The Right Time for a Resident Bill of Rights

The path of progress for resident rights in Continuing Care Retirement and Life Care Communities is sometimes tortuously slow. There is hope, however, that residents are gaining momentum, especially in light of the recent investigation by the GAO and Senate Special Committee on Aging into financial practices at CCRCs.

For more than ten years, I have been working on law and aging policy issues, including my work as the educational director of a legal clinic that provides assistance to older adults on a variety of issues. I first started examining resident rights in 2006, as the result of residents and family members who approached me about CCRC operations in Pennsylvania, Florida and California. Some of the most frequent questions were connected to governance, including the right of residents to have a say in the direction their facilities are taking.

I wrote an article about Pennsylvania's law governing CCRCs in 2006. At that time I noted it is "important to keep a watchful eye for key markers of a stable or unstable industry in light of the apparent sudden growth of CCRCs." I expressed concern that in Pennsylvania and other states, public authorities were unwilling or unable to report on complaints and financial concerns in existing operations, information that could help current and future residents make sound decisions about investment in these communities. A Pennsylvania official rejected my call for greater transparency, commenting to me that there had been no "failures" during his 20 year tenure.

Even before the current financial crisis, however, I was hearing rumblings from residents at several CCRCs about potential financial issues. Among the issues reported to me were facilities that were unable to support their claims for preferential property tax treatment as charitable operations; facilities with expansion plans based on questionable financial projections; and highly leveraged operations that used income from one facility to operate, build or expand at other facilities. In some instances, residents were asking questions and not getting satisfactory answers from owners of facilities.

In 2008, the financial crisis began to hit the CCRC industry, with the twin blows of a sagging real estate market affecting the ability of prospective residents to afford high entrance fees, and the tightening of credit impacting operations and expansion plans for facilities. The bankruptcy petition filed by the Erickson Retirement Communities in 2009 covering 19 operations across the country disclosed some of the challenges caused by the financial crisis. In addition, the bankruptcy of Covenant Hills CCRC near Pittsburgh, with residents losing more than $20 million in "refundable" admission fees, caught the attention of many. According to an article in the Wall Street Journal on July 21, 2010, Pennsylvania insurance department official Stephen Johnson says that new regulation is not called for in response to what he sees as a single "unique" failure in Pennsylvania. I am concerned that on both a state and national level, residents do not have enough information to know whether Covenant Hills was "unique."

During the fall of 2009, I was contacted by the General Accountability Office (GAO) to assist in an investigation of CCRC financial practices, triggered by the request of Senator Herb Kohl of Wisconsin. The GAO investigation was thorough and wide-ranging, and they offered anonymity to those who might otherwise be reluctant to cooperate with an investigation, including residents, regulators and representatives of the CCRC industry. The GAO report, issued in late June 2010, is interesting reading and is available on-line at http://www.gao.gov/new.items/d10611.pdf.

Unfortunately, the GAO report does not conclude with any recommendations for national actions, instead leaving the responsibility for oversight in the hands of individual states. About three-fifths of the states have CCRC-specific oversight legislation and there is a great deal of variation in the states' regulations. The reluctance of the federal government to get directly involved in regulation is probably understandable in this economic climate. There is limited appetite in Washington for the costs associated with new regulation.

On July 21, 2010, I was one of several people invited to testify before Senator Kohl's Special Committee on Aging about CCRC financial accountability. I prepared my written testimony while on sabbatical. This gave me the time to look and think carefully about the needs for better accountability to residents. Even if the federal government was not willing to undertake direct regulations of CCRC financial operations, I believe it is still possible and appropriate for there to be national standards. There are several potential routes to national standards. I believe the best precedent comes from a national bill of rights for residents in nursing homes, part of the federal law tied to the states' receipt of Medicare and Medicaid funds for nursing home operations. Therefore, as I testified to at the hearing, I am calling for a national bill of rights for residents of CCRCs, with an emphasis on financial transparency and accountability to residents.

The devil is in the details for crafting such a bill of rights — and the next step for me will be an article on what I see as key components. The good news is that I have been approached by responsible leaders within the CCRC industry about working together. Residents and members of NaCCRA are encouraged to take the lead on this project. I look forward to hearing from you and working with you.

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