

# Continuing Care Retirement Community (CCRC) study

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Assessment of state and federal CCRC  
authorities

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**Mike Kreidler**, *Insurance Commissioner*  
[www.insurance.wa.gov](http://www.insurance.wa.gov)

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# Executive summary

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The 2022 Legislature approved agency funding for the Washington state Office of the Insurance Commissioner (OIC) to do a study on the potential for updating Washington’s Continuing Care Retirement Communities (CCRC) regulations. The budget proposal is quoted as:

*“\$250,000 of the insurance commissioner’s regulatory account— state appropriation is provided solely for the commissioner to contract for an assessment of federal and state authorities to provide recommendations on creating a legal framework within which continuing care retirement community products under Chapter 18.390 RCW may achieve heightened consumer protections through shared regulatory oversight by the office of the insurance commissioner.”<sup>1</sup>*

CCRCs are primarily regulated by the states rather than the federal government. Under Washington state law, a CCRC means an entity that provides continuing care to a resident under a residency agreement.<sup>2</sup> The American Association of Retired Persons (AARP) defines CCRCs as a long-term care option for older people who want to stay in the same place through different phases of the aging process.<sup>3</sup> CCRCs differ from other retirement housing and healthcare alternatives for the elderly, such as stand-alone assisted living and nursing home facilities, because they offer the full range of housing, healthcare and support services all in one location.<sup>4</sup>

Regulating CCRCs is very complex. CCRC regulation addresses concepts including financial and actuarial analyses, consumer complaints, civil and criminal investigations, varied health and residential care settings (each with separate license requirements), and several areas of law (including administrative law, contract law, and real property). Generally, states license CCRCs, provide oversight of their financial condition and enforce resident consumer protections. Some states rely on a single agency to regulate CCRCs, while other states rely on a system of shared regulatory oversight between two or more agencies.

States with a single CCRC regulator system rely solely on one agency for government certification and enforcement. This allows the sole regulators to achieve efficiencies, eliminate waste and create cohesive policies from one office. Other states with shared CCRC regulatory oversight employ resources from multiple agencies. This allows agencies to conserve resources and focus on their areas of subject matter expertise to provide consumer protections.

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<sup>1</sup> Supplemental Operating Budget – Section 139(10), Chapter 297, Laws of 2022 – (<https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bills/Session%20Laws/Senate/5693-S.SL.pdf#page=1>).

<sup>2</sup> [RCW 18.390.10\(4\)](#) – Definition of Continuing Care Retirement Community.

<sup>3</sup> AARP: How CCRCs Work – CCRCs aim to provide a continuum of care as a resident ages. Here’s how to evaluate choices, by AARP, Jan. 27, 2022 – (<https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html>).

<sup>4</sup> IRS Elderly Housing Report: by Elizabeth C. Kastenbergh and Joseph Chasin, (2004) – (<https://www.irs.gov/pub/irs-tege/eotopicg04.pdf>).

Washington's CCRC regulatory statute went into effect on July 1, 2017.<sup>5</sup> The statute defines a CCRC, establishes minimum registration and renewal requirements, and requires limited financial disclosures. However, the law does not address all areas of consumer protection concerns for CCRC residents.

Washington's current legal framework for CCRCs is limited in the scope of regulatory oversight, financial regulations and consumer protections when compared to other states across the country. Other states have taken alternative approaches to achieve additional resident consumer protections in these areas. For example, some states established independent review boards, minimum surplus and solvency standards, and mandatory entry fee refund requirements.

Key findings include:

- Washington state does not license CCRCs, but instead requires their registration and renewal.
- There are limited financial regulations and disclosure requirements for CCRCs in Washington.
- There are no current state authorities that mandate a CCRC to maintain specific reserves, meet certain surplus levels or refund entry fees.
- CCRCs can require substantial nonrefundable entrance fees.
- Residents have minimal control on how their facilities will use funds committed by their residents.
- CCRC financials are subject to varying levels of administrative review and financial scrutiny across the country.
- Washington exhibits lower regulatory oversight and financial scrutiny on initial registration and subsequent renewals, in comparison with other states.

The budget proviso described above requires the OIC to submit a report to the health care committees of the Washington state Legislature by Dec. 1, 2022. The OIC elected to conduct its own limited internal study after two attempts to solicit contractors for the study did not result in any proposals.

Under current law, OIC does not regulate CCRCs. In Washington, the Department of Social and Health Services (DSHS) registers and renews CCRCs, and the Office of the Attorney General (AGO) investigates CCRC consumer complaints. These agencies could implement additional resident consumer protections if directed by legislation. However, the regulatory system that shows the most potential to achieve additional consumer protections for residents is that of a single-agency regulator. States with a single CCRC regulator achieve administrative efficiencies, additional consumer protections, and benefits for all affected parties. Examples include stronger internal agency communication, more cohesive policies, less waste in delegating work to another agency and advanced coordination between business units.

The sole regulator system provides benefits to all affected parties in working on consumer protection issues related to CCRCs, due to the complex nature of their varied residential and healthcare settings. This system also avoids delegating specific areas of CCRC regulation to several other agencies.

Therefore, OIC recommends the most efficient and immediate path to achieve additional resident consumer protections will result from a sole regulator model and not through shared regulatory

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<sup>5</sup> WACCRA Legislative History website (October 4, 2022) – (<https://waccra.org/legislation>).

oversight. Under a sole regulator model, a single agency develops advanced experience and expertise regulating all aspects of CCRCs, from licensing to financial oversight and enforcement of resident expectations. This provides consistency and convenience for all affected parties and avoids confusion that can be caused by dividing CCRC management between agencies for regulation. Legislation can also require CCRCs to become licensed, rather than just registered, and may broaden resident consumer protections or expectations to be enforced by the single regulating agency.

## **Context and background on CCRC study**

In 2022, the Washington state Legislature appropriated agency funds to be used by the OIC to contract for a study on the potential for updating Washington's CCRC regulations. OIC attempted twice to engage a contractor through state government procurement protocols.<sup>6</sup> However, the OIC did not receive any proposals from potential contractors.

OIC understood the importance of completing the assessment given the direction from the Legislature in the budget proviso. Therefore, the OIC elected to conduct a limited internal study without using the appropriations after no contract was procured. The OIC worked within its resources to produce this assessment.

OIC coordinated its efforts with interested parties, such as applicable Washington state agencies (DSHS, AGO, and Washington State Department of Financial Institutions (DFI)), other state CCRC regulators (CA, CT, FL, NC, NM, NY, OR, PA, and TX), national and state resident associations, CCRC representatives, CCRC providers and residents. This level of coordination enhanced the agency's abilities to research other states, study federal authorities and make appropriate recommendations informed by research results.

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<sup>6</sup> See OIC RFPs S202307 and S202308.

# Introduction

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In Washington, there are many different types of facilities where someone can live and acquire long-term care services in residential settings. State licensed long-term residential care options include nursing homes, adult family homes and assisted living facilities. Non-state licensed options include retirement communities, independent living facilities and CCRCs.<sup>7</sup> In Washington, there are a total of 23 CCRCs.<sup>8</sup>



Washington state does not license CCRCs, but instead requires their registration and renewal. Before enacting CCRC legislation, many residents in Washington were concerned that existing authorities did not provide enough consumer protections. Therefore, legislation was sought to achieve consumer protections for residents, and on April 1, 2016, Governor Inslee signed the new Continuing Care Retirement Communities law (RCW [Chapter 18.390](#)).<sup>9</sup> The law defined CCRCs, mandated minimum registration requirements with the state, and required limited financial disclosures to prospective and current residents. This statute has not been significantly amended since its enactment.<sup>10</sup>

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<sup>7</sup> DSHS Long-Term Care Residential Options website (Oct. 4, 2022) – (<https://www.dshs.wa.gov/altsa/residential-care-services/long-term-care-residential-options>).

