents.

By 2010, the damage from The Great Recession of 2008 had shown itself with a string of significant bankruptcies of owners and operators of CCRCs. Sunwest Management, Inc. which had

[17] John Heinz, Chairman, U. S. Senate Special Committee on Aging, "Life Care Communities: Promises and Problems," May 25, 1983, p. 2.

owned and operated as many as 200 facilities before its bankruptcy, Erickson Living which operated approximately 20 large CCRCs, and Covenant at South Hills had filed for federal bankruptcy protection in the years leading up to the year 2010.

As the decade of 2010–2019 commenced, many of the problems with CCRCs, from a resident's perspective, were identified at the beginning of the decade during the hearing, *Continuing Care Retirement Communities: Risks to Seniors—Summary of Committee Investigation* held by the U.S. Senate Special Committee on Aging on July 21, 2010. Unfortunately, although the Committee Hearing identified many problems, the hearing did not solve any of the problems. Of the many problems, one of the most fundamental problem is the "Entry Fee." What is it?

1. Entry Fee — What Is It?

One of the most significant problems residents have is with the entry fee. There are at least a half dozen different definitions:

- *"Forward funding care,"* not unlike long-term care insurance funded by a single large upfront fee followed by monthly fees. As viewed by actuaries,

  > "All entry fee CCRC contracts contain actuarial risks because **entry fees are prepaying a component of future costs**. [Emphasis added.] Therefore, actuarial analysis is needed to determine whether those organizations are solvent. Type A and B contracts contain components of long-term care insurance (LTC), and actuarial analysis is used to estimate health care contingencies. Entry fees for all CCRC contracts include prepayment of a portion of future operating and/or capital costs which corresponds to annuity risk and longevity contingencies. Refund provisions, especially fully refundable entry fees, for all CCRC contracts are identical to whole life insurance and require actuarial analysis to determine mortality contingencies."[18]

- *"Loans,"* that is, entry fees are loans to qualified continuing care facilities under continuing care contracts, according to the Internal Revenue Service (IRS).[19]
- *"Endowment"* as characterized by John Heinz, Chairman, U.S Senate Special Committee on Aging during the 1983 hearing
- *"Consideration"* the word sometimes used to characterize entry fees in *Residency and Care Agreements.*
- *"For payment of municipal bond interest and principle"* as characterized in Municipal Bond Covenants used to finance CCRCs.

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[18] A. V. Powell, *Actuarial Risks Are Not Limited to Type A and B Contracts*, Z-NEWS, Jul 30, 2019.
[19] *Investment Income and Expenses,* Internal Revenue Service, Pub. 550, 4/3/2020, pp. 6 & 71.

- *"Owners' Equity"* as the only item on a CCRC's balance sheet that does not have a definite promise to repay.

> The exact dividing line between liabilities and owners' equities is a difficult one to draw. Although a distinction based on whether the claim is that of an owner or that of an outside creditor is satisfactory for most situations, in borderline cases fine-spun philosophical arguments can often be made for either treatment. A practical approach is to ask whether the claim involves a definite promise to pay; if so, the claim is a liability. If, on the other hand, the business does not incur a definite obligation to pay— definite in the sense that failure to make payment would be grounds for legal action—the item is part of owners' equity. [20,21,]

Residents, those who give the matter any thought, consider entry fees as a combination of forward funding their care and an investment in their care through end of life as provided in *the Residency and Care Agreement*. For residents with a Life Care, Type A Contract, there is a built-in long-term care insurance, and the entry fee is not unlike a one-time upfront payment toward paying the premium of the long-term care insurance policy. A Type B has more or less of a long-term care insurance built into the *Residency and Care Agreement*. The residents pay an entry fee and the *Residency and Care Agreement* promises care through end-of-life. Not surprisingly, residents are of the view they are entitled to have say with regard to their care and CCRC operations. When residents learn the facts are not as they were led to believe by marketing personnel, or as inferred from the *Disclosure Statement*, or as described in the *Residency and Care Agreement*, residents become upset and might just sue the CCRC as happened at Vi at Palo Alto.

Although CCRC residents are not very litigious, there are time when litigation results because the meaning of entry fee so confounds the most brilliant minds and causes misunderstandings. Such appears to be the case of Prof. Burton Richter[22] and similarly situated plaintiffs who filed a complaint against CC Palo Alto, Inc.; Classic Residence Management Limited Partnership and CC-Development Group, Inc. The plaintiffs allege concealment, negligent misrepresentation, and breach of fiduciary duty and constructive trust, financial abuse of elders, violation of California Civil Code, Violation of California Business and Professional Code, and Breach of Contract.[23] The lawsuit continues through the federal court system on appeal. The basic issue appears to be that the plaintiffs did not understand the true nature of the substantial entry fee they paid to the CCRC where he resided, even as the lead plaintiff, Prof. Burton Richter, who was a retired Nobel Prize-winning professor of physics at Stanford University and had received

[20] Robert N. Anthony, *Management Accounting*, Richard D. Irwin, Inc., 4th ed., 1970, p. 198.

