

# Continuing Care Retirement Communities, State Regulation and the Growing Importance of Counsel for Residents and their Families

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## INTRODUCTION

Older persons and their families report a wide range of satisfaction about their experiences with Continuing Care Retirement Communities ("CCRCs"), also known as Living Care or Life Care Communities ("LLCs").<sup>1</sup> This

range in satisfaction demonstrates a need for experienced lawyers who are prepared to assist clients in understanding the resident's rights and financial commitment, as well as the limits of the community's legal obligation to provide a full spectrum of long-term care:

"I wish I had moved into [this community] five years earlier, as soon as my wife's health became more fragile. It was expensive, but we looked carefully at our options, knew what we were getting into, and this was the best choice for my wife and me—and it saved our children the burden of trying to care for us."

—*Resident in South Central Pennsylvania.*

"If I had known how secretive and insensitive to residents' cares and concerns the administration and board [of this community are], I believe I would not have come to [this CCRC]."

—*Resident in North Central Pennsylvania*

"Our father barely qualified for [the CCRC closest to his home town in Florida], and he had to pledge every dime of his savings in order to get accepted. But when he ended up spending his money for health care more quickly than he had anticipated, we were suddenly faced with the question of what

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<sup>1</sup> The genesis for this article was a series of inquiries by applicants and residents of CCRCs made to the Elder Law and Consumer Protection Clinic at the Penn State Dickinson School of Law. My special thanks to Dale Tice, a May 2006 graduate of Penn State Dickinson, who provided invaluable assistance in researching CCRC issues, and to Jared Childers, Class of 2008, for his excellent research

and editorial work. Gordon M. Wase, Esq., and I used an early outline of this article to present "The ABCs of CCRCs" at the 9th Annual Elder Law Institute hosted by the Pennsylvania Bar Institute in July 2006. I am indebted to Gordon, who greatly helped me in understanding Pennsylvania's approach, drawing upon his own background in financial services industries, including financing of CCRC start-ups.

happens now? Does he have to move out? He's not ready for a nursing home and the facility doesn't accept Medicaid."

—*Adult Daughter in Pennsylvania, whose father is in his third year of assisted living at a CCRC in northern Florida*

"I'm nervous about asking [the marketing person] a lot of questions before my [parent] is accepted. I'm afraid that if we ask too many questions, the [CCRC] won't accept [my parent] as a resident and that's really the only option in our home town. But at the same time, [my siblings and I] really don't understand parts of the contract and some terms seem ambiguous, especially with regard to the different options for repayment of a percentage of the entrance fees."

—*Adult child in Pennsylvania, whose elderly parent is considering a CCRC in central California*

The notion of life-time care for the aged, tied to a single, up-front fee is not new.<sup>2</sup> CCRCs, however, are a relatively recent incarnation, with most of their growth coming in the last twenty years.<sup>3</sup> Their popularity among older adults stems from several factors, including flexibility in living arrangements, the comparative certainty of what will happen as care needs change, and the ability to stay in one familiar location. The price tag for CCRC living can be high—but often the amenities provided are top-of-the-line.

Recently the CCRC label has gained in popularity with prospective operators in Pennsylvania. Following recent changes in qualification for federal matching funds under the

Medicaid program,<sup>4</sup> Pennsylvania began assessing nursing homes a charge of \$15 per bed per day.<sup>5</sup> In contrast, the same bed in a nursing care wing of a CCRC is assessed less than \$2 per bed per day, although a CCRC's wing may also qualify for Medicaid payments.<sup>6</sup> The substantial difference in taxation has not been lost on nursing home operators.<sup>7</sup> The Pennsylvania Department of Insurance's records indicate that where there were three to four CCRC applications per year in previous years, during the last 24 months there have been more than 40 new applications for CCRC licensure, with most applications coming from existing nursing home operations.<sup>8</sup> To qualify

<sup>4</sup> See 42 C.F.R. §433.68 (2006) (regarding permissible health care-related taxes after transition period).

<sup>5</sup> See Department of Public Welfare's Nursing Facility Assessment Program for Fiscal Year 2005-6, at 35 Pa. Bull. 6845, providing that for FY 2005-6, the assessment rate for "nonexempt nursing facilities that participate within a licensed CCRC or that have 50 licensed beds or less will be . . . \$1.54 per non-Medicare resident day" while the assessment rate for all other non exempt nursing facilities will be "\$15.95 per non-Medicare resident day." For FY 2006-7, the rates for CCRC increase to \$1.97 per bed, while the nursing home rate increases to \$20.35 per day. See 36 Pa. Bull. 4673. See also 62 P.S. §§801-A through 815-A.3.

<sup>6</sup> "The annual assessment rates must be sufficient to generate at least \$50 million in additional revenues, subject to the maximum aggregates assessment amount that qualifies for Federal matching funds." 36 Pa. Bull. 4673. The Department of Public Welfare "estimates that the annual aggregate assessment fees for nonexempt nursing facilities will total \$339,839,170 in FY 2006-7." *Id.* The assessment fees and the associated matching federal funds are to be used to make payment to qualified Medical Assistance nursing facility providers. *Id.*

<sup>7</sup> Several nursing homes objected to the proposed assessment structure. See 35 Pa. Bull. 6845. Pennsylvania attorney Stephen Feldman reports at least one nursing home has initiated a court challenge to its higher assessment. E-Mail from Stephen A. Feldman, Esq. to author (September 30, 2006) (on file with author).

<sup>8</sup> Based on the author's review of public records on CCRC applications and disclosure statements at the Pennsylvania Department of Insurance in July, 2006. The numbers used here are admittedly rough counts, but even the rough numbers suggest the need for comprehensive state statistical information and follow-up. See text accompanying notes 89-108, *infra*.

<sup>2</sup> See, e.g., *In re Maull's Estate*, 40 A. 1010 (Pa. 1898) (holding a resident's promise to transfer all assets to the Presbyterian Home for Aged Couples to be unenforceable, where the resident died without transferring his assets, instead leaving all assets to other individuals and charities under his will). See generally Robert Brazener, *Validity and Construction of Contract Under Which Application for Admission to Home for Aged or Infirm Turns Over His Property in Return For Lifetime Care*, 44 A.L.R. 3d 1174 (2006).