<sup>8</sup> Ziegler: Ziegler Investment Banking (2010) Report to LAWA.

<sup>9</sup> WACCRA Legislative History website (Oct. 4, 2022) – (<https://waccra.org/legislation>).

<sup>10</sup> DSHS LTC Residential Options website (Oct. 4, 2022) – (<https://www.dshs.wa.gov/altsa/residential-care-services/long-term-care-residential-options>).



*\*Photograph from April 1, 2016, where Governor Inslee signed new CCRC law (RCW Chapter 18.390), (Oct. 7, 2022) – <https://waccra.org/legislation>*

However, the new law did not address all areas of consumer protection concerns for residents. Additionally, CCRC providers and residents do not always agree about the administration, operation and management of CCRC facilities. Each party can have competing interests on the proper path for the CCRCs as it pertains to financial management practices and prospective or current residents. The ownership and administration of CCRCs have business interests to responsibly manage amenities, health and long-term care services, finances, and ongoing operations for their residents. These business interests raise concerns for residents because CCRCs may invest their assets and community resources into recruitment efforts for new residents, rather than sustainability of services, amenities and lifestyle expectations.

CCRCs' ability to attract new residents and accurately predict the cost of long-term care for current residents is critical to the continuity of the facility. CCRCs engage in the financial review of prospective residents, as well as undergo financial investigations with their banking or lending institutions. However, there are no current state authorities that require a CCRC to maintain specific reserves, meet certain surplus levels or refund entry fees.

There are limited financial regulations and disclosure requirements for CCRCs in Washington. Additionally, residents generally have little control on how the CCRCs use their funds. CCRCs can also require substantial nonrefundable entrance fees. This leaves residents with the following options:

- Resident recourse with their CCRC provider.
- Relocating to a new CCRC.
- Pursuing private legal action.
- Submitting a complaint to the AGO for violations of [RCW Chapter 18.390](#), as it relates to the Consumer Protection Act (CPA) ([RCW Chapter 19.86](#)).

Washington's Continuing Care Residents Association (WACCRA) represents the interests of residents and does legislative work on CCRC regulations and consumer protection issues.<sup>11</sup> WACCRA engaged in

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<sup>11</sup> WACCRA: website (Aug. 25, 2022) – (<https://waccra.org/about-us>).

a legislative review as to how other states regulate CCRCs and reported that Washington is missing consumer protections given to residents in New York, California, Florida, Pennsylvania and New Mexico.<sup>12</sup>

This study will examine CCRCs, with a focus on the current state of CCRC regulations in Washington, as well as CCRC authorities in other states and federally, to determine potential consumer protections that can be achieved through increased financial and regulatory oversight. This study will also include recommendations, informed by research results, on the best agencies and systems for increased oversight of CCRCs specific to Washington.

## What is a Continuing Care Retirement Community?

### General information – benefits and risks

Generally, a CCRC means an establishment that provides a stimulating and attractive living environment for residents who are active seniors. It may incorporate into the community additional facilities or services.<sup>13</sup> The primary benefit for residents of CCRCs is the establishments can provide a wide range of care, activities and services in one place. This affords residents some stability and familiarity through the aging process if their health or abilities change. The National Continuing Care Residents Association (NaCCRA) explains the benefits of residing at a CCRC, as follows:

*“The communal living experience that a CCRC offers can bring you much happiness, new friends, a rich social and cultural experience, excellent health care, and genuine security and peace of mind. It is also a responsible decision, in that it ensures that you will not become a burden to the state, to relatives, or to others.”<sup>14</sup>*

However, the U.S. Government Accountability Office (GAO) reported on the risks of CCRCs to the U.S. Senate Special Committee on Aging, in their report titled *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk*.<sup>15</sup> This report explains that residents moving into a CCRC will experience significant financial and emotional investment, with hundreds of thousands of dollars at risk.<sup>16</sup> The report outlines that many residents will sell their home to cover their entry fees, leaving the

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<sup>12</sup> WACCRA Agency Meeting Presentation PowerPoint (May 21, 2021).

<sup>13</sup> National Continuing Care Residents Association: *Consumer Guide 2018 – Introduction to CCRCs and their meaning* –

([https://s3.amazonaws.com/ClubExpressClubFiles/526131/documents/NaCCRA\\_consumer\\_guide\\_194123385.pdf?AWSAccessKeyId=AKIA6MYUE6DNNCCDT4J&Expires=1660324766&response-content-disposition=inline%3B%20filename%3DNaCCRA\\_consumer\\_guide.pdf&Signature=r6LSnv%2BeRjXKDCH7ugePxElnfI%3D](https://s3.amazonaws.com/ClubExpressClubFiles/526131/documents/NaCCRA_consumer_guide_194123385.pdf?AWSAccessKeyId=AKIA6MYUE6DNNCCDT4J&Expires=1660324766&response-content-disposition=inline%3B%20filename%3DNaCCRA_consumer_guide.pdf&Signature=r6LSnv%2BeRjXKDCH7ugePxElnfI%3D)).

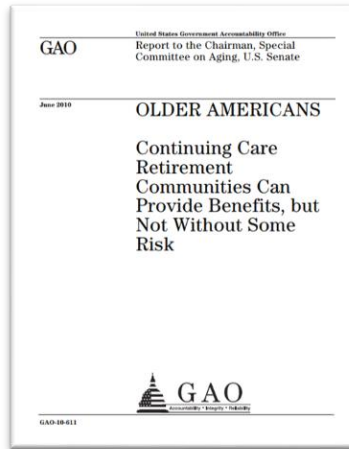
<sup>14</sup> National Continuing Care Residents Association: *Consumer Guide 2018*.

<sup>15</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>) – Future references to this report will be referred as the GAO report.

<sup>16</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate.

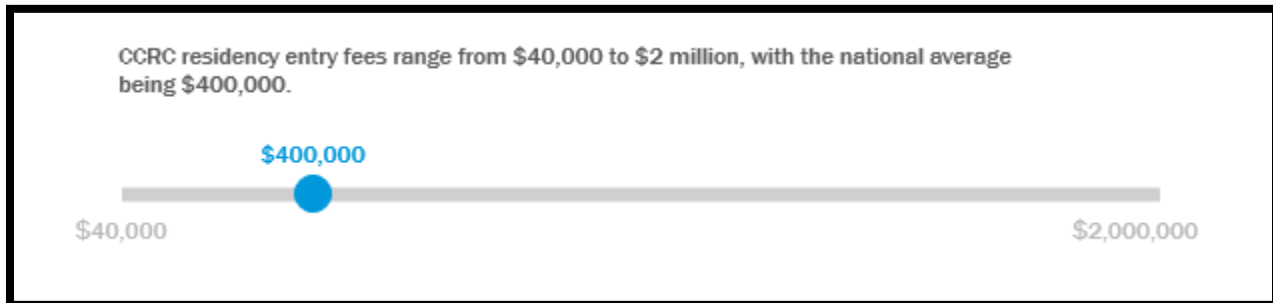


residents' support tied to the CCRCs' long-term viability. The report also communicates that many CCRCs can be financially vulnerable during periods of economic decline.<sup>17</sup>



*[\\*GAO Report to the Chairman, Special Committee on Aging, U.S. Senate \(June 2010\): Older Americans – Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk](#)*

CCRC residency can come at a significant cost and most CCRCs will charge an entry fee. As of 2022, the national average entry fee for CCRC residency is about \$400,000 and fees can range quite drastically from as low as \$40,000 to as high as \$2 million.<sup>18</sup>



<sup>17</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate.