[21] Robert N. Anthony, was one of the extraordinary minds in accounting. See also the 942-page textbook by Robert N. Anthony & David W. Young, *Management Control in Nonprofit Organizations, 7th Ed., 2003*. .

[22] Andrew Myers and Glenda Chui, *Nobel Prize-winning Stanford physicist Burton Richter dies at 87,* Standford News, July 19, 2018.

[23] Burton Richter et al, Plaintiffs v. CC-Palo Alto, Inc. et al, In the U.S. District Court for the Northern District of California, Case5:14-cv-00750-HRL, February 19, 2014.

numerous awards and titles in recognition of his contributions to nuclear physics.

2. REGULATION

In 2010, there was another hearing on CCRCs by the U.S. Senate Special Committee on Aging.[24] The participants were:

Herb Kohl, Chair, U.S. Senate Special Committee on Aging

Bob Corcker, U.S. Senate Special Committee on Aging

Al Franken, U.S. Senate Special Committee on Aging

Alicia Cackley, Director, Financial Markets and Community Investment, U.S. Government Accountability Office, Washington, D.C.

Kevin McCarty, Insurance Commissioner, Florida Office of Insurance Regulation, Tallahassee, FL

Charles Prine, Resident of Concordia (formerly, Covenant) of the South Hills CCRC, Mount Lebanon, PA

Katherine Pearson, Professor, Dickinson School of Law, Pennsylvania State University and Director, Elder Law and Consumer Protection Clinic, University Park, PA

David Erickson, Vice President of Legal Affairs, Covenant Retirement Communities on Behalf of the American Association of Homes and Services for the Aging (now, LeadingAge), Skokie, IL

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

Susanne Matthiesen, MBA, Managing Director, Aging Services and Continuing Care Accreditation Commission CARF International

The consensus, if not conclusion, of the Senate Hearing might be characterized as:

> *There will be no federal regulation of CCRCs. Instead, a passive approach is recommended for the regulation of CCRC at the state level. States are encouraged to provide for residents' rights; and CCRC disclosure, transparency, and communications between residents and management. State Insurance Commissioners are encouraged to provide oversight.*

The implied regulatory philosophy is that of *passive regulation*, that is, fully informed prospective residents and residents will make fully informed decisions.

There are several problems with this approach which should have been apparent to the U.S Senate Special Committee on Aging:

[24] U.S. Senate Special Committee on Aging Hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment*? July 21, 2010.

A. At the state level, the state LeadingAge is influential with legislatures and regulators and can effectively oppose legislation recommended by the U.S. Senate Special Committee Majority Staff or by CCRC residents groups.

B. Enforcement of state CCRC laws is frequently lacking.

C. The recommendations of the U.S. Senate Majority Staff, or even the recommendations of AAHSA, would not be widely adopted by either the state legislatures or by the individual LeadingAge CCRC members.

D. Most not-for-profit CCRCs are operated by faith-based organizations. As should have been obvious from the testimony of Charles Prine, prospective residents, even well-educated and successful businessmen such as Charles Prine, are inclined to accept on faith what they are told by faith-based organizations. As Mr. Prine testified,

> "One of the problems is that when an organization like this [Covenant at South Hills] 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."

3. Financial

What the NaCCRA Financial Soundness Committee has observed over the decade of 2010:

A. Lesson learned from the U.S. Senate Special Committee on Aging Hearing of July 21, 2010. Following the series of newspaper headlines on CCRC-related bankruptcy filings and the U.S. Senate Special Committee on Aging hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment*? was held, NaCCRA President Ruth Walsh appointed Walton Boyer to form and chair a Financial Soundness Committee. One of his first actions was to make the transcript of *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?* as the

Financial Soundness Committee's touchstone. The hearing described many of the elements of what was wrong with the CCRC industry leading up to 2010 and, unfortunately, what continued to be wrong with the CCRC industry during the decade 2010—2019.