<sup>3</sup> For an overview of senior care housing alternatives, including CCRCs, see Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*, 90 IOWA L. REV. 121 (Oct. 2004). For more of the history of CCRCs, see Nancy A. Peterman, Robert W. Lannan & John T. Gregg, *Protecting Residents of Continuing Care Retirement Communities*, 22 AM. BANK. INST. JOURNAL 18 (Mar. 2003); Michael D. Floyd, *Should Government Regulate the Financial Management of Continuing Care Retirement Communities?*, 1 ELDER LAW JOURNAL 29 (1993).

rapidly, existing nursing homes often seek affiliation with an existing continuing care community.<sup>9</sup>

Even before the increase in popularity, there were potential legal issues, often tied to significant variation in financing and legal structures, as well as variation in the individual states' regulations. Legal issues typically arise from one of several variables in CCRC structures, including:

- The pricing structure for admission;
- The pricing structure for on-going services, including the potential for unpredictable or unaffordable increases;
- Any property ownership interest held by the resident;
- The quality and accessibility of care provided on-site for residents;
- The governance of the CCRC, including the impact on resident autonomy of changes in management companies or resident-member organizations;
- The legal structure of the CCRC ownership, including religious affiliations, non-profit and for-profit entities, public or private ownership, and the financial stability of any parent corporation; and
- The extent of CCRC regulation and review provided by the state.

The last point should be emphasized. In Pennsylvania, for example, state law places authority for regulation of CCRC contracting and financial practices with the Department of Insurance.<sup>10</sup> The primary focus of the Commonwealth's regulations is on public "disclosure" of items such as price and financing structure, leaving it up to the consumer to make choices. The Department does not appear to interpret the law as requiring the state to make an active assessment of the management practices or financial soundness of CCRCs individually or as an industry.<sup>11</sup> Other states have taken a more aggressive attitude

towards state oversight of CCRC financial practices.<sup>12</sup>

The label of "continuing care retirement community" can be misleading, especially if assumptions are made about the scope of services available to residents. There are several different CCRC formats recognized by the industry itself,<sup>13</sup> including "extensive agreements," defined as providing housing, residential services, and unlimited health-related services, usually for a initial, fee (sometimes with periodic, inflation adjustments); "modified agreements," providing housing, residential services and a specified amount or type of health-related services for the initial fee, with additional services available for additional fees, and "fee-for-service agreements," that provide housing and residential services for a fee stated in the initial agreement, with access to health care offered at full fee-for-service rates.<sup>14</sup>

The initial price depends on the facility's assessment of the applicants' profile, usually based on age of the applicants, their health conditions, and the size or type of initial housing selected. Generally speaking, the highest initial cost is for housing tied to an extensive agreement, with lower initial prices for modified or fee-for-service agreements. However, the total cost of the financing agreement will depend on inflation, how long the residents live in the community and other factors which can be difficult to predict. Unfortunately, whether the community is offering an "extensive," "modified," "fee-for-service" arrangement or a hybrid is not easy to determine from a quick look at marketing materials, or even the contracts, thus making comparison between neighboring CCRCs more difficult.<sup>15</sup>

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to "examine its books and records at least once every four years." 40 PA. CONS. STAT. §3219 ("Audits"). However the "financial statements need not be certified audited reports," *id.*, and Pennsylvania's inquiry appears to be largely pro forma, at least in the absence of substantial complaints by applicants or residents.

<sup>12</sup> See *e.g.*, N.Y. PUBLIC HEALTH LAW §4602 (McKinney 2006) (creating a CCRC Council, with members from different agencies and the public, and giving the council broad powers of review and inquiry).

<sup>13</sup> See Commission on Accreditation of Rehabilitation Facilities, including its accreditation standards for Continuing Care Retirement Communities, described at [www.carf.org](http://www.carf.org). (hereafter referred to as "CARF-CCRC Standards").

<sup>14</sup> *Id.*

<sup>15</sup> Similar problems with lack of "comparability" have plagued other commercial products sold to older adults, such as Medigap insurance policies.

<sup>9</sup> *Id.*

<sup>10</sup> In addition to regulation of contracting and financial practices by the Pennsylvania Department of Insurance, CCRCs will be subject to regulation of various aspects of their assisted living and nursing facility operations by the Pennsylvania Departments of Health and Public Welfare. CCRCs also may adopt industry-standards, such as accreditation through the Joint Commission on Accreditation of Healthcare Organizations. See also CARF-CCRC Standards at note 13 *infra*.

<sup>11</sup> Pennsylvania law requires the Insurance commissioner or his designee to visit each CCRC facility

In addition, a major variable in the industry is whether the initial contract involves the resident's purchase of real estate or "membership" in the community, which can be similar to a condominium or cooperative purchase, thus triggering questions about how the resident's ownership interest will be sold or transferred after death or upon other reasons for leaving the community.<sup>16</sup> Conditions on the right of resale—such as "approval" by the corporation of any new resident—can also impact on the overall dollar value of the CCRC investment.

Finally, despite the promises implied by the names for "continuing care" or "life care" communities, in most states CCRCs are not required by regulatory authorities to guarantee or otherwise promise to provide specific services as part of their package. While some CCRCs offer a full range of options including independent living, assisted living and skilled nursing care as the resident's needs changes, other CCRCs emphasize independent living units with communal services such as on-site dining, recreation and therapy, while offering a relationship with a "nearby" nursing home. Many communities do provide guarantees of all levels of care, usually tied to specific contractual conditions—but generally speaking state law does not require such guarantees as a prerequisite for the use of tempting marketing labels.

With such enormous variation comes the need for carefully considered, informed decision making by prospective residents and their families; in turn, attorneys with experience in reviewing CCRC contracts can play an important role. As Pennsylvania's Department of Insurance website on CCRCs advises consumers, "The disclosure statement and resident's agreement are important documents that you should read carefully. You may wish to review these documents with your attorney or other advisor."<sup>17</sup>

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One response has been to require standardization and labeling of similar policies. See e.g., *Choosing a Medigap Policy: A Guide to Health Insurance for People With Medicare*, published by the Center for Medicare and Medicaid Services (describing policies by lettered designations). Compare Richard L. Kaplan, *Cracking the Conundrum: Toward a Rational Financing of Long-Term Care*, 2004 U. ILL. L. REV. 47 (advocating standardization of long term care insurance policies to facilitate consumer comparisons).