<sup>18</sup> AARP: *How CCRCs Work – CCRCs aim to provide a continuum of care as a resident ages. Here's how to evaluate choices*, by AARP, Jan. 27, 2022 – (<https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html>).

CCRC entry fees may be refundable, depending on the CCRC and residency agreement. The Internal Revenue Service (IRS) examined CCRC refund paradigms in their *Elderly Housing Article (2004)* and outlined the following:

*“Depending on the particular CCRC, the entrance fee may be refundable under certain conditions. The most common types of refunds are described below:*

<b>Declining Scale Refunds</b>	Under this type of refund (also known as amortizing), the agreement specifies a period of time in which the entry fee will be refundable to the resident on a declining basis. For example, an entrance fee under this arrangement declines at the rate of one percent each month. For example, after six months, 94% of the entrance fee is refundable.
<b>Partially Refundable</b>	Partially refundable entrance fees guarantee a specific percentage of the refund that will be returned within a certain period of time. For example, 50% of the entrance fee is refundable, but only within the first 24 months of the contract.
<b>Fully Refundable</b>	Full refunds offer just that, a full refund of the entrance fee. A fixed charge may be deducted before the refund is made. The agreement generally states how long the refund is valid and under what conditions a refund is due. Entrance fees that offer full refunds are typically more expensive than those without refunds or those that are partially refundable or on a declining basis.” <sup>19</sup>

## Financial information

Establishing a CCRC can be costly and time consuming. This can include time and costs associated with construction of the CCRC, as well as financing facility operations. Generally, CCRCs must keep prices low enough to attract residents and maintain competition in the markets, but also high enough to meet short- and long-term costs.<sup>20</sup> Here, CCRCs must consider numerous variables including occupancy trends, mortality rates, health care costs, staffing and capital improvement costs.<sup>21</sup> CCRCs that set fees too low will need to raise entrance and other fees to cover current and future costs.

CCRCs can acquire funding from various sources, such as banks, bonds, private equity, lenders, resident entry fees and ongoing monthly fees. Banks and lenders for CCRCs will employ internal protocols and financial investigations to determine whether and how much to loan.

<sup>19</sup> IRS: Elder Housing Article, by Elizabeth C. Kastenber and Joseph Chasin (2004) – (<https://www.irs.gov/pub/irs-tege/eotopicg04.pdf>).

<sup>20</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>21</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate.

CCRCs may provide their funding and financial information in financial statement submissions to their lenders and regulators, as well as making financial disclosures to current or prospective residents.

CCRC financial statement submissions can include:

- Asset and debt reports
- Bank or investment account statements
- Bond portfolios
- Independent accountant's report opinion letters
- Profit and loss statements
- Ratio records
- Other verifying financial documentation

The CCRCs' financial records are reviewed internally by financial professionals and certified public accountants before submission or disclosure. However, CCRC financials are subject to varying levels of administrative review and financial scrutiny across the country.

Few CCRCs closed or declared bankruptcy over the 20 years prior to the GAO report in 2010.<sup>22</sup> For instance, Ziegler Investment Banking recorded eight closures among life plan communities nationwide, including CCRCs, from 2016 to 2022.<sup>23</sup> Additionally, some CCRCs have become bankrupt or closed in multiple states across the country, including California, Texas and New York.<sup>24,25,26</sup> CCRCs are also not immune from economic conditions that can negatively affect their financial status or continuity of operations, such as difficult real estate markets, declining liquidity and other financial ratios, and tightening financial markets.

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<sup>22</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>23</sup> Ziegler: *CCRC/LPC Growth Trends: Ziegler CCRC National Profile Module* (October 2022). Note: Ziegler defines CCRC/LPC as: age-restricted properties that include a combination of independent living, assisted living and skilled nursing services (or independent living and skilled nursing) available to residents all on one campus. Resident payment plans vary and include entrance fee, condo/co-op and rental programs.

<sup>24</sup> The Dallas Morning News: Here's how continuing care retirement communities work and why some go bankrupt, by Natalie Walters, (April 29, 2022) – (<https://www.dallasnews.com/business/local-companies/2022/04/29/heres-how-continuing-care-retirement-communities-work-and-why-some-go-bankrupt/>).

<sup>25</sup> CANHR: Long Term Care Justice and Advocacy – Continuing Care Retirement Community Closures: It Can Happen Here! By Lillian L. Hyatt, M.S.W., and a Resident of a CCRC (Fall 2006) – ([http://canhr.org/CCRC/CCRC\\_Corner2006Q3.html](http://canhr.org/CCRC/CCRC_Corner2006Q3.html)).

<sup>26</sup> NY Department of Health: CCRC Bankruptcy, by Michael Heeran, Director of Nursing Home Licensure and Certification & CCRC Programs (Sept. 14, 2016) – ([https://www.health.ny.gov/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/docs/2016-09-14\\_wm\\_ccrc\\_bankruptcy.pdf](https://www.health.ny.gov/facilities/long_term_care/retirement_communities/continuing_care/docs/2016-09-14_wm_ccrc_bankruptcy.pdf)).

## Facilities, services and settings

CCRCs have specialized characteristics such as location, infrastructure, medical services, living accommodations, amenities, proximity to family and dining, as well as the culture of the residents and management.<sup>27</sup> Potential residents can evaluate the many components of CCRCs by formally visiting the establishments in person. This allows potential residents to consider major components, such as location, staff, facilities and meals.

CCRCs can incorporate additional facilities and services into their community, including assisted living units, skilled nursing wings and memory care sections.<sup>28</sup> In addition to independent living facilities, a CCRC can have the following three levels of care settings:

- Assisted Living Facility – For residents who need some measure of help with their activities of daily living, such as dressing, showering or medication management.
- Skilled Nursing Facility – For residents who are temporarily ill, returning from the hospital following surgery for rehab or other treatment, or who are dependent on daily skilled nursing over a long term, perhaps until the end of life.
- Memory Care Unit – For residents whose cognitive limitations make it no longer safe for them to live independently.

Some CCRCs will subdivide these care categories. For example, there may be a Memory Care unit for people with mild dementia and another for the severely cognitively disabled. There may be separate assisted living units for people who are mildly and more seriously disabled. Some CCRCs have certain levels of care at a different facility.

## Contract types

According to consumer interest groups, there are many important components to CCRCs residents should consider that are not easily evaluated by visiting facilities. These include important items such as residency agreements, planned amenities and services, long-term financial strength of the CCRC, and the ownership and governance of the facility.

CCRC residency is established through four different types of CCRC contracts. However, the different contract types are not available from every CCRC. The four different types of CCRC contracts are outlined below:

1. **Type A contracts (Full Risk – Extensive or Life Care Agreements)** – These types of contracts include housing, residential services and amenities (including unlimited use of health care services) at minimal to no increase in monthly fees as the resident transitions care settings.<sup>29</sup> Type A contracts

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<sup>27</sup> WACCRA CCRC Consumer Guides (Second and Third Editions).

<sup>28</sup> WACCRA CCRC Consumer Guides.

<sup>29</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

require substantial entrance fees, but can be popular due to the limits on increases to monthly payments as the residents traverse care settings.<sup>30</sup> In return for an entrance fee plus a monthly fee, the resident is guaranteed to pay approximately the same monthly fee (except due to regular inflation) for as long as the resident resides in the CCRC. This occurs even if assisted living or skilled nursing care is needed.<sup>31</sup> Residents who buy Type A contracts are eligible for tax deductions for a portion of their fees, as the IRS interprets them to be the pre-payment of medical expenses.