When it came to the Financial Soundness Committee's investigation of CCRC bankruptcy filings nothing better described the problems than the *Testimony Submitted for the Record by B'nai B'rith Housing, Inc*. (BBHI). B'nai B'rith International, Inc. created the shell company B'nai B'rith Housing, Inc. to insulate the parent company from liability for its offspring. The testimony of BBHI, in part, follows,[25]

> "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, 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, Keystone 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."
>
> "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."

When you read the first two paragraphs of the preceding quotes of the capabilities of Greystone Development Company, Herbert J. Sims, and BDO Seidman, L.L.P. is it not reasonable to expect that these very capable organizations would have prevented the inexperienced BBHI and TCSHI who never operated a CCRC, according to the testimony of Charles Prine,

[25] U.S. Senate Special Committee on Aging Hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment*? *Testimony Submitted for the Record by B'nai B'rith Housing, Inc*.; pp 82 & 83.

from doing something so foolish as to take on a project with excessive debt? Or, in the alternative, would the reader not conclude that regardless of the capability of the advisors, predicting the success or failure of a new CCRC cannot be done with certainty, BBHI and TCSHI needed the organizational strength and experience to make it work. These elements appear come together time and again to cause financial stress in new CCRCs.

Adding to the testimony submitted by BBHI the observations by witness Charles Prine, who spoke for the residents of The Covenant South Hills, a more complete picture evolves,[26]

> "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% 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."
>
> "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

[26] U.S. Senate Special Committee on Aging Hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?* Statement of Charles Prine, July 21, 2010, pp. 29 - 30.

> 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% 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% 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."

Should the reader conclude that some reputable charities are persuaded by developers, investment bankers, and accounting firms to take on CCRC projects that are beyond their interests and skills, carry too much debt, and are priced beyond what the market will bear?

Please forgive the authors for suspecting that developers, investment bankers, and accounting firms might be motivated by the substantial fees they receive when a project proceeds to completion rather than being terminated as infeasible.

The preceding above testimonies by BBHI and Charles Prine provide elements that can be found in other bankruptcies investigated by the NaCCRA Financial Soundness Committee. Their testimonies also illustrate the failure of passive regulation.

What BBHI said about The Covenant at South Hills could be said about many of the CCRC that became financially distressed, violated bond covenants, filed for bankruptcy, merged with or were acquired by a stronger CCRC, or just struggled on.

Among all of the financially sophisticated parties identified by BBHI, none had put equity capital at risk, although a person could reasonably conclude the entry fees of residents are the *de facto* equity capital, at least from an accounting perspective. If there was no equity, the letter of credit would not have been obtained and the municipal bonds would not have been offered. Someone has to have capital at risk. If not the sponsor of the CCRC, the Board of Directors, or senior managers, who?

Who? The elderly residents who sold their homes and "invested" the money in a CCRC. Residents, who are at a point in life where they cannot afford to lose their savings intended for a secure retirement.

B. **The not-for-profit CCRC financial model is beyond comprehension** by most prospective residents and residents, even those with an MBA. What industry has audited financial statements that look like that of a not-for-profit CCRC? A balance sheet with no equity!? Or, do we look at a CCRC as a charity and the entry fee as a charitable donation? Or, are the entry fees the equity capital? CCRCs with negative income year-after-year and negative net assets growing year after year!? How can a CCRC operate that way, no other business can? Negative income and negative net assets, year-after-year are usually two good reasons for filing for bankruptcy protection.

C. **Seniors sell their house and give a substantial part of their net assets to a CCRC,** whose sole purpose is, supposedly, to care for its residents. That transfer of wealth from seniors to CCRC conveys an entitlement that they have a right to be informed and participate in management decisions. Often, residents do not have the sense of control over their lives that they would like to have.

D. **Residents pay fees for purposes not related to their care,** such as for charity care, another property, or management services that do not benefit residents. The problems is not the payment of fees for such purpose as much as not being informed in advance before singing the *Residency and Care Agreemen*t.

E. **Dispositions, acquisitions, mergers, and bankruptcies** since *The Great Recession of 2008* are unsettling to residents.

F. **Use of Residents' Entry Fees for Large, Risky Expansions by Existing CCRCs—** residents who never speculated on real estate development, now at 80+/- years of age have their entry fees, intended for their care through end of life, used for real estate speculation.

G. Competition from For-Profit Rentals[27] Competition from the accelerating growth of for-profit, no-entry-fee independent and assisted living facilities.

4. ACCOUNTING

Audited financial statements for CCRCs have given residents a misleading understanding of entry fees, although recent accounting changes might be improving upon that situation.