<sup>16</sup> *Id.*

<sup>17</sup> See Pennsylvania Department of Insurance, Consumer Information on CCRCs, "Facility Disclosure Information," at <http://www.ins.state.pa.us/ins/>

## REGULATION OF CCRCs AND LLCs

As of September 2005, thirty-four states had enacted some form of legislation regulating CCRCs.<sup>18</sup> While there is substantial variation among the regulatory approaches, common themes do exist. Many states have regulations affecting concepts such as licensure, mandatory disclosures, financial accountability, mandatory contract terms, advertising restrictions and resident rights.<sup>19</sup>

The primary focus of most states' financial regulations is (a) protection of any pre-paid entrance fees including refund policies and (b) mandating standard accounting practices for reporting of operating and investment capital for the facility as a whole. Some states require that all or a portion of a resident's entrance fee be placed in escrow to ensure that a refund will be available under specific conditions and many states require a cash reserve in an attempt to assure the ability of the facility to provide services. Most states also have special provisions for state oversight of insolvent or struggling facilities.

### *Pennsylvania's Approach to Regulation*

#### Licensure

The modern era for CCRCs can be traced to the mid-1980s, when the CCRC industry established its own accreditation program<sup>20</sup> and many states, including Pennsylvania, adopted specific regulations. In 1984, the Pennsylvania legislature enacted the Continuing-Care Provider Registration and Disclosure Act, found at 40 PA. CONS. STAT. §3201 *et seq.*, with regulations at Title 31, Chapter 151, of the Pennsylvania code, 31 PA. CODE §151.1 *et seq.* By the mid-80's, high-profile bankruptcies of CCRCs had occurred in at least ten states,<sup>21</sup> and Pennsylvania's response recognized that "tragic consequences can result" for seniors upon the insolvency of a provider.<sup>22</sup>

The trigger for Pennsylvania's regulation is offering care, board, lodging, nursing or other health services "for the life of the individual or for a period in excess of one year."<sup>23</sup> Providers must obtain a certificate of authority from the

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[cwp/view.asp?A=1274&Q=525815](http://www.cwp/view.asp?A=1274&Q=525815) (last visited September 30, 2006).

<sup>18</sup> JOAN M. KRAUSKOPF ET AL., *1 ELDER LAW ADVOCACY FOR THE AGING* §12.82 (2d ed. 2005).

<sup>19</sup> *Id.*

<sup>20</sup> See CARF-CCRC Standards, *supra* note 13.

<sup>21</sup> See e.g., KRAUSKOPF, ET AL., *supra* note 18, at §12:81 note 6.

<sup>22</sup> 40 PA. CONS. STAT. §3202.

<sup>23</sup> 40 PA. CONS. STAT. §3203 (emphasis supplied).

Insurance Commissioner and the Department of Insurance has the primary regulatory role, as the investment in a CCRC is often deemed analogous to the purchase of life insurance or long-term care insurance.<sup>24</sup> As a result of the definition, a facility that calls itself a CCRC or life-care community is not, however, obligated by state law to provide life-time care or to provide specific levels of care. Rather, the terms of the contract will define the scope of the obligation.

As of June of 2006, there were 147 active CCRC providers in Pennsylvania, operating 186 licensed facilities.<sup>25</sup>

### Disclosures

At the time of or prior to the execution of a contract to provide continuing care, the provider is required to deliver to the prospective resident a disclosure statement<sup>26</sup> containing specific information about the organizers, their backgrounds and business experience, profit or non-profit status and any religious or charitable affiliation, and certain financial information about the proposed organization, including:

- The services provided under the continuing care contract, and other services available for an extra charge;
- A description of all fees, including tables showing the frequency and average amount of fee increases for the last five years;
- Provisions for the establishment of reserve funds or escrow accounts, including how these funds will be invested;
- Certified financial statements including a balance sheet and income statement for the previous two years; and
- “Any other material information.”<sup>27</sup>

The provider is also required to file an annual disclosure statement containing the same information, with a “revised pro forma income statement for the next fiscal year, with a description of any material differences between the actual operating results and the pro forma statement from the prior year.”<sup>28</sup> The regula-

tions further specify that annual disclosure statements must include information on all new or additional mortgages, liens, loan commitments, long-term financing arrangements or leases. The annual statement must be delivered to all current and prospective residents.

No provider shall make any statement or representation which is untrue, deceptive, or misleading and further “no provider shall file with the department or deliver to any person any financial statement which does not accurately state its true financial condition.”<sup>29</sup>

The regulations require a minimum of two years worth of information<sup>30</sup>—but as one wise counselor-at-law has observed, “two data points do not make a trend.”<sup>31</sup>

### Financial Accountability

Reports of past financial woes for CCRCs have resulted in regulatory attempts to ensure not only full information for prospective residents about the finances of the facilities, but also some reassurance that the resident’s “investment” in the venture will not be mis-used or squandered. For example, Pennsylvania requires that each provider shall establish and maintain liquid reserves not less than the greater of: (a) the total of all principal and interest payments due during the next 12 months on any mortgage loan or long term financing of the facility; or (b) ten percent of the annual operating expenses of the facility.<sup>32</sup> In an apparent attempt to create a warning system for potential instability, Pennsylvania requires each provider to notify the commissioner in writing at least ten days prior to reducing the funds available to satisfy the reserve requirement, and the provider may expend no more than one-twelfth of the reserve balance each month.<sup>33</sup>

When the commissioner has cause to believe that additional protection may be necessary to secure the obligations assumed under the residential agreements, the commissioner “may” require the provider to maintain in escrow a portion of the entrance fees, up to the total of all principal and interest payments due on the mortgage during the next twelve months.<sup>34</sup>

<sup>24</sup> 40 PA. CONS. STAT. §3204.

<sup>25</sup> A listing of provider’s name, primary address, and the name, address and phone number for each facility in Pennsylvania is available at the Department of Insurance’s website. See <http://www.ins.state.pa.us/ins/site/default.asp> (last visited 9/30/06).

<sup>26</sup> 40 PA. CONS. STAT. §3207.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* See also 31 PA. CODE §§151.4 and 151.7 regarding initial statements and annual statements.

<sup>29</sup> 40 PA. CONST. STAT. §3208.

<sup>30</sup> 40 Pa. Cons. Stat. § 3207 (a)(9).

<sup>31</sup> Gordon Wase, Esq., speaking at the Pennsylvania Bar Institute’s Elder Law Institute, July 20, 2006.