2. **Type B contracts (Partial Risk – Modified Contracts)** – Type B contracts generally have lower monthly fees than Type A contracts, and include similar housing and residential amenities.<sup>32</sup> However, these contracts only provide some health care services included in the monthly fee.<sup>33</sup> In return for an entrance fee and monthly fees, the resident can receive higher levels of healthcare services at a lower or discounted rate for a set term or defined periods of time, before market rates will be applicable.<sup>34</sup> Residents who buy Type B contracts are eligible for tax deductions for a portion of their fees as the IRS considers them to be the pre-payment of medical expenses.
3. **Type C contracts (No Risk - Fee-for-Service Contracts)** – Type C contracts include similar housing, residential services and amenities as Type A and B contracts, but require residents to pay market rates for health-related services, or on an as needed basis.<sup>35</sup> The entrance and monthly fees are typically much lower than compared to those of the Type A or B contracts.<sup>36</sup> However, when higher levels of healthcare services are needed the residents then pay additional fees that increase significantly toward market rates. Generally, no tax deductions are available as no healthcare expense is being prepaid through the entrance fee.
4. **Type D contracts (No Risk - Rental Agreements)** – Type D contracts or rental agreements, generally require no entrance fee and guarantee access to CCRC healthcare and services.<sup>37</sup> These contracts are short-term rental agreements that CCRCs offer with a variety of contract options and terms.<sup>38</sup> Here, generally either party can terminate the contract without cause. Tax deductions may be available for healthcare expenses incurred.

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<sup>30</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate and WACCRA CCRC Consumer Guides.

<sup>31</sup> WACCRA CCRC Consumer Guides (Second and Third Editions).

<sup>32</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>33</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate.

<sup>34</sup> WACCRA CCRC Consumer Guides (Second and Third Editions).

<sup>35</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>36</sup> WACCRA CCRC Consumer Guides (Second and Third Editions).

<sup>37</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>38</sup> WACCRA CCRC Consumer Guides (Second and Third Editions).

## General consumer protections

Consumer protection laws were created to protect consumers and the public from business practices that are unfair, deceptive, defective, or those that pose risk.<sup>39</sup> In the U.S., consumer protection authorities are comprised of several federal and state laws, where each governs a certain part of the economy.<sup>40</sup> The federal government oversees consumer protections through the Federal Trade Commission (FTC).<sup>41</sup> The states provide consumer protection oversight on numerous issues through multiple state agencies and authorities.

The GAO report explained “*State CCRC regulation developed over time and in some instances grew out of the need to address financial and consumer protection issues, including insolvency, which arose in the CCRC industry in the 1970s and 1980s.*”<sup>42</sup>

## Resident consumer protections

The OIC’s assessment of CCRC regulations identified consumer protections that are specific to CCRCs and their residents. In detail, this research revealed the consumer protections below that can be afforded to prospective or existing residents of a CCRC.

## Regulatory oversight

Establishing government oversight of CCRC business provides the public with confidence and confirmation that regulated entities meet certain legal standards.

- **Operational requirements** – These are legal thresholds CCRs must meet to start and continue operations. They protect consumers by providing thorough and well-vetted processes CCRs must be accountable to and comply with, before and during operations. For example, in New York, construction of a CCRC cannot start until at least 50% of the units have been pre-sold.
- **Government certification – registration, licensure and certificates of authority:** Government certification is an important component to consider when contemplating consumer protections for residents. Government agencies provide a neutral third-party who can render objective and unbiased decisions on certification. Government certification can include registration, licensure or certificates of authority. While Washington engages in the registration and renewal of CCRCs, there are other states who do not register CCRCs at all, and some states that only issue CCRC certificates of authority or licenses to conduct business. The legal threshold and agency work processes

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<sup>39</sup> Law Insider: Dictionary – Define Consumer Protection (Oct. 11, 2022) – (<https://www.lawinsider.com/dictionary/consumer-protection>).

<sup>40</sup> Investopedia: *Consumer protection laws exist to protect people from unfair business practices*, by Ana Gonzalez Ribeiro, (Sept. 22, 2022) – (<https://www.investopedia.com/articles/pf/10/know-your-consumer-protection-laws.asp>).

<sup>41</sup> Investopedia: *Consumer protection laws exist to protect people from unfair business practices*.

<sup>42</sup> US GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

required for licensure, are beyond that of registration and offer additional regulatory oversight on CCRCs.

- **Disclosure duties** – CCRCs provide disclosures on several areas of their business to regulators, residents and prospective residents alike. These disclosures include information on CCRC ownership, residency agreements, registrations and renewals, and financials, as well as on complaints and investigations. The disclosure duties vary from jurisdiction to jurisdiction, and can be improved for consistency, standardization and consumer protections.
- **Notice requirements** – CCRCs must meet legal requirements related to notifying regulators, residents and prospective residents with information indicating ownership, addresses, finances, residential settings and consumer protections. These notices serve as education materials so affected parties can make informed decisions on the CCRC business.
- **Renewal standards** – Establishing minimum renewal standards requires all CCRCs within a certain jurisdiction to meet consistent compliance standards and consumer protection duties per certification period. The renewal requirements vary by state for CCRCs, where some provide longer timeframes than others for renewal. However, the renewal requirement in and of itself offers consumer protections of guaranteed regulatory oversight every certification period.

## Financial protections

Resident and potential resident consumer protections related to CCRC financial requirements are present in both the public and private sectors. While financial protections are provided through authorities and regulatory oversight, there are also protections provided by business requirements in place in the private sector. However, the financial protections and requirements vary by jurisdiction and sector.

- **Public sector (administrative and regulatory financial duties)** – Several methods of public sector engagement in CCRC financial regulation achieve additional consumer protections. For example, currently CCRCs disclose to regulators, residents and prospective residents, their most recent financial records. This provides notice to all affected parties on CCRC business practices and their impact on financial sustainability. However, the disclosures only provide a snapshot in time to all parties and thus provide a limited assessment for future sustainability. Other states also engage in ongoing financial reviews with actuarial staff, investigations of mandated reserve and surplus levels, and ensuring statutory duties related to refunds are met.
- **Private sector (banks, lending institutions, and prospective resident applications)** – Privately banks and lending institutions employ their own internal investigations in their business with CCRCs. CCRCs themselves process actuarial analysis and certified public accountant reviews of their financials prior to and during operations. CCRCs may also engage in investigations of prospective CCRC residents' health and financial statuses before entering into a residency agreement. However, in the private sector these protections can come from internal protocol and policies, which are not mandated by state authorities. Financial institutions follow protocol specific to their companies,

which can differ from one entity to another. This can cause inconsistent financial investigations and varying levels of consumer protections.

## Resident rights and expectations

Regulatory oversight and financial protections are crucial components of consumer protections, but there are other resident rights and expectations that are equally vital. Resident rights and expectations specific to CCRCs can include the following:

- **Enforcement and resident recourse** – Legislation delegating enforcement authority to a regulatory agency that authorizes administrative action (penalties) and broad resident recourse, provides more consumer protections than in states with no CCRC regulating agency or authorities. In states where there is no legal framework for CCRCs, these entities do not have legal duties associated with consumer protections. The CCRCs may still follow best practices, internal resident rights and expectation protocols, or policies offered by the private sector. However, without authorities and regulating agencies, CCRCs and their residents do not have any administrative guidance or government enforcement to maintain strong consumer protections.
- **Civil and criminal penalties** – Civil and criminal penalty authorities can promote consumer protections. This assessment revealed that some states can impose both civil and criminal penalties for CCRC violations, as well as some states that have neither. Penalties provide incentives for CCRCs to align their business practices with the associated authorities. The jurisdictions with the most stringent laws maintain both civil and criminal penalties for CCRC violations or fault.
- **Complaint oversight** – Enforcing compliance is crucial to resident consumer protections. There must be a process in place for consumers to make complaints about potential CCRC violations. The process must provide prospective and current residents with information on where and when consumer can submit complaints. This results in regulation that addresses CCRC violations after they have occurred. The agency designated to oversee complaints must have the capacity to engage in the detailed investigation and recourse or remedy of any issues identified.
- **Independent review boards** – Some states established independent review boards to analyze the business practices of CCRCs for compliance with their authorities. For example, New York established an independent review board for CCRCs within their jurisdiction. The independent review board is a specialized entity that has subject matter expertise regarding CCRCs. This forum helps to ensure CCRCs maintain compliance with all authorities and achieve resident consumer protections.