Since 1973, the Financial Accounting Standards Board (FASB) has been the designated organization in the private sector for establishing standards of financial accounting that govern the preparation of financial reports by nongovernmental organizations. Those standards, published as the *FASB Accounting Standards Codification®*, are officially recognized as authoritative by the Securities and Exchange Commission (SEC) and the American Institute of Certified Public

[27] Lisa McCracken, *Key Senior Living Trends,* LeadingAge, NaCCRA Dinner, October 26, 2019, pp. 13 & 24.

Accountants (AICPA). These standards are what are referred to as "generally accepted accounting principles (GAAP).

An Accounting Standards Update (ASU) is a document that communicates how the *Accounting Standards Codification* is being amended. It also provides other information to help a user of GAAP understand how and why GAAP is changing and when the changes will be effective. A CCRC's audited financial statements are most likely prepared in compliance with GAAP.

During the decade of 2010—2019, FASB has issued one ASU that affects the CCRC industry and proposed others. These are FASB ASU *Revenue from Contracts with Customers (Topic 606)*, No. 2014-09, May 2014 and FASB *Proposed Accounting Standards Update, Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954), Presentation of Financial Statements of Not-for-Profit Entities*.

ASU *Revenue from Contracts with Customers (Topic 606)* elucidates the use of entry fees by CCRCs to meet their contractual obligations to residents. "... [T]he objective of the guidance in this Topic is to establish the principles that an entity shall apply to report useful information to users of financial statements about the nature, amount, timing, and uncertainty of revenue and cash flows arising from a contract with a customer."[28] Importantly for residents, this ASU rescinds the CCRC industry-specific CCRC accounting of entry fees. Instead, consistent with other industries, CCRCs must relate entry fees to the present and future contractual obligation to provide goods and services; establish a liability for refunds; recognize the financing component of the entry fee, taking into consideration the time value of money; and management's policy for providing charity care, as well as the level of charity care provided, shall be disclosed in the financial statements.

The American Institute of Certified Public Accountants (AICPA) Revenue Recognition Task Force developed revenue recognition implementation guidance on how to apply this new revenue recognition standard.

FASB's *Proposed Accounting Standards Update, Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954), Presentation of Financial Statements of Not-for-Profit Entities* seeks to improve the current net asset classification requirements and the information presented in financial statements and notes about a not-for-profit entity's liquidity, financial performance, and cash flows. The FASB's Not-for-Profit Advisory Committee (NAC) and other stakeholders indicated that existing standards for financial statements of not-for-profit entities (NFPs) are sound but could be improved to provide better information to donors, creditors, and other users of financial statements."[29]

NaCCRA responded to FASB's request for comments by letter from Daniel A. Seeger on August 17, 2015 by agreeing with FASB "that existing standards for financial statements of not-for-profit entities (NFPs) ... could be improved to provide better information to donors, creditors,

[28] ASU No. 2014-09, p. 16, par. 606-10-10-1
[29] FASB ASU Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954), Issued April 22, 2015.

and other users of financial statements." Residents who pay up front entry fees are unsecured creditors, frequently the largest class of creditors. Existing standards for financial statements of not-for-profit entities need improvement for use by, and protection of, residents."

Seeger's letter continued,

> Most important to residents is assurance that the advance payment of entry fees paid to a CCRC for housing and services through end-of-life, is preserved for that purpose and, if a refundable entry fee, in whole or part, that those funds are readily available for refund. Residents frequently sell their home to raise the funds to move to a CCRC. The funds are a major portion of their savings. Residents are at a point in life where they cannot start over if their funds are not available for the intended purpose. Financial statements need to be clear on the availability of entry fees for the intended purpose.
>
> In addition, residents would like to know the adequacy of:
>
> - Cash to pay expenses and other forthcoming liabilities;
> - Adequacy of a surplus of revenues over expenses to maintain the business; and
> - Net assets to assure the business is not burning through cash provided by residents to pay for future resident housing, services, and refunds.[30]

The American Institute of Certified Public Accounts (AICPA) appointed a committee to issue guidance on how the ASUs should be applied. The Committee is made up mostly of accountants who serve the healthcare community. NaCCRA asked to appoint a representative to the Committee. The letter read, in part,

> Residents view entry fees as an investment in their care through the end of life and, if refundable in whole or in part, as is frequently the case, as an inheritance for their survivors.
>
> Actuaries consider the entry fee as forward funding a resident's healthcare. The Internal Revenue Service (IRS) agrees and allows a substantial medical deduction for entry fees from an individual's income tax. The IRS also considers the entry fee as a "below-market" loan and requires a resident to pay income tax on the imputed interest, unless the resident is over 62 years of age. Banks and investors in municipal bonds of the not-for-profit CCRCs view the entry fees as risk capital that will protect them from default.
>
> CCRCs view the entry fee as their funds to do with as they please; any refund will be from the resident who reoccupies the vacated residence. This arrangement

