Will Oregon’s recent amendments to CCRC law help residents?

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Continuing Care Retirement Communities (CCRCs), also called life-care communities, are often attractive to aging adults because of their campus-like settings and a range of service options. In late 2009, however, the federal General Accounting Office (GAO) opened a congressionally mandated investigation, sparked by reports of recent financial instability of well-known operations. The GAO report to Congress is pending.

In the meantime, Oregon was one of several states that responded to long-simmering concerns by passing House Bill 2138 in 2009 to amend Oregon’s existing Continuing Care Retirement Community Provider Registration Act, O.R.S. § 101.010 to 101.160. The changes are largely pro-consumer, but the real test of the statute will come from resident groups. Elder law attorneys who have a sophisticated understanding of Oregon law may have a role to play in determining whether the changes are substantive or only cosmetic.

For several years, in my role of teaching and working with students and clients in Penn State’s Elder Law and Consumer Protection Clinic, I have come to know the concerns of CCRC resident groups in Pennsylvania and nationally, including those of the National Continuing Care Residents Association. Two themes emerge: the desire of many resident groups for a greater voice in the governance of their communities, and the demand for complete transparency on a wide range of financial issues that affect costs and increase the fees for residents. Both of these topics receive attention in Oregon’s recent amendments.

On the issue of governance, resident groups frequently express annoyance with management of even the most highly regarded non-profit and for-profit CCRCs, especially when management treats their inquiries with a paternalistic attitude, suggesting that “elderly” residents should not worry their graying heads about management issues. Existing Oregon law governing requirements for meetings and notices on changes in fees or charges, now contained in Section 101.112 (1), required CCRCs to hold regular open meetings with residents “at least twice a year” about topics such as “facility income, expenditures, financial trends” and any changes in policy, programs or services. The amendment to the meeting requirement appears to be an attempt to make communications more effective. Section 101.112(1) now also requires management to address “for discussion any topic presented by a resident council or resident,” whether orally or in writing 14 days or more before the meeting. Amendments also require 45 days advance notice for proposed changes in fees and service charges, with an accounting that supports any changes. CCRCs are now required to provide residents with financial statements that compare actual costs to budgeted costs, broken down by expense categories.

As many residents are aware, meetings between residents and management can be frustrating. Residents express concern that the most important discussions occur in closed door meetings of the CCRC’s governing boards. Oregon law at Section 101.112 (6) attempts to meet this concern by mandating that CCRCs must now include “at least one resident from each CCRC operated in [Oregon]” as a “nonvoting resident representative” in meetings of the governing board or “along with the owners and managers.” The amended law permits the representative to be excluded from certain executive sessions, but mandates that the representative shall not be excluded from discussion of the annual budget, increases in charges, the provider’s indebtedness and expansion in new or existing facilities. The statute provides a mechanism for selection of the resident representative and makes clear that the facilities can provide residents with greater representation on governing boards.

Oregon’s CCRC law adds a new provision, Section 101.112, that sets forth a brief set of basic resident rights, including the residents’ rights to be free from discriminatory treatment on the basis of sex, marital status, race, color, and national origin, and significantly, sexual orientation. The new provision includes a right for residents to “submit grievances and to suggest changes in policies and services either orally or in writing . . . without fear of . . . reprisal by the provider.” Further, “the provider
must listen and respond promptly to a grievance or suggestion from a resident.”

On the financial side, Oregon’s law continues to be a “disclosure” law, emphasizing the obligation of providers to give information to prospective or current residents, rather than the state’s obligation to affirmatively analyze the operations’ financial soundness. Oregon requires facilities to submit audited financial reports to the state on an annual basis, and the amendments add details about disclosures that must be made at Section 101.052. It is unclear what “disclosure” states, such as Oregon, do with the collected information, at least in the absence of a complaint by residents or a declaration of insolvency, although a long-standing Oregon provision, Section 101.120, gives the Department of Human Services the power to sanction or enjoin violations of the Act.

One new financial disclosure provision is potentially useful given complaints in other states about interlocking ownership of facilities. In California, for example, litigation has raised concerns that “plush” facilities (and financially strong residents) are expected to carry facilities with weaker income streams. The financial stability of such interlocking facilities can be threatened by the weakest link, whether in for-profit or non-profit operations. The amendments to Oregon’s CCRC law expand the providers’ obligations to provide information about their extended financial operations. Section 101.050(n) requires providers to give “full descriptions of all contracts that the provider has entered into with affiliated organizations and an explanation of the financial impact that the contracts may have on residents.”

Is it enough for facilities to disclose such financial entanglements or should there be restrictions on interlocking financial operations? This is a basic theme in regulatory approaches that haunts consumers and business people alike in virtually all segments of financial industries.

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Warning about new Medicare scam

Elders in several states are receiving fraudulent phone calls that ask for personal information “so that new Medicare cards may be issued to the consumers.”

The caller claims to represent Medicare or the Social Security office and asks the consumer to verify or provide personal information that could lead to identity theft.

Consumers should never verify or provide personal information to someone who has called them. When in doubt on Medicare or Social Security, consumers should hang up and call Social Security at 1.800.772.1213 or Medicare at 1.800.Medicare.

The warning about this scam comes from the National Legal Resource Center, a collaborative effort developed by the Administration on Aging, US Department of Health and Human Services.

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2010 NAELA Student Journal writing competition

The National Academy of Elder Law Attorneys is holding its Fifth Annual NAELA Elder Law Writing Competition, which offers a $1,500 cash prize for the best article submitted. In addition to the $1,500 first prize, the winner will be interviewed for a future issue of NAELA News. The second-place winner will receive $1,000 cash, and the third-place winner will receive $500 cash. The top eight articles will be published in NAELA Student Journal, an annual publication, and the top eight authors also will receive a complimentary one-year student membership to NAELA.

Articles can address any topic regarding legal issues that affect elders or people with disabilities. The contest is open to part-time and full-time JD candidates who have not yet graduated. All articles must be original and previously unpublished. Articles written for law school credit are acceptable. Jointly authored papers are not acceptable.

Each entry must be submitted by 12:00 p.m. EDT on May 31, 2010 to mhansen@naela.org.

Complete contest rules are available on the NAELA Web site: www.naela.org.