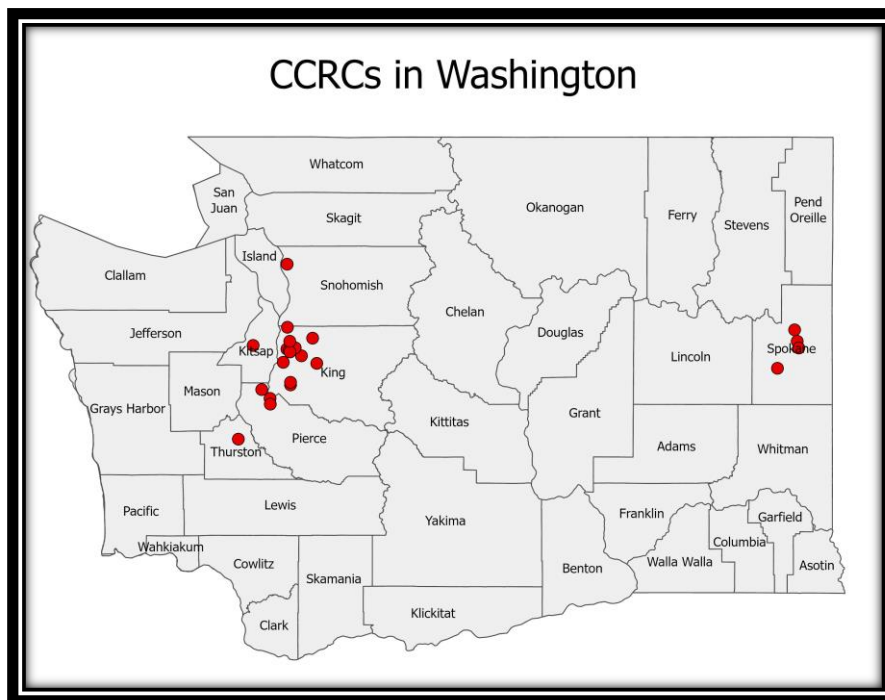


# Continuing Care Retirement Communities in Washington

## Current state

Under Washington state law, a CCRC means an entity that agrees to provide continuing care to a resident under a residency agreement.<sup>43</sup> Here, continuing care means directly providing or indirectly making available, upon payment of an entrance fee and under a residency agreement, housing and care for a period of greater than one year.<sup>44</sup> Care is defined in the Revised Code of Washington (RCW) to mean nursing, medical, or other health-related services, protection or supervision, assistance with activities of daily living, or any combination of those services.<sup>45</sup> A CCRC does not include a licensed assisted living facility under RCW Chapter 18.20 (that does not directly, or through a contractual arrangement with a separately owned and incorporated skilled nursing facility, offer or provide services under Chapter 74.42 RCW).<sup>46</sup>

In Washington, entities calling themselves a CCRC must register with DSHS.<sup>47</sup>



<sup>43</sup> [RCW 18.390.10\(4\)](#) – Definition of Continuing Care Retirement Community.

<sup>44</sup> [RCW 18.390.10\(3\)](#) – Definition of Continuing Care.

<sup>45</sup> [RCW 18.390.10\(2\)](#) – Definition of Care.

<sup>46</sup> [RCW 18.390.10\(2\)](#).

<sup>47</sup> [RCW 18.390.020](#).

According to DSHS, a CCRC is a residential community for adults that offers a range of housing options (normally independent living through nursing home care) and varying levels of medical and personal care services.<sup>48</sup> A CCRC is designed to meet a resident's needs in a familiar setting as they grow older. People most often move into such a community when they are healthy, but their health conditions and needs can change as they age. Some CCRCs provide these medical and personal care services from a single campus, and others have contracts for these services with other entities off campus.

CCRCs offer a variety of contracts for their services and charge residents a wide range of fees. Residents in Washington are required to enter into long-term contracts, known as residency agreements, which provide terms for items including but not limited to housing, personal care, housekeeping, yard care and nursing care. These contracts can involve either an entry fee or a buy-in fee in addition to monthly service charges, which may change depending on the contract type and according to the medical or personal care services required. Fees vary depending on whether the person owns or rents the living space, its size and location, the type of service plan chosen, and the current risk or need for intensive long-term care. Because the contracts are lifelong and fees vary, DSHS encourages residents to seek financial and legal advice before execution.<sup>49</sup>

Generally, CCRCs will screen prospective residents to determine their general health and financial statuses before entering into a residency agreement.<sup>50</sup> CCRCs in Washington use their own applications for CCRC residency or waitlists.<sup>51</sup> This process can vary between CCRCs, but may include the CCRC's review of a prospective resident's financial portfolio, current health status and ongoing care needs.<sup>52</sup> This financial review of prospective tenants is not regulated under RCW Chapter 18.390.

As of August 2022, Washington state had 23 CCRCs, home to more than 8,000 residents.<sup>53</sup> Of the 23 CCRCs in Washington, seven offer Type A contracts, and the others offer variations of Type B, C and D contracts.<sup>54</sup> The majority of state CCRCs are nonprofit entities, and only one has been established for profit.

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<sup>48</sup> DSHS Long-Term Care Residential Options website (Sept. 27, 2022) – (<https://www.dshs.wa.gov/altsa/residential-care-services/long-term-care-residential-options>).

<sup>49</sup> DSHS Long-Term Care Residential Options website.

<sup>50</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>51</sup> Rockwood Retirement Community – Waitlist Application website (Sept. 27, 2022) – (<https://www.rockwoodretirement.org/assets/PDF/Waitlist-Applicant-3-26-20.pdf>).

<sup>52</sup> Covenant Living at the Shores – FAQs on CCRCs (Sept. 27, 2022) – (<https://www.covlivingshores.org/Frequently-asked-questions-ccrc>).

<sup>53</sup> DSHS ALTA Find A CCRC website (Aug. 23, 2022) – (<https://fortress.wa.gov/dshs/adsaapps/lookup/ccrclookup.aspx>) and WACCRA Presentation and Legislative Review PowerPoint (May 21, 2021).

<sup>54</sup> LeadingAge WA: Correspondence to OIC on Current Figures (August 23, 2022) and WACCRA CCRC Consumer Guides (Second and Third Editions).

Nonprofit CCRCs, under tax rules, are not allowed to evict residents for non-payment of monthly fees if the resident runs out of funds due to no fault of their own.<sup>55</sup> CCRCs financed with tax-exempt bonds have also agreed to retain residents who exhaust their money.<sup>56</sup>

The City of Vancouver, WA, reported that after establishing residency, residents will pay monthly, maintenance, and service fees ranging from as low as approximately \$2,000 to as high as about \$6,000.<sup>57</sup>

## Associations and organizations

All Washington CCRCs are members of LeadingAge WA.<sup>58</sup> This organization represents the interests of nonprofit and mission-driven organizations dedicated to improving the aging experience of over 50,000 older Washingtonians and their family members. LeadingAge WA offers information and materials to their CCRC members. For example, LeadingAge WA offers *Commitment to CCRC Practices*, which outlines best business practices in the areas of financial disclosures, entrance fee refunds and resident involvement in decision-making.<sup>59</sup>

The private nonprofit organization known as the Commission on Accreditation of Rehabilitation Facilities (CARF) provides a voluntary process for CCRCs to become accredited.<sup>60</sup> CARF provides CCRCs best financial practices and consumer guides, as part of their accreditation services. One CCRC facility in Washington is an accredited member of CARF.<sup>61</sup> Other CCRCs in Washington have previously been accredited with CARF but have since made the business decision to continue operations without CARF accreditation.