<sup>32</sup> 40 PA. CONS. STAT. §3209.

<sup>33</sup> *Id.*

<sup>34</sup> 40 PA. CONS. STAT. §3210.

In addition to the commissioner's discretion to escrow entrance fees, regulations provide that in the event a prospective resident makes a pre-payment of five percent or more of the entrance fee for a unit—usually done to reserve a place on a waiting list for admission—such amount must be placed into an escrow account.<sup>35</sup>

Only the unencumbered assets of a CCRC may be pledged by the provider to secure a loan for other facilities, whether proposed or existing.<sup>36</sup> Further, the commissioner “may” file a lien on the real and personal property of the provider to secure the obligations to the residents at such time as the commissioner determines a lien to be in the best interests of the residents.<sup>37</sup> The lien may be foreclosed upon the liquidation, bankruptcy, or insolvency of the provider.<sup>38</sup> The lien is deemed subordinate to any first mortgage, and may be subordinated to other claims if the commissioner determines it to be advisable for the efficient operation of the facility.<sup>39</sup>

In an apparent attempt to provide a struggling facility with outside evaluation and, if necessary, reorganization so as to avoid complete collapse, Pennsylvania gives the Insurance Commissioner the authority to apply for a court-ordered trustee to rehabilitate or liquidate a CCRC which is failing to perform contracted obligations, or is failing to maintain required reserves, or is otherwise in “imminent” danger of insolvency or actual bankruptcy.<sup>40</sup>

Finally, the Insurance Commissioner or his designee is required to visit each continuing care facility in the Commonwealth to examine its books and records at least once every four years.<sup>41</sup>

### Contract Terms

There is enormous variation in how CCRCs price and structure their facilities and care options, and currently Pennsylvania does little to restrict the facility's options. Instead it is up to the consumer to make comparisons and Pennsylvania requires CCRCs to include cer-

tain information in their contracts which will be necessary for the comparison.

For example, the contracts, often called “resident's agreements,” must be written in “non-technical language” and must include specific details about the services to be rendered, including whether the contract is for a “stated period” or for life.<sup>42</sup> The contract must specify any health or financial conditions which disqualify an individual for continued residence, what happens if residents marry or divorce, what will happen if and when the resident dies, and when and under what circumstances the resident may or is required to move to a different level of care.<sup>43</sup>

The contract must specify a right to rescind the continuing care agreement within seven days of making a deposit or executing the contract—and must disclose all other available grounds for rescission as well as for any refunds of deposits or entrance fees.<sup>44</sup> “No agreement shall permit discharge of a resident prior to the expiration of the agreement without just cause.”<sup>45</sup> Just cause “includes a determination that the resident is a danger to himself or others.”<sup>46</sup>

CCRCs are permitted to limit their coverage based on pre-existing conditions. Pre-existing conditions are defined in the regulations as “a disease, illness, sickness or physical condition for which medical care, advice or treatment was recommended by or received from a physician within the 5 year period preceding the date of admission to a facility.”<sup>47</sup>

Perhaps the most important obligation imposed by Pennsylvania law is the obligation that the facility must contractually disclose its policy for what happens if a resident's personal finances are exhausted or prove inadequate to meet rising maintenance fees.<sup>48</sup> The mere fact that the facility is associated with a non-profit entity or otherwise has a charitable mission does not necessarily guarantee care. Increases in monthly maintenance fees are not regulated by the state—and therefore it is important to know what will happen if the resident lives longer than his or her ability to make full payments.

For example, one CCRC in Pennsylvania has a contract with two of its thirty-six, single-

<sup>35</sup> 40 PA. CONS. STAT. §3212. The regulations permit release of the prepaid entrance fee upon certain events, such as the unit's availability for occupancy, but funds held for 36 months must be returned to the prospective resident, with interest. *Id.*

<sup>36</sup> 40 PA. CONS. STAT. §3213.

<sup>37</sup> 40 PA. CONS. STAT. §3211.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> 40 Pa. Cons. Stat. § 3216. See also 31 Pa. Code §151.130, regarding rehabilitation and liquidation.

<sup>41</sup> 40 PA. CONS. STAT. §3219.

<sup>42</sup> 40 PA. CONS. STAT. §3214.

<sup>43</sup> *Id.*

<sup>44</sup> 40 PA. CONS. STAT. §3214(b).

<sup>45</sup> 40 PA. CONS. STAT. §3214(d).

<sup>46</sup> *Id.*

<sup>47</sup> See 31 PA. CODE §151.9(d).

<sup>48</sup> 40 PA. CONS. STAT. §3214 (a)(5).

spaced pages devoted to explanation of its “financial assistance” policy.<sup>49</sup> The contract provides in part: “Should a Resident find he or she is unable to pay the Monthly Fee and charges through no fault on his or her part, the Resident may petition the Community Residents’ Reserve Committee for Financial Assistance.”<sup>50</sup> Any family member handling the resident’s finances will need to be aware of any conditions on assistance and may be called upon to justify expenditures. Typically the community will require “facts and financial information,”<sup>51</sup> such as a record of all checks or disbursements from the resident’s income and savings, and the ultimate decision may depend on “the financial condition of the Community.”<sup>52</sup>

### Residents’ Right of Organization

In many ways, CCRCs often mimic a small town, and as with any small town the residents will often take an interest in the amenities of the community, including the potential for rising costs. In many CCRCs, the residents are active and vocal about governance matters. Pennsylvania assures the residents of a right to self-organization, and further provides that a board of directors or a designated representative shall hold quarterly meetings with the residents for free discussion of subjects including, income, expenditures, financial matters, and proposed changes to policies, programs and services.<sup>53</sup> At least seven days notice shall be given for each quarterly meeting.<sup>54</sup>

### Liability of CCRC Provider for Misrepresentation or Other Misconduct

Despite Pennsylvania’s fairly hands-off attitude to probing the financial soundness of existing Continuing Care or Life Care Communities, Pennsylvania’s CCRC law offers extensive enforcement provisions, especially where providers can be shown to have failed to make full and accurate disclosures. For example, misleading disclosure statements or failure to disclose material facts may cause a CCRC provider to be directly liable to a resident for civil damages, including repayment of fees (less “reasonable value of care” provided), plus

interest, costs, and attorneys fees.<sup>55</sup> Thus, as a practical matter, the burden appears to be on the individual resident or residents’ group to monitor and assess the financial fitness of their CCRC, to push for state investigation if there is substantial reason to suspect financial problems, and to initiate, if appropriate and necessary, a private cause of action for enforcement.<sup>56</sup>