[30] Letter from D. A. Seeger, President, NaCCRA to Technical Director, *Subject: FASB Proposed Accounting Standards Update, Not-for-Profit Entities (Topic 958) and Health Care Entities (Topic 954), Presentation of Financial Statements of Not-for Profit Entities*, Issued: April 22, 2015; letter date August 17, 2015.

appears to some as a pyramid scheme. At least 10 states with most of the CCRCs in the U.S. have stepped in and regulate entry fees to some extent.[31]

The NaCCRA request was denied.

Residents, as unsecured investors, have no say and are given little, if any, consideration in the issuance of accounting standards and practices. Residents are expected to put up the equity to secure the bonds, and pay the principle and return on the bonds. Residents are, otherwise, expected to have no say on the use or accounting of their entry fees.

5. CONTRACTS—THE RESIDENCY AND CARE AGREEMENTS

A. **The contract types are confusing.** Generally, residents who are not on a Life Care, Type A contract, are shocked when a spouse moves into assisted living or skilled nursing, and their monthly service fee increases by $10,000, more or less, per month. The LeadingAge-led name change from *Continuing Care Retirement Community* to *Life Plan Community,* where the terms are synonymous, easily leads to confusion between "Life Plan Community" and "Life Care Community," which is synonymous with Type A Contract. Today, many seniors move into Independent Living Unit with an aide and have no plans to move into an Assisted Living Unit or Skilled Nursing Bed. Today's Independent Living Unit is yesterday's Assisted Living Unit. If a senior needs a greater level of care than possible from Independent Living with in-home care, the senior will opt for a for-profit Assisted Living Unit or Skilled Nursing Bed. The basis for a CCRC with three levels of care is being eroded.

B. **Entry fees are for forward-funding resident care, or so many residents think.** Instead, the cash is sometimes used for expansion, meeting operating expenses, and other purposes, other than resident care.

C. **Risks** described to bondholders in the *Official Statements* accompanying the issuance of municipal bond financings are 20 pages, more or less, in length. Most of these risks are also resident risks. Residents are rarely informed, even if they studied the CCRC's *Disclosure Statement*.

D. **Entry fees are committed not to care of residents but to bondholders**. If residents in a CCRC read Appendices to the *Official Statement*, they might learn that their entry fee is immediately upon payment committed to securing the bondholders.

E. **"Refundable entry fee" will not be refunded.** "Refundable entry fee" is an oxymoron. Rather, the entry fee is given to the CCRC which, in turn, commits the entry to the bondholders. Any entry fee refund will come from the next resident to occupy the individual living unit, if there is a next resident to reoccupy the unit. Financially stressed CCRCs do not always have a resident to reoccupy an independent living unit. In New Jersey, the Organization of Residents Associations of New Jersey, a NaCCRA founding member, achieved passage of a law in

[31] Letter from D.A. Seeger, to Ms. Kimberly McKay, Chair, AICPA Health Care Entities Revenue Recognition Task Force, Subject: AICPA Health Care Entities Revenue Recognition Task Force, date April 1, 2015.

New Jersey to require a CCRC to issue refunds based on a first resident out, first resident paid from available funds. Although the specifics might vary from CCRC to CCRC and there are CCRCs that firmly agree to a refund, the point is, "Refundable entry fee" is not always what the phrase would imply to a prospective resident.

F. **Information made publicly available by Internal Revenue Service and Municipal Securities Research Board rules** are rarely brought to the attention of prospective residents or residents, specifically, IRS Form 1023, ***Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*** and the last three IRS Form 990's ***Return of Organization Exempt From Income Tax*** and the ***Official Statements*** and ongoing ***Disclosure Documents*** available from the Municipal Securities Research Board.