## Resident consumer protections in Washington state

In Washington, before entering a residency agreement, potential residents can visit a CCRC and review the most recent inspection reports and findings of related complaint investigations.<sup>62</sup>

Additionally, Washington law establishes the following expectations for residents of a CCRC:

- Transparency regarding the financial stability of the CCRC provider operating the facility.
- Timely notifications of developments affecting the facility, including ownership changes of the CCRC provider operating the facility, a change in the financial condition of the CCRC provider operating the facility and construction and renovation at the facility. The management of the CCRC may deem

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<sup>55</sup> WACCRA Agency Meeting Presentation PowerPoint and Legislative Review (May 21, 2021).

<sup>56</sup> [WAC 458-16A-010](#) – Nonprofit homes for the aging.

<sup>57</sup> City of Vancouver: The Messenger - Is a Continuing Care Retirement Community the right choice for you? (accessed Oct. 19, 2022) – (<https://www.cityofvancouver.us/messenger/page/continuing-care-retirement-community-right-choice-you>).

<sup>58</sup> LeadingAge WA: About Us website (Aug. 25, 2022) – (<https://www.leadingagewa.org/about/who-we-are/>).

<sup>59</sup> LeadingAge WA: Commitment to CCRC Practices.

<sup>60</sup> CARF International: About CARF (Aug. 25, 2022) – (<http://www.carf.org/About/>).

<sup>61</sup> CARF International: CARF-Accredited CCRC Listings (Sept. 14, 2022) – (<http://www.carf.org/ccrclisting.aspx>).

<sup>62</sup> [RCW 18.390.070](#).

certain information confidential if it is of a sensitive nature such that disclosure of the information would materially harm the position of the CCRC.

- Reasonable accommodations for people with disabilities.
- The opportunity to participate freely in the operation of independent resident organizations and associations.
- The opportunity to seek independent counsel review of all contracts, including residency agreements, before executing the residency agreement.
- The assurance that all requests for donations, contributions and gifts, when made by residents to the CCRC, are voluntary and may not be used as a condition of residency.<sup>63</sup>

The CCRC also must provide a copy of the resident expectations to prospective residents prior to entering into a residency agreement, make copies publicly available in accessible areas and include notice on how residents can submit consumer complaints.

## Washington state CCRCs – registration, contracts & renewal

### Washington - CCRC registration

In Washington, a CCRC must register with DSHS.<sup>64</sup> An entity that is not registered with DSHS may not represent itself or refer to itself in advertising and marketing materials as a "registered continuing care retirement community" or "continuing care retirement community," as defined by law.<sup>65</sup>

Applicants pursuing CCRC registration must complete the DSHS CCRC Registry Application (DSHS 14-547), submit supplemental application materials, and pay a \$900 registration fee.<sup>66</sup> DSHS will review the application packet and issue the CCRC registration within 60 days of the receipt of a complete application and payment of registration fees.<sup>67</sup> Complete CCRC applications consist of the following:<sup>68</sup>

- DSHS CCRC Registry Application.
- Information about licensed assisted living facility components of the CCRC and if the CCRC has a nursing home.
- Copies of residency agreements the CCRC intends to use for the registration period.
- Copies of disclosure statements including information required by RCW 18.390.060.

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<sup>63</sup> [RCW 18.390.070.](#)

<sup>64</sup> [RCW 18.390.020.](#)

<sup>65</sup> [RCW 18.390.050.](#)

<sup>66</sup> DSHS ALTA: CCRC Registration website (Sept. 14, 2022) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc#:~:text=To%20renew%20registrations%20with%20the,payable%20to%20Washington%20State%20Treasurer>).

<sup>67</sup> DSHS ALTA: CCRC Registration website.

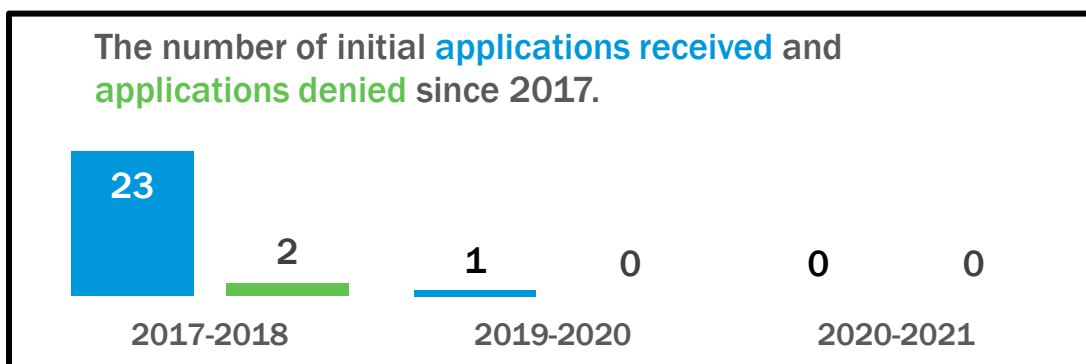
<sup>68</sup> [RCW 18.390.030.](#)

- \*Copies of audited financial statements for the two most recent fiscal years. The audited financial statement for the most current period may not have been prepared more than 18 months prior to the date that the CCRC applied.
- An attestation by a management representative of the CCRC that the CCRC complies with the disclosure notification requirements of RCW 18.390.060.

*\* Note: If the CCRC has obtained financing, but has been in operation less than two years, then the CCRC must submit a copy of the audited financial statement for the most current period, if available, and an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC. In the alternative, if the CCRC has not obtained financing, then the CCRC must submit a summary of the actuarial analysis for the new CCRC stating that the CCRC is in satisfactory actuarial balance.*

The application packet materials are not subject to disclosure under the Public Records Act, RCW Chapter 42.56.<sup>69</sup>

DSHS reviews CCRC Registry applications, along with the required submissions, and determines whether to issue CCRC registrations under a standard of completeness.<sup>70</sup> The standard of completeness requires applicants to submit all materials listed above and include all pages of those submissions. If an application is incomplete, DSHS will inform the applicant and give them another opportunity to supplement and complete their application. CCRC applicants are also afforded appeal rights, where they can appeal DSHS denials for CCRC registration applications. CCRC registration is valid for two years and is nontransferable.<sup>71</sup>



CCRCs must also include with their application to DSHS, disclosure statements required by law. The CCRC disclosure statement must be written in understandable language and a clear format. CCRCs must

<sup>69</sup> [RCW 18.390.030\(6\)](#).

<sup>70</sup> DSHS ALTA: CCRC Registration website (Sept. 14, 2022) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc#:~:text=To%20renew%20registrations%20with%20the,payable%20to%20Washington%20State%20Treasurer>).