The Department of Insurance “may” make any public or private investigation the commissioner deems necessary regarding any violation of the CCRC law, or to aid in the enforcement of the law, and may publish information concerning any violation.<sup>57</sup> For the purpose of investigation, the Insurance commissioner may subpoena witnesses and may require the production of documents, which may be enforced in court.<sup>58</sup> The Insurance Commissioner can issue cease and desist orders<sup>59</sup> and the CCRC law provides for criminal penalties.<sup>60</sup>

There is no annual public report of complaints, investigations, or enforcement actions involving CCRCs available at Pennsylvania’s Department of Insurance.<sup>61</sup>

### *Regulation of CCRCs in States Other Than Pennsylvania*

The statutes and regulations governing CCRCs in Pennsylvania are similar to the regu-

<sup>55</sup> 40 PA. CONS. STAT. §3217. The statute provides for a six year statute of limitation running from the date of execution of the continuing care contract—although that may raise some questions about liability for failure to make required, on-going disclosures. *Id.*

<sup>56</sup> This consumer-oriented provision is non-exclusive. 40 P. S. § 3217(e). Concerns about misrepresentations may also trigger Pennsylvania’s Unfair Trade Practices and Consumer Protection Act (“UTPCPA”) at 73 Pa. Cons. Stat. §§ 201-1 et seq. In particular, the UTPCPA gives the court discretion in private actions to award “up to three times the actual damages sustained . . . and . . . such additional relief as it seems necessary or proper.” 73 PA CONS. STAT. §201-9.2.

<sup>57</sup> 40 PA. CONS. STAT. §3218.

<sup>58</sup> *Id.*

<sup>59</sup> 40 PA. CONS. STAT. §3221.

<sup>60</sup> 40 PA. CONS. STAT. §3222. A person convicted of a violation of the CCRC disclosure law “shall be sentenced to pay a fine of not more than \$10,000, or to imprisonment of not more than two years.” *Id.*

<sup>61</sup> Pennsylvania law provides that “upon acceptance of a report of examination by the provider examined, or upon issuance of an adjudication after a hearing has been held to consider objections, the Commissioner [of Insurance], if he deems it in the interest of the public to do so, may publish all or any portion of the report in a manner he deems appropriate.” 31 PA. CODE §151.12 (emphasis supplied).

<sup>49</sup> Dunwoody Village Residence and Care Agreement, revised 5/1/00, on file with the Pennsylvania Department of Insurance as of July, 2006.

<sup>50</sup> *Id.* at 14.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> 40 PA. CONS. STAT. §3215.

<sup>54</sup> *Id.*

latory approach used in most other states. However, some states have adopted somewhat more aggressive legislation—usually aimed at better assuring long-term financial soundness of CCRCs. An example is Indiana's mandate that a CCRC must establish a "retirement home guaranty fund" as a mechanism for protecting the financial interests of residents in the event of the bankruptcy of the provider.<sup>62</sup> Indiana's fund is created by the collection of a "guarantee association fund fee" of \$100.00 from each party who enters into a continuing care agreement, with the fee collected by the provider. By comparison, Vermont requires providers of long term care to establish a "resident assistance fund" for the purpose of assisting residents who are unable to meet a portion of their periodic charges,<sup>63</sup> but in Vermont, the fund is established by an initial contribution of at least \$25,000.00 from the provider.<sup>64</sup> Pennsylvania permits facilities to offer financial assistance to residents who run out of money, and requires disclosure of any such assistance, but Pennsylvania does not mandate the existence of a financial assistance plan.<sup>65</sup>

New York came relatively late to the table for CCRCs, first approving them in 1990.<sup>66</sup> New York recognizes three specific types of contracts for CCRCs, tracking the industry's own labels, with legislation limiting the use of certain labels in an apparent attempt to facilitate better consumer awareness of alternatives and to permit easier comparisons.<sup>67</sup> Type A, "life care" contracts specify that a resident's

monthly fee cannot change in the resident's care level (except for "normal operating costs and inflation adjustment") and thus the residents pay the same monthly fee for skilled care as for independent housing.<sup>68</sup> Type B "modified" contracts permit independent living and residential services but cover only a limited number of days of skilled nursing facility care. When the contracted number of skilled care days are exhausted, the resident must pay a market or per diem rate if staying in the same facility.<sup>69</sup> The third type of contract recognized in New York, "FFSCRCs," are fee-for-service continuing care contracts with no long-term care benefit included in the contract.<sup>70</sup>

New York law also requires providers to provide a refund of at least a portion of the entrance fee for the first four years of residency. Traditional "declining balance contracts" specify the resident's entrance fee is reduced by 2% per month with a one time 4% processing fee,<sup>71</sup> although New York also reports that many CCRCs and FFSCRCs offer contracts with a specific percentage of the entrance fee refundable regardless of the length of stay.<sup>72</sup>

Both Pennsylvania and California require providers to file an annual report showing key financial data. California, however, goes further in requiring the annual report to include projections of the financial indicators for the upcoming five years.<sup>73</sup>

Michigan takes a somewhat innovative approach to resident rights by providing a statutory procedure for dispute resolution. "[U]pon election and written consent of the parties," a

<sup>62</sup> IND. CODE ANN. §23-2-4-13 (2005).

<sup>63</sup> VT. STAT. ANN. 8, §8018 (2005).

<sup>64</sup> *Id.*

<sup>65</sup> 40 PA. CONS. STAT. §3214(a)(5) (requiring the facility to describe the circumstances under which the resident will be permitted to remain in the facility in the event of financial difficulty of the resident).

<sup>66</sup> N.Y. PUBLIC HEALTH LAW §§4600-4624 (McKinney 2006) (on "Continuing Care Retirement Communities," passed in 1989) and N.Y. PUBLIC HEALTH LAW §§4650-4676 (McKinney 2006) (on "Fee-For-Service Continuing Care Retirement Communities"). In his 2005 Annual Report to the New York Legislature, New York's Superintendent of Insurance reported that there were only ten CCRCs with certificates of authority in New York, and two of these were still in pre-construction phases. See Annual Report of the Superintendent of Insurance to the New York State Legislature for the Calendar Year 2005, at page 101, available at <http://www.ins.state.ny.us/acrobat/annrpt05.pdf> (last visited September 30, 2006) (hereafter "2005 N.Y. Insurance Report").