G. **Arbitration.** Some states are offering, if not requiring, binding arbitration agreements. Consumer and patient advocacy groups are against binding arbitration. Although there is a place for arbitration, no one should give up their constitutional rights under the law and the right to have their day in court. Last year, the Centers for Medicare & Medicaid Services (CMS), HHS amended the requirements that Long-Term Care (LTC) facilities must meet to participate in the Medicare and Medicaid programs. Specifically, in response to a 2017 proposed rule, requiring binding arbitration, the final rule neither prohibits nor requires binding arbitration. The final rule was the result of over 1,000 comments concerning the changes to the requirements regarding arbitration. Many comments were submitted by organizations that advocate for the rights of older adults, residents in nursing homes, or people with disabilities, including State Offices of the Long-Term Care Ombudsman.[32]

6. HEALTHCARE

A. **Trend Away from Type A Contract** to Type B and Type C Fee for Service contracts. With the Type B and C contracts, having a spouse in independent living and a spouse in assisted living, skilled nursing, or memory care adds a $10,000 per month, more or less, increase to the monthly service fee, a situation that can continue for many years. The fee increase can be a shock to many residents

B. **Trend Away from Skilled Nursing** to assisted living for long-term care—the "dumbing down" of health care—is not in the best interest of residents. If the resident moves to skilled nursing offsite, the CCRC advantage of providing a continuum of onsite care through end-of-life ceases.

C. **Decisions Regarding Transfer** under the ***Residency and Care Agreement*** which gives management the sole discretion of deciding whether a resident can remain in independent living or transfer to a higher level of care.

[32] DEPARTMENT OF HEALTH AND HUMAN SERVICES, Centers for Medicare & Medicaid Services, 42 CFR Part 483, Federal Register**,** Vol. 84, No. 138, July 18, 2019, pp. 34718 *et seq.*.

D. **COVID-19—**Long-Term Care Facilities, usually defined as assisted living, residential care, and skilled nursing care, account for 40% of all deaths, according to numerous newspaper accounts. Congregate living is considered a risk factor for COVID-19. Even though it might be an appropriate procedure, residents in assisted living and skilled nursing complain of the lockdowns, isolation, and not being able to see loved ones.

7. BOARD OF DIRECTORS AND RESIDENTS ENGAGEMENT

Consider that a resident might have:

1. This paper opened with the quote on behalf of ASSHA/LeadingAge "*CCRCs exist for one reason ---- to serve the needs of our residents.*" to the U.S. Senate Special Committee on Aging. A review of annual *Returns of Organizations Exempt from Income Tax, IRS Form 990* for CCRCs affirms the ASSHA/LeadingAge statement that the mission or purpose of CCRCs, charitable public purpose organizations, is to provide shelter and services for the aging. Who would know better than a resident the needs of residents and how to fulfill the mission and purpose of the CCRC?
2. Residents have contributed a significant part of their net worth to CCRCs as entry fees and are paying considerable monthly service fees. They feel entitled to have a say as to the use of these funds through resident-elected board members. Residents with large parts of their net worth at risk might be better stewards of CCRC funds than board members with nothing at risk.
3. Residents are usually well educated with valuable career experience and offer useful experience to CCRC governing boards.
4. Who better to know the needs of residents than a resident?

Increasingly, as a consequence of state laws or smart managements, residents are being added to CCRC boards.

VIII. NaCCRA

NaCCRA is a national umbrella organization formed by state associations of CCRC residents' councils and CCRC residents. The state associations of CCRC residents' councils are shown in Table 2.

Regulation of CCRCs is at the state level for the 38 states that regulate CCRCs.[33] Over the years, state association of CCRC residents' councils have had some successes at the state level, but it is a slow, difficult process to achieve protection for residents. Most states do not have a

[33] AAHSA and American Seniors Housing Association (ASHA), The Assisted Living and Continuing Care Retirement Community State Regulatory Handbook, 2009 as quoted in Alicia Puente Colder Ackley, *Older Americans, Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risks,* U.S. Government Accountability Office, GAO-10-611, June 2010, p. 14.

state association of residents' councils. Residents of the states without state associations to represent them to state legislatures and regulators have little representation and say about the laws and regulations governing CCRCs and ultimately CCRC treatment of residents. Infrequently, residents, or their children, will be so aggrieved that they will bring a civil suit against a CCRC. But, these are few. Residents moved to a CCRC to make the best of their remaining years, not become involved in a legal battle. Their inability to stand up for their rights is undoubtedly the reason some state have enacted laws defining the rights of the elderly and elder abuse laws. The states with state associations of residents' councils are given in Table 2.

Not-for-profit CCRCs are represented at the state level by the respective state LeadingAge organizations. The LeadingAge state organizations are well funded, thanks to residents' entry fees and monthly service fees which allow CCRCs to support both their state association and national LeadingAge. The state LeadingAge organizations are influential with the state legislatures and regulatory agencies. Nationally, LeadingAge is influential at the federal level and supports the state LeadingAge organizations.

TABLE 2. STATE ASSOCIATIONS OF CCRC RESIDENTS COUNCILS

The California Continuing Care Residents Association, Inc. (CALCRA)
https://www.calcra.org/

Connecticut Continuing Care Residents Association (ConCCRA)*
No Internet site.