<sup>71</sup> [RCW 18.390.030](#).

deliver to prospective residents a copy of the disclosure statement they most recently submitted to DSHS, prior to entering into a residency agreement, or accepting an entrance fee.<sup>72</sup>

## **CCRC mandatory disclosures**

- The business address of the CCRC.
- The name(s) of the individual(s) who constitute the CCRC and each officer, director, trustee or managing general partner of the legal entity and a description of each individual's duties on behalf of the legal entity.
- The type of ownership, names of the CCRC's owner and operator, and the names of any affiliated facilities.
- The names and business addresses of any individual having any more than a 10% ownership or beneficial interest in the CCRC, the percentage of the ownership or beneficial interest, and a description of each individual's interest in or occupation with the CCRC.
- The location and general description of the CCRC, including:
  - The year the CCRC opened.
  - The location and number of living units, licensed assisted living facility beds and nursing beds considered part of the CCRC.
  - The average annual occupancy rate for the prior three fiscal years for each type of unit or bed.
  - Any other care facilities owned or operated by the owner of the CCRC.
- An explanation of the CCRC's policy regarding placement in off-campus assisted living facilities and nursing homes and the payment responsibilities of the CCRC and the resident in the event of off-campus placement.
- The number of residents who were placed off-site in the previous three years for assisted living and nursing services due to the lack of available capacity at the CCRC.
- An explanation of all types of fees charged by the CCRC, how each type of fee is determined, current ranges for each type of fee, and refund policies for each type of fee.
- Statements describing the CCRC's policy for notifying residents of fee increases, including the amount of prior notification that is provided.
- Statements describing the CCRC's policy related to changes in levels of care and any associated fees.
- Statements describing the CCRC's policy for the termination of a contract, including the return of any fees or deposits pursuant to the residency agreement.
- A description of services provided or proposed to be provided by the CCRC under its residency agreements, including:

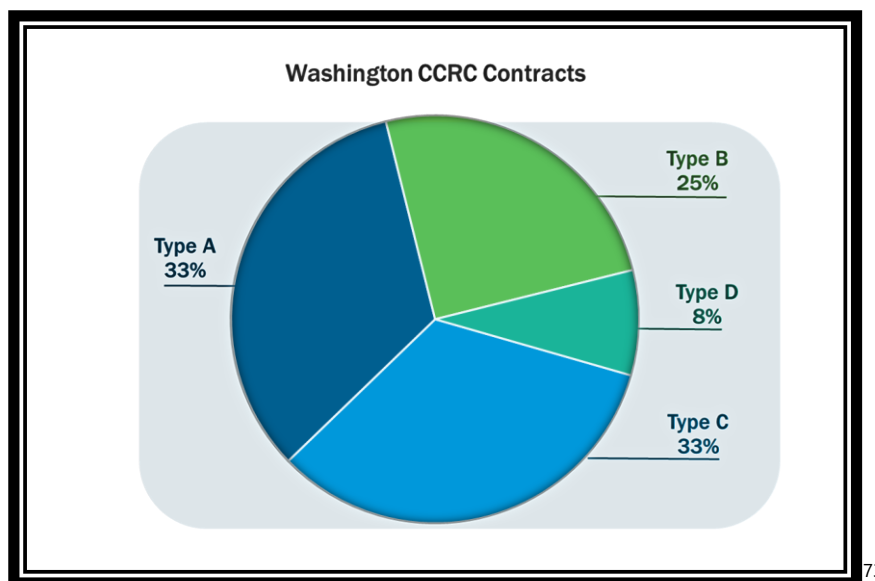
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<sup>72</sup> [RCW 18.390.060](#).

- The extent to which care, long-term care, or health-related services are provided. If the services are provided at a facility that is not certified as part of the CCRC’s campus, the disclosure statement must identify the location where the services are provided, and any additional fees associated with the services.
- The services made available by the CCRC for an additional charge.
- The CCRC’s two most recent annual audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant. The most recently audited financial statement may not have been prepared more than 18 months prior to the date that the CCRC applied for its current registration; or
  - If the CCRC is new and has:
    - Obtained financing, but does not have two years of audited financial statements as required under this subsection, an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC; or
    - Not obtained financing, a summary of the actuarial analysis for the new CCRC stating that the CCRC is in satisfactory actuarial balance.

## Washington - CCRC contracts

This chart provides recent data on the residency agreement types present in Washington CCRCs.



## Washington - CCRC renewal

Washington CCRCs are required to renew their registration with DSHS every two years.<sup>74</sup> To renew registrations with DSHS, CCRCs must complete a similar process as compared to their initial registration

<sup>73</sup> Data points provided by WACCRA CCRC Consumer Guides.

<sup>74</sup> [RCW 18.390.030](#).

and application. Here, CCRCs must complete a CCRC Registration Renewal Addendum stating that nothing other than the CCRC financials have changed.<sup>75</sup> The CCRC Registration Renewal Addendum is a two-page template with check boxes, attestations, and data entry fields for names, dates, addresses and signatures.<sup>76</sup>

If anything other than financials have changed, then the CCRC must submit a new and complete CCRC registry application. CCRCs must also pay a fee of \$900 for renewal. DSHS will issue the renewed registration within 60 days of receipt of either the new complete application, or the addendum and financials only.<sup>77</sup>

The current state of CCRC regulation in Washington exhibits lower regulatory oversight and financial scrutiny on initial registration and subsequent renewals, when compared to other jurisdictions.

CCRC registration applications and renewals must include the following:

- Current and audited financial statements;
- An independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC; or
- A summary of the actuarial analysis for the new CCRC stating that the CCRC is in satisfactory actuarial balance.<sup>78</sup>

This provides prospective and current CCRCs different pathways to achieve registration or renewal. However, none of the financial submissions are reviewed by the CCRC registering agency, for financial standards or accuracy of analysis included therein. Instead, these submissions are reviewed solely for completeness, a standard in which the CCRC applicants can be given multiple notices and attempts to succeed, or the opportunity to appeal denials.

Since 2017, DSHS's Aging and Long-Term Support Administration (AL TSA) program has processed 24 applications for initial CCRC registration. Two of the 24 applications for initial registration have been denied due to incomplete information. In the last five years, DSHS AL TSA has requested additional information on 17 initial or renewal applications. Additionally, DSHS AL TSA has processed 42 CCRC renewal applications over the past five years with none being denied.<sup>79</sup>

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<sup>75</sup> DSHS CCRC Registration and Renewal website (Sept. 14, 2022) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc#:~:text=To%20renew%20registrations%20with%20the,payable%20to%20Washington%20State%20Treasurer>).

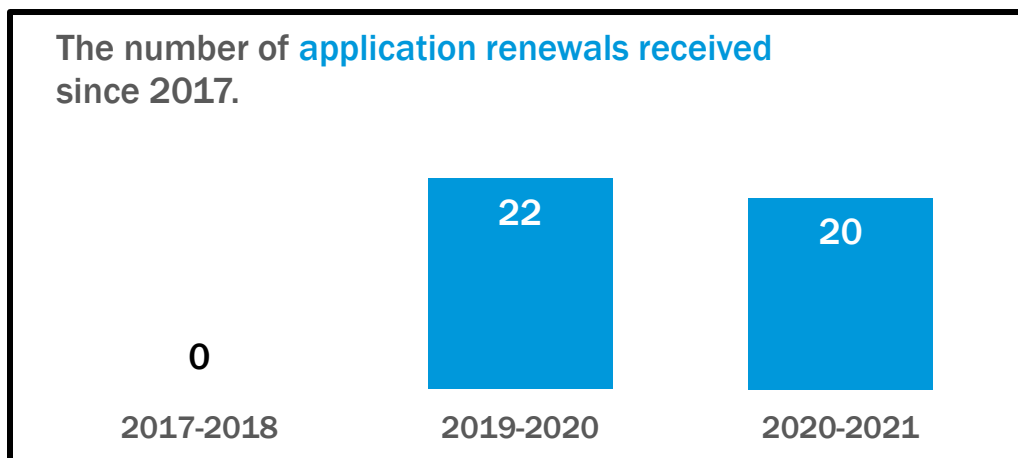
<sup>76</sup> DSHS CCRC Registration Renewal Addendum (Sept. 14, 2022) – (<https://www.dshs.wa.gov/sites/default/files/forms/pdf/15-556.pdf>).

<sup>77</sup> DSHS CCRC Registration and Renewal Applications (Sept. 14, 2022) – (<https://www.dshs.wa.gov/sites/default/files/forms/pdf/15-556.pdf>).