<sup>67</sup> See New York Department of Health's consumer friendly website on CCRCs and FFSCRCs at [http://www.health.state.ny.us/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/index.htm](http://www.health.state.ny.us/facilities/long_term_care/retirement_communities/continuing_care/index.htm) (last visited September 30, 2006).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> N.Y. PUBLIC HEALTH LAW §§4608, 4609 and 4610 (McKinney 2006).

<sup>72</sup> 2005 N.Y. Insurance Report, *supra* note 66 at 101. Further demonstrating the important of practical knowledge of local CCRC contracts and prices is the difference between partially refundable "entrance fees" for CCRCs and potentially nonrefundable "life care" fees, also part of the up-front payment requirement. See *e.g.*, Carin Rubenstein, *A Lot of Life, A Little Help*, NEW YORK TIMES, Sept. 7, 2003 at Section 14Wc, available at 2003 WLNR 4636828, noting that residents of one New York CCRC pay entrance fees of between \$250,000 and \$300,000, of which 90 percent is refundable to the residents when they move or to their estate upon death, but who also pay a one-time, nonrefundable charge of \$23,000 for a guarantee of "life care," plus a monthly fee of between \$2,500 and \$4,500, which includes two meals a day, social activities, housekeeping services and transportation.

<sup>73</sup> CAL. HEALTH & SAFETY CODE §1792.7 (2006). Compare Pennsylvania's law at 40 PA. CONS. STAT. §3207 (a)(9) (requiring two years of prior data).

dispute shall be subject to be submitted to arbitration, with the arbiter's decision deemed final.<sup>74</sup> Michigan further provides that each facility shall appoint at least one resident, elected by the other residents, to the board of directors as an "advisory member."<sup>75</sup>

Minnesota recognizes the importance of resident input with a requirement that providers submit their annual budget to the resident's association for comment prior to its adoption.<sup>76</sup>

#### EFFECT OF FEDERAL DEFICIT REDUCTION ACT ON CCRC PLANNING

Prior to the Deficit Reduction Act of 2005 ("DRA"),<sup>77</sup> federal law provided that nursing facilities may "not" require individuals applying or residing in a nursing facility to waive their rights to Medicaid benefits. Further, federal law prohibited such facilities from requiring oral or written assurances that individuals are not eligible for and will not apply for Medicaid benefits.<sup>78</sup> These provisions are sometimes described as prohibiting qualified nursing homes from seeking Medicaid waivers or anti-alienation promises as a condition of admission.<sup>79</sup>

Relying on state law that tracked the federal law, in 2004 Maryland's highest court dismissed a CCRC's suit against a couple who made post-application transfers of funds. In *Oak Crest Village, Inc. v. Murphy*,<sup>80</sup> the CCRC alleged the residents' breach of agreement. At time of admission the wife signed "required" admission agreements that contained a "condition" that the residents not divest themselves of any assets—if such changes would result in the resident's qualification for Medical

Assistance or a reduction in monthly fees.<sup>81</sup> Shortly after moving to the facility, the resident/wife transferred a substantial amount of assets, including bank accounts and proceeds from the sale of their home into joint ownership with herself and her daughter.<sup>82</sup> The resident/husband went directly at time of admission into the CCRC's Medicaid qualified nursing facility, eventually applied for Medicaid, and was found eligible.<sup>83</sup> The CCRC, however, insisted it was entitled to receive higher private pay rates for the husband's care, thus giving rise to the breach of contract claim.<sup>84</sup> Turning to Maryland's statute and regulations (which are similar to pre-DRA Medicare and Medicaid regulations), the Maryland Court of Appeals held that such an anti-alienation clause violated the state's Nursing Home Residents' Bill of Rights, where it affected a CCRC resident's admission to CCRC's Medicaid qualified nursing facility.<sup>85</sup>

The enactment in 2006 of the DRA, however, made major changes as to what conditions may be imposed where the nursing care facilities are part of the CCRC's overall care plan.<sup>86</sup> These changes are a direct response to the concerns raised by CCRCs after the Maryland court's decision. The DRA appears calculated to permit CCRCs to have greater security in determining how (and how much) they will be paid.

Specifically, the DRA permits CCRCs to "require residents to spend on their care resources declared for the purposes of admission before applying for medical assistance."<sup>87</sup> In addition, certain CCRC "entrance fees," to the extent they can be used by the resident or are subject to a refund and do not confer an ownership interest to the CCRC, are an "available resource."<sup>88</sup> Attempts to transfer pledged fees away from the CCRC will trigger a transfer penalty, thus affecting the resident's ability to secure Medicaid.

<sup>74</sup> MICH. COMP. LAWS §554.811 (2005) (providing for dispute procedure in Michigan's Living Care Disclosure Act and providing for American Arbitration Association rules to apply). Attempts by a facility to require the resident to waive the right to arbitration are deemed void. *Id.* It is unclear from Michigan's statute, however, whether a resident may be bound to arbitration prior to any dispute, such as through a so-called "consent" provision in the admission contract."

<sup>75</sup> MICH. COMP. LAWS §554.812 (2005).

<sup>76</sup> MINN. STAT. ANN. §80D.20 (2006).

<sup>77</sup> Deficit Reduction Act, Pub. L. No. 109-71, signed by President Bush on February 8, 2006 (hereafter "DRA"), amending, in pertinent part, 42 U.S.C. §1396p and 1396r.

<sup>78</sup> See e.g., the Nursing Home Residents' Bill of Rights provisions, contained at 42 U.S.C. § 1396r(c)(5)(A).

<sup>79</sup> See e.g., *Podolsky v. First Healthcare Corp.*, 58 Ca. Rptr. 2d 89, 94 (Ct. App. 1996).

<sup>80</sup> *Oak Crest Village Inc. v. Murphy*, 841 A.2d 816 (Md. 2004).

<sup>81</sup> *Id.*, 841 A.2d at 820.

<sup>82</sup> *Id.*, at 821.

<sup>83</sup> *Id.*, 841 A.2d at 822.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*, 841 A.2d at 827.

<sup>86</sup> See DRA, Pub. L. No. 109-171 at §6015, and the corresponding new language as set forth at 42 U.S.C. §1396p(g) and 1396r(c)(5) (regarding treatment of entrance fees of individuals residing in continuing care retirement communities).