Florida Life Care Residents Association (FLiCRA)*
http://www.flicra.com/

Maryland Continuing Care Residents Association (MaCCRA)*
https://maccra.org/

Massachusetts Life Care Residents' Association (MLCRA)*
https://www.mlcra.org/

North Carolina Continuing Care Residents Association (NorCCRA)*
https://www.norccra.org/

Organization of Residents Association of New Jersey (ORANJ)*
https://www.oranjccrc.org/

Pennsylvania Alliance of Retirement Community Residents (PARCR)*
https://www.parcr.org/

Virginia Continuing Care Residents Association (VaCCRA)*
https://www.vaccra.org/

Washington Continuing Care Residents Association (WACCRA)*
http://www.waccra.org/home.html

*NaCCRA State Association member.

IX. NACCRA FINANCIAL SOUNDNESS COMMITTEE

During 2011, following the July 21, 2010 U.S. Senate Special Committee on Aging Hearing on *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?* and with the continuing reports of CCRCs filing for federal bankruptcy protection, the then President of NaCCRA, Ruth Walsh appointed Walton Boyer to form a Financial Soundness Committee to investigate the bankruptcies which continued year after year. In addition, to the bankruptcies, there were dozens of annual mergers, acquisitions and retirements of CCRCs.

The Financial Soundness Committee investigated 24 bankruptcies. One of these owners/operators controlled as many as 200 facilities at one time. Another controlled 20 CCRCs. The bankruptcies investigated are shown in Table 3.

Bloomberg News reported that during the decade of 2010, there were 80 bond defaults.[34]

The Financial Soundness Committee has published one document and is working on another to provide prospective residents and residents with guidance on selecting a CCRC.

[34] Martin Z. Braun, Retirement Communities Financed by Munis Pushed to Edge by Virus,Bloomberg, L.P., May 28, 2020.

TABLE 3. CCRCS THAT FILED FOR FEDERAL BANKRUPTCY PROTECTION REVIEWED BY THE NACCRA FINANCIAL SOUNDNESS COMMITTEE

Year	Facility
01/2009	Covenant at South Hills
03/2009	Sunwest Management [owner/operator of as many as 200 long-term care facilities for the aging]
10/2009	Erickson Retirement Communities [owner/operator of 20± not-for-profit CCRCs. The CCRCs were independent of debtor Erickson]
04/2010	First Community Village
02/2011	Glebe
02/2011	Fairview Village [Obligated group consists of Fairview Ministries, Inc.; Fairview Village; Fairview Baptist Home; and Fairview Residence of Rockford]
11/2011	Village at Penn State
11/2011	St. Mary's Woods
12/2011	Clare Oaks
12/2011	The Clare at Water Tower
06/2012	Devonshire at PGA
10/2012	South Franklin Circle
02/2013	Windsor Meade
03/2013	Cottage Grove [bankruptcy narrowly avoided by a refinancing of debt]
03/2013	Groves
04/2014	Baptist Home of Philadelphia
06/2014	Sears Methodist Retirement System [operator of three senior living properties and owner/operator of eight senior living properties]
09/2014	Amsterdam at Harborside
01/2016	Capital Lakes
09/2016	Westport/University Village
03/2017	Air Force Village West
04/2017	Green Fields of Geneva
02/2018	Inverness Village
09/2019	BVM Management

Note: These CCRCs are not-for-profit, except for Sunwest Management and Erickson Retirement Communities.

X. Conclusions

Residents are drawn to what CCRCs offer, the attraction of a stimulating and attractive living environment for residents who are active seniors, and which incorporates into the community additional facilities which allow aging in place—an assisted living unit, a skilled nursing wing, and a memory care section.

As Senator Herb Kohl was quoted in his opening remarks,

> "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 through 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 CCRC 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."[35]

There are many CCRCs that are delivering on these promises, adapting to the trends, and satisfying their residents with good governance, financial acumen, leadership, disclosure, transparency, engagement with management, and healthcare. There are other CCRCs not living up to expectations

The number of older adults living in CCRC had more than doubled between 1997 and 2007. "Doubling" is equivalent to 7.2% per year growth rate. From the Ziegler presentations at the 2019 concurrent meetings of NaCCRA and LeadingAge (see pages 13 and 14, above) not-for-profit CCRC growth was 2% per year from 2009 to 2019.

With so much promise from the growth in the years leading up to 2010 and such dismal performance since then, the Ziegler data should be a clarion call to those not-for-profit CCRCs that do not measure up, to change direction and regain your industry's growth.