<sup>78</sup> [RCW 18.390.060](#).

<sup>79</sup> DSHS AL TSA: Response to OIC Questions with Excel Spreadsheet (Sept. 28, 2022).





## Washington state CCRCs – requirements, penalties, & complaints

### Washington - financial reporting and reserve requirements

In Washington CCRCs must submit a CCRC Registration Application for registration to DSHS, before marketing themselves or operating as a CCRC, entering into residency agreements, soliciting application fees and collecting entrance fees.<sup>80</sup> DSHS also requires any entity operating as a CCRC in Washington to be listed on the DSHS CCRC Registry online.<sup>81</sup>

Once registered, the CCRC financial submissions may only occur once every two years. For new and existing CCRCs, this can mean reporting to DSHS, and providing a disclosure statement to prospective residents. The disclosure statement must be written in understandable language and a clear format, with either of the following:

- For existing CCRCs, two most recent annual audited financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant. The most recently audited financial statement may not have been prepared more than 18 months before the date that the CCRC applied for its current registration; or
- For new CCRCs, financial reporting and disclosures are dependent on whether the CCRC has obtained financing, as explained below:
  - If the new CCRC obtained financing, but does not have two years of audited financial statements as required under this subsection, an independent accountant's report opinion letter that has evaluated the financial feasibility of the CCRC; or

<sup>80</sup> [RCW 18.390.020](#).

<sup>81</sup> DSHS ALTA: CCRC Registration website (Sept. 14, 2022) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc>).

- Has not obtained financing, a summary of the actuarial analysis for the new CCRC stating that the CCRC is in satisfactory actuarial balance.<sup>82</sup>

DSHS's registration and renewal activities consist of reviewing an application for completeness and do not signify that the agency has otherwise issued a certification or license to the CCRC or any of its component parts.<sup>83</sup>

Washington does not have laws mandating surplus or reserve requirements for CCRCs.

## **Washington – resident complaint procedures and requirements**

In Washington, residents have the right, as an affected party, to file a complaint with the AGO for violations of the CCRC law. Consumer complaints for CCRC violations are investigated by the AGO. The AGO will provide notice to the CCRC management about submitted complaints, including the name of the complainant, to allow the community to take corrective action. However, the AGO will limit its application of the Consumer Protection Act (CPA) to cases in which a pattern of complaints, or other activities that, when considered together, demonstrate a pattern of similar conduct that, without enforcement, likely establishes an unfair or deceptive act in trade or commerce and an unfair method of competition. The AGO's enforcement limitation will not apply for violation of the title protection requirements (RCW 18.390.050) and the failure of a CCRC to register with DSHS (RCW 18.390.020).<sup>84</sup>

In Washington, those residing within CCRCs also have resident expectations.<sup>85</sup> The expectations provide limited consumer protections for residents including financial transparency, timely notices for developments affecting the community, reasonable accommodations, ability to participate freely in organizations and associations, opportunity to seek independent counsel review (of contracts and residency agreements), and that requests for CCRC donations, contributions and gifts, will be done in a voluntary manner, so as not to be tied to a condition of residency.

Additionally, CCRCs have a statutory duty to provide a copy of the resident expectations to each prospective CCRC resident prior to executing a residency agreement. CCRCs must make copies of the resident expectations publicly available in areas accessible to the independent residents and visitors. All copies of resident expectations must state that the independent residents have the right, as an affected party, to file a complaint with the AGO for violations of the CCRC law and include information indicating how and where the complaint can be filed.

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<sup>82</sup> DSHS ALTA: CCRC Registration website (Sept. 14, 2022) and [RCW 18.390.060](#).

<sup>83</sup> [RCW 18.390.040](#) and DSHS ALTA: CCRC Registration website (Sept. 14, 2022) –

(<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc>).

<sup>84</sup> [RCW 18.390.080](#).

<sup>85</sup> [RCW 18.390.070](#) The expectations outlined in RCW 18.390.070 apply only to residents of a CCRC in a living unit that is not used exclusively for assisted living or nursing services. However, a prospective resident may visit each of the different care levels of the CCRC, assisted living facility, and nursing home, and may inspect the most recent inspection reports and findings of complaint investigations related to the assisted living and nursing home components covering a period of not less than two years prior to signing a residency agreement.

## Washington – fines and penalties for noncompliance

Current laws authorize the AGO to engage in enforcement action against CCRCs. The AGO will limit enforcement of the CPA to patterns of CCRC complaints, or other activity, which establish unfair or deceptive acts in trade or commerce and unfair methods of competition.<sup>86</sup>

The legislature has found that certain violations of CCRC requirements are matters vitally affecting the public interest for purposes of applying the CPA, including:

- The CCRC title protection requirements of RCW 18.390.050.
- The failure of a CCRC to register with the DSHS under RCW 18.390.020.
- The failure of a CCRC to comply with the disclosure statement delivery and content requirements under RCW 18.390.060; and
- The failure of a CCRC to comply with the resident expectations established under RCW 18.390.070.<sup>87</sup>

The fines and penalties that apply to CCRC violations are those contained within the CPA and more specifically those included in RCW 19.86.140.

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<sup>86</sup> [RCW 18.390.080](#) The AGO will not limit its application of the CPA to violations of the CCRC title protection requirements of RCW 18.390.050 and the failure of a CCRC to register with DSHS under RCW 18.390.020.

<sup>87</sup> [RCW 18.390.080](#) The legislature has also found that CCRC violations of title protection requirements, registration requirements, disclosure statement delivery and content requirements, and the resident expectation requirements are not reasonable in relation to the development and preservation of CCRC business and are unfair or deceptive acts in trade or commerce and unfair methods of competition for the purpose of applying the CPA.

# Federal overview

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CCRCs are mostly regulated at the state level, rather than by the federal government.<sup>88</sup> CCRCs are regulated to varying degrees by the different states and no federal agency has oversight on CCRCs or their associated activities.<sup>89</sup> WACCRA completed a review of federal legislation related to CCRCs and discovered that there are very limited authorities that apply to CCRCs federally, such as IRS tax and nonprofit regulations.<sup>90</sup>

For example, the United States Revenue Act of 1942 first allowed for medical expense tax deductions, such as those for prepaid qualifying medical expenses. The more recently adopted Tax Cuts and Jobs Act of 2017 allows taxpayers who itemize medical deductions to continue doing so, including CCRC entrance and monthly fees in some instances. This allows residents, under certain CCRC contracts, to pursue tax deductions for CCRC entry fees, prepaid as qualifying medical expenses.<sup>91</sup>

The GAO researched this issue in 2010 and produced a report, as requested by the U.S. Senate Special Committee on Aging. The GAO report revealed the following:

*“CCRCs are primarily regulated by states rather than by the federal government. ...States generally license CCRC providers, monitor and oversee their financial condition, and have regulatory provisions designed to inform and protect consumers. The U.S. Department of Health and Human Services (HHS) provides oversight of nursing facilities that are commonly part of CCRCs, but this oversight focuses on the quality of care and safety of residents in those facilities that receive payments under the Medicare and Medicaid programs.”<sup>92</sup>*

Congress historically has considered legislation for increased federal oversight on CCRCs. In 1977, Congress considered legislation that attempted to provide federal oversight of certain CCRCs that receive Medicare or Medicaid payments or were built with federal assistance. This legislation would have required CCRC contracts to clearly explain all charges, provide full financial disclosures, maintain sufficient financial reserves, and complete annual audits.<sup>93</sup>

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<sup>88</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>89</sup> IRS: Elder Housing Article, by Elizabeth C. Kastenber and Joseph Chasin (2004) – (<https://www.irs.gov/pub/irs-tege/eotopicg04.pdf>).