<sup>87</sup> DRA, Pub. L. No. 109-171 at §6015, amending 42 U.S.C. §1396r(c)(5).

<sup>88</sup> DRA, Pub. L. No. 109-171 at §6015, amending 42 U.S.C. §1396p(g).

However, even as the DRA responds to the CCRC's understandable goal of maximizing income, the Act raises questions about the overall impact on couples. One can anticipate questions triggered by the new language, particularly if there is an attempt to maximize a healthier spouse's control over financial resources while placing the more fragile spouse into a Medicaid-certified nursing facility at the CCRC. Must all "resources declared for purposes of admission" be used before either spouse can apply for Medicaid? Such an interpretation appears to limit normal protections against impoverishment of the "community" spouse.

#### LOOKING TO THE FUTURE OF CCRCs: IS CURRENT REGULATION ADEQUATE TO PROTECT RESIDENTS?

During the early 1980's a modest wave of CCRC insolvencies appeared to be tied to aggressively marketed but poorly financed development plans. Faced with a complete loss of their substantial up-front investments, residents were trapped between the proverbial rock and hard spot. They were forced to choose between abandoning their upfront investment to search for more affordable—and usually less elegant—alternatives, or pay significantly higher maintenance fees to keep the CCRC afloat.<sup>89</sup>

The good news is that unlike the nursing home industry, which has had several rocky years, beginning with deep cuts in Medicare and Medicaid reimbursement rates in the late 1990s,<sup>90</sup> CCRCs have had a fairly stable, recent financial picture. One interesting trend in the market is the increase in CCRCs connected to universities and colleges, taking the "campus" concept to a new level.<sup>91</sup>

<sup>89</sup> See Nathalie D. Martin, *The Insolvent Life Care Provider: Who Leads the Dance Between the Federal Bankruptcy Code and State Continuing-Care Statutes?* 61 Ohio State L. J. 267 (2000).

<sup>90</sup> See e.g., Susanna Moon, *Scaling the Cliff: Post-Acute Providers Report Healthier Numbers Despite Medicare Challenges*, 34 MODERN HEALTHCARE 24 (Issue 15, Special Feature), April 12, 2004, available at 2004 WLNR 14760032 (summarizing a trend in national companies offering senior housing and long term care). "Providers [in recent years] increased revenue by pumping up Medicare volume and shifting beds to more profitable lines such as assisted living and continuing-care retirement communities. . . . Better investment returns also made a difference, at least on paper." *Id.* See also Nathalie D. Martin, *Funding Long Term Care: Some Risk-Spreaders Create More Risks Than They Cure*, 16 J. CONTEMP. HEALTH L. & POL'Y 355 (Summer 2000).

At the same time, there appears to be a great deal of movement in the CCRC segment of the larger senior housing and long-term care industry. In contrast to a past pattern of CCRCs owned and operated primarily by not-for-profit organizations (and often tied to a specific religious or charitable mission), CCRCs are attracting greater interest from for-profit investors, national chains, and owners who attempt to reduce costs by subcontracting management services to companies used to running tightly margined nursing homes.<sup>92</sup> Costs in CCRCs are going up, in large part, although not exclusively, because of increases in the cost of skilled care. A July 2006 review by this author of more than sixty annual CCRC disclosure statements on public file with the Pennsylvania's Department of Insurance revealed reports of deviations between past projections and actual revenues, usually tied to increases in nursing care costs, and resulting in some instances of annual increases in excess of ten percent for monthly maintenance fees. Few older adults—even the financially sophisticated residents often sought by CCRCs—would be comfortable with a continuing pattern of such increases.

<sup>91</sup> See e.g., Audrey Williams June, *Getting Smarter With Age*, CHRONICLE OF HIGHER ED. at A25-27, July 14, 2006 (describing the "30 or so college-affiliated retirement communities that already exist" and "at least two dozen more" in development); Kathleen Dawley, *Partnerships Help Offset Rising Higher Ed Tuitions*, BOSTON BUSINESS JOURNAL, Dec. 16, 2005, available at <http://albany.bizjournals.com/boston/stories/2005/12/19/focus4.html> (last visited September 30, 2006). (describing Lasell College's Village, "a thriving Continuing Care Retirement Community and substantial source of new income. Besides its financial impact, Lasell Village is a cornerstone for enhanced intergenerational learning for students at the college.")

<sup>92</sup> Moon, *supra* note 90, at 24. In addition, the higher returns for independent living units may trigger higher tax consequences, particularly as communities are fighting for local revenues. See e.g., *Alliance Home of Carlisle v. Bd. of Assessment and Appeals*, 852 A.2d 428 (Pa. Cmwlth. Ct. 2004) (denying a CCRC's application for tax exempt status for independent living units, on the ground that there was no evidence the facility contributed a substantial portion of its revenues from such units to a charitable purpose); *Onderdonk v. Presbyterian Homes of N.J.*, 425 A.2d 1057, 1059n.1 (N.J.1981) (noting that the CCRC in question, although a nonprofit corporation, was not a charity, and thus was subject to municipal real estate taxes). See also Annotation: *Nursing Homes As Exempt from Property Taxation*, 24 A.L.R. 5th 529 (1995).

Further, the movement by nursing homes to re-characterize themselves as CCRCs to qualify for the lower state assessment rates, however understandable as a means of saving operating revenue, raises the question whether CCRCs will continue to have the proportions of comparatively healthy “independent living” residents that helped to achieve past financial stability.<sup>93</sup> CCRCs that feel the need to increase their number of independent living or assisted living units to offset the costs of skilled nursing care, may face challenges from existing residents who relied on the original size and plan for services, or from non-CCRC neighbors who object to a higher density.<sup>94</sup>

CCRCs who make substantial increases in monthly fees—or alternatively, who make cost-saving cuts in services or amenities—face the potential for resident reaction and turmoil. At least one state has concluded that a resident’s objection to management practices does not constitute “just cause” for termination of the resident’s contract.<sup>95</sup>

An older case from New Jersey demonstrates the importance of financial accountability of CCRCs to their residents. In *Onderdonk v. Presbyterian Homes of New Jersey*,<sup>96</sup> fourteen residents united in their opposition to management. The residents brought suit against their non-profit provider, seeking declarative relief, appointment of a receiver and a constructive trust, and damages stemming from allegations of mismanagement. The residents’ requested relief was granted in part and denied in part in the New Jersey Supreme Court’s final decision.

