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Senate Committee Examines Potential Financial Risks of CCRC Model

The Senate Special Committee on Aging held a hearing on July 21, 2010, entitled "Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?" The hearing focused on CCRC regulation and potential financial risks to consumers who invest in CCRCs. In connection with the hearing, the Committee released its recent investigative report on CCRCs and a study from the US Government Accountability Office (GAO).

At the hearing, the Committee heard statements from five panelists:

1. Alicia Cackley, from the Financial Markets and Community Investment office of the GAO;
2. Kevin McCarty, the Florida Insurance Commissioner;
3. Charles Prine, a CCRC resident;
4. Katherine Pearson, an Elder Law and Consumer Protection Professor at Pennsylvania State University; and
5. David Erickson, the Vice President of Legal Affairs for Covenant Retirement Communities, who testified on behalf of the American Association of Homes and Services for the Aging (AAHSA).

This article summarizes the panelists' statements, as well as the Committee report and GAO study.

The Committee Report and GAO Study

The Committee's investigative report focused heavily on financial risks associated with CCRCs. The report observes that the CCRC model relies heavily on occupancy in independent living units (ILUs). According to the report, this model is "particularly vulnerable during economic downturns" because ILU occupancy tends to decrease significantly when the real estate market slows down. Additionally, the report states that some CCRCs have gone into bankruptcy "as a result of poor financial planning." The report emphasizes that CCRC residents invest in the model expecting to live on the CCRC campus for the rest of their lives. The report states that CCRCs must "maintain a certain level of financial security" to provide consistent and reliable community services over the long term to resident-investors.

The report concludes with a regulatory checklist for state lawmakers who might want to implement a new CCRC law or update an existing law. The detailed checklist includes the following key regulatory areas for state CCRC legislation:

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- Licensing standards;
- Minimum financial reserve requirements;
- Periodic monitoring and analysis of financial information, fee schedules, and occupancy levels;
- Periodic reviews of solvency, marketing practices, and communication between CCRC staff and regulators;
- Mandatory financial and non-financial disclosure to consumers about company operations and overall stability

The GAO study offered a somewhat less skeptical analysis, compiling information from a variety of sources, including CCRC officials. The study examines the CCRC operational model, the financial risks involved in that model, and how various state laws address those risks. The GAO ultimately found that "CCRCs can benefit older Americans by allowing them to move among and through independent living, assisted living, and skilled nursing care in one community." However, the GAO study also acknowledges that CCRCs, "like other businesses," face certain risks. According to the study, primary risks to CCRC long-term viability include declining occupancy, unexpected cost increases, slow real estate markets, and declining equity and credit markets. The GAO emphasizes that "while few CCRCs have failed, challenging economic and real estate market conditions have negatively affected some" CCRCs.

The GAO study found that regulation varies considerably among the states, but that many states require CCRC providers to maintain minimum financial reserves and submit audited financial statements annually. The study also notes that "[r]egulators and CCRC providers [...] generally believe that current CCRC regulation is adequate," but that CCRC resident organizations would like to see more financial oversight to protect CCRCs' long-term viability.

The Panelists' Statements

The Panel statements reflected various perspectives on the issue of CCRC financial stability and regulation. First, the GAO representative, Alicia Cackley based her statement on the GAO report. Accordingly, her comments and analysis mirror the report. Notably, she opened her statement by acknowledging the potential advantages of the CCRC option for older Americans. She summarized the GAO report findings and concluded that the states must maintain "vigilant" efforts to "help ensure that CCRC residents' long term interests are adequately protected."

Florida Insurance Commissioner Kevin McCarty focused his statement on Florida's regulatory model for CCRCs. He explained that in Florida, CCRC regulation focuses on four areas:

1. Verifying that CCRC owners and management are reputable and responsible;
2. Ensuring that information is properly disclosed to prospective and current residents;
3. Ensuring compliance with licensure requirements; and
4. Providing financial oversight.

Charles Prine commented on his personal experience as a CCRC resident. Prine's CCRC filed for bankruptcy and was unable to refund resident deposits. Prine made several recommendations for enhanced oversight to protect against loss of resident funds, such as mandating that residents comprise at least 33 percent of a CCRC's board of directors.

Elder Law Professor Katherine Pearson stated that she is a supporter of the CCRC model, which provides "for many thousands of people [...] an active and supportive environment, with essential flexibility in both housing and care arrangements." She offered a brief historical overview of CCRC regulations and then advocated on behalf of CCRC residents, recommending a national bill of rights for CCRC residents, which would set a minimum threshold for state regulation.

Finally, David Erickson, speaking on behalf of AAHSA, stated that the "vast majority" of CCRCs remain "strong and financially viable" despite the economic downturn. He agreed that CCRCs must have effective state regulatory oversight, but that the regulatory framework "must maintain a balance that provides for adequate consumer protections without unreasonably restricting" CCRC growth and development.

Conclusion

While the Committee hearing will not have an immediate legislative or regulatory impact, the statements and reports offer a glimpse at the industry's potential regulatory future. Senator Kohl, the Committee Chairman, expressed decided concern about the financial risks that consumers face when investing in CCRCs. The Committee's investigative report echoed such concerns and offered a detailed model for state-based regulation. Although the panelists offered varying perspectives on the amount and types of regulation needed, most panelists seemed to agree that more regulation is on the horizon.