In June 2009, the AAHSA Cabinet on Future Needs of Consumers concluded in *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers*,

> "This report describes a major shift in the relationship between consumers and providers of long-term services and supports—a shift that will require a new mindset on the part of AAHSA members if they are to attract future consumers to their services and supports. AAHSA members who recognize and respond to this shift toward consumer-centered planning will, by necessity, need to make basic changes in the way they do business."

[35] U.S. Senate Special Committee on Aging Hearing, *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment*? July 21, 2010, p. 1..

> "AAHSA members have a unique ability to lead and learn. The willingness to share and the desire to innovate are imbedded in the nonprofit culture. Both characteristics will help individual organizations imagine a different future for a new generation of older consumers."[36]

NaCCRA's purpose is promoting, protecting and improving the CCRC/Life Plan lifestyle. NaCCRA urges not-for-profit CCRCs to heed the recommendations of AAHSA Cabinet on Future Needs of Consumers in *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers* and work with your state associations of residents' councils and residents to deliver on the promises of what CCRCs have a reputation for offering residents.

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[36] *Who Decides? Imagining a Different Future: Planning Now for a New Generation of Older Consumers,* AAHSA Cabinet on Future Needs of Consumers, June 2009, p. 18.

APPENDIX A. DEFINITIONS OF CONTRACT TYPES

CCRCs typically offer one of three general types of contracts that involve different combinations of entrance and monthly fee payments. Some CCRCs may offer residents a choice of the following contract types, while others may choose to offer only one.[37]

• Type A, extensive or Life Care contracts, include housing, residential services, and amenities—including unlimited use of health care services— at little or no increase in monthly fees as a resident moves from independent living to assisted living, and, if needed, to nursing care. Type A contracts generally feature substantial entrance fees but may be attractive because monthly payments do not increase substantially as residents move through the different levels of care. As a result, CCRCs absorb the risk of any increases in the cost of providing health and long-term care to residents with these contracts.

• Type B, or modified contracts, often have lower monthly fees than Type A contracts, and include the same housing and residential amenities as Type A contracts. However, only some health care services are included in the initial monthly fee. When a resident's needs exceed those services, the fees increase to market rates. For example, a resident may receive 30, 60, or 90 days of assisted living or nursing care without an increased charge. Thereafter, residents would pay the market daily rate or a discounted daily rate—as determined by the CCRC—for all assisted living or nursing care required and face the risk of having to pay high costs for needed care.

• Type C, or fee-for-service contracts, include the same housing, residential services, and amenities as Type A and B arrangements but require residents to pay market rates for all health-related services on an as needed basis. Type C contracts may involve lower entrance and monthly fees while a resident resides in independent living, but the risk of higher long-term care expenses rests with the resident.

• Some CCRCs offer a fourth type of contract, Type D or rental agreements, which generally require no entrance fee but guarantee access to CCRC services and health care. Type D contracts are essentially pay-as-you-go: CCRCs charge monthly fees of residents based on the size of the living unit and the services and care provided.

[37]Alicia Puente Cackley & Barbara D. Bovbjerg, *OLDER AMERICANS Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk, U.S. Government Accountability Office*, GAO-10-611, June 2010, pp. 5-6.

APPENDIX B. DEFINITIONS OF LIVING TYPES

LeadingAge/Ziegler defines the different living type as follows: [38]

“**Independent living units (ILU)** units may be composed of apartments, duplexes, triplexes, quadplexes, villas, or single-family homes. Typically, residents in independent living units pay a combination of a monthly fee and one-time entrance fee. (Note: some residents own these units, but this type of equity model represents a very small number of the independent living units within the LZ 200.) Those who pay a monthly fee will usually receive services such as house-keeping, maintenance, dining, security, and lawn maintenance.”

“**Assisted living units (ALU)** bridge the gap between independent living and nursing home care. Trained employees provide supportive care to residents who are unable to live independently and require assistance with activities of daily living (ADLs), including management of medications, bathing, dressing, toileting, ambulating, and eating.”

“**Personal Care or Residential Care Units** (PCU/RCU) are included in the overall ALU total for LZ 200 organizations. These units share similarities with ALUs but are not licensed as such.”

“**Nursing care beds (NCB)** provide care for those who need rehabilitative care or can no longer live independently because of a chronic physical or mental condition that requires round-the-clock nursing care. Meals, laundry, housekeeping, and medical services are provided. In most cases, these units are licensed for Medicaid and/or Medicare reimbursement.”

[38] Source: *LZ 200*, LeadingAge & Ziegler, October 2019, p. 70.