The residents demanded that the provider submit adequate periodic accountings to the residents, with one resident seeking to enjoin his eviction from the facility and collect damages.<sup>97</sup> The monthly fees of the residents had increased dramatically and the residents were

concerned that these fees were being used to subsidize other activities of the corporation, unrelated to the management of the particular CCRC.<sup>98</sup> When the facility was unable to make its mortgage payments and entered a series of forbearance agreements, the residents formed a committee to investigate the matter.<sup>99</sup> Upon discovery that the committee had been meeting with and providing documents to the mortgagee, the provider demanded that copies of all documents provided by the committee be divulged. When one resident, a member of the committee, refused the provider’s request, he was given notice of termination of his residence agreement.<sup>100</sup>

The appellate division rejected the residents’ claim that the provider was obligated to furnish meaningful financial statements.<sup>101</sup> The Supreme Court of New Jersey reversed, however, noting that the most important financial feature of a CCRC residency agreement is the expectation that the monthly fees would remain relatively stable, and that there is a reasonable expectation that the fees will only be used to pay for the services provided.<sup>102</sup> The court held that a necessary correlation of this restriction on the use of income from residents’ fees is the obligation to provide the residents with meaningful financial statements, focusing on the fact that under these circumstances the provider has a monopoly on the information necessary for monitoring the agreement.<sup>103</sup> The court added that to be fully significant the information supplied should be adequate to enable the residents to determine whether the sources and expenditures are in accordance with the residency agreement.<sup>104</sup> However, the New Jersey Supreme Court also determined that no damages had been proven by the residents,<sup>105</sup> and pointed to the fact that the provider had waived its right to enforce the termination notice against the one resident it sought to discharge.<sup>106</sup>

## CONCLUSION

Many of the CCRC disclosures addressed in the early New Jersey case are now mandated by state law, both in Pennsylvania and elsewhere, with periodic review of financial dis-

<sup>93</sup> “Because the financial stability of [a CCRC] is based on actuarial expectations, a greater-than-average number of residents needing nursing care could endanger the assets of the residents.” ROBERT B. FLEMING, *ELDER LAW ANSWER BOOK* (2d Ed. 2004) at p. 11-16.

<sup>94</sup> See e.g., *Stewart v. Commonwealth*, 593 A.2d 14 (Pa. Cmwlth. Ct. 1991) (recognizing the standing of a member of the public as an “affected individual” to challenge a CCRC’s application for a certificate of need).

<sup>95</sup> *Seabrook Village v. Murphy*, 853 A.2d 280 (N.J. Super. Ct. App. Div. 2004) (recognizing a public policy in favor of providing a secure environment, without undue fear of displacement).

<sup>96</sup> *Onderdonk v. Presbyterian Home of New Jersey*, 425 A.2d 1057 (N.J. 1981).

<sup>97</sup> *Id.*, 425 A.2d at 1060-1061.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*, 425 A.2d at 1061-1062.

<sup>100</sup> *Id.*, 425 A.2d at 1062.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*, 425 A.2d at 1065.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*, 425 A.2d at 1066.

<sup>105</sup> *Id.*, 425 A.2d at 1067.

<sup>106</sup> *Id.*

closures to be made by state officials. The extent to which such disclosures are evaluated on a substantive basis by state regulators is unclear.<sup>107</sup> It seems important to keep a watchful eye for key markers of a stable or unstable industry in light of the apparent sudden growth in CCRCs. However, currently there is no requirement that Pennsylvania officials make regular, public reports on growth or financial stability of CCRCs in Pennsylvania.<sup>108</sup>

Perhaps the time is ripe to adopt a practice in Pennsylvania of making annual, public reports on key markers of financial stability in

the CCRC realm, such as:

- (a) numbers and types of any complaints about CCRCs,
- (b) number of applications for CCRC licensure received and either approved or rejected,
- (c) state-wide, comparative information on entrance fees and monthly maintenance fees, providing state-wide averages on any increases, and
- (d) whether the state has required existing providers to give additional information or revised financial projections.

Pennsylvania already collects much of this information annually—and individual residents are entitled to view their own facility's information—but the value of such disclosures is uncertain in the absence of tracking studies for the information. Pennsylvania has not made substantial changes to its Continuing Care Provider Registration and Disclosure Act since the original enactment in 1985. Once reliable statistical information is made available to the larger public, it should be possible to determine whether existing Pennsylvania law needs updating and, if needed, to accomplish any necessary changes well in advance of the probable wave of "elder boomers" who will be interested in CCRCs.

In the meantime, the absence of comparative, public information puts a premium on qualified private lawyers being available to prospective residents and their families. An attorney experienced in reviewing CCRC documents can help older adults assess whether the facility is satisfying or exceeding the law's minimum requirements, and can provide objective explanations of specific contracts terms, including alternative financing arrangements, offered by the facilities.

<sup>107</sup> "As might be expected, a consensus on the effectiveness of state regulation of the insurance business does not exist." ROBERT H. JERRY, UNDERSTANDING INSURANCE LAW at 128 (3rd Ed. 2002). However, as noted by Professor Jerry, there are arguments favoring state regulation of insurance products, as opposed to self-regulation or federal regulation, and these arguments would appear to apply with equal force to CCRC regulation. For example, state regulation is often innovative and regulators are closer to the concerns and people affected. *Id.* at 124-130

<sup>108</sup> Pennsylvania law mandates that the Department of Insurance publish a "consumers' guide" for CCRC facilities, as well as an annual directory. 40 PA. CONS. STAT. §3220. The brief guide and the directory of names, addresses and telephone numbers of CCRC providers are available on line at the Department of Insurance's website at <http://www.ins.state.pa.us/ins/cwp/view.asp?a=1281&Q=543105&PM=1&tx=1> (last visited September 30, 2006). By comparison, in addition to providing consumer guides with comparative pricing information for CCRCs, in New York the Commissioner of Insurance makes a fairly detailed report on trends in all of the insurance-like products regulated by the state, including CCRCs. *See e.g.*, 2005 N.Y. Insurance Report, *supra* note 66. Pennsylvania law already permits its commissioner to make public reports of violations of the Continuing-Care Provider Registration and Disclosure Act. 40 Pa. Cons. State §3218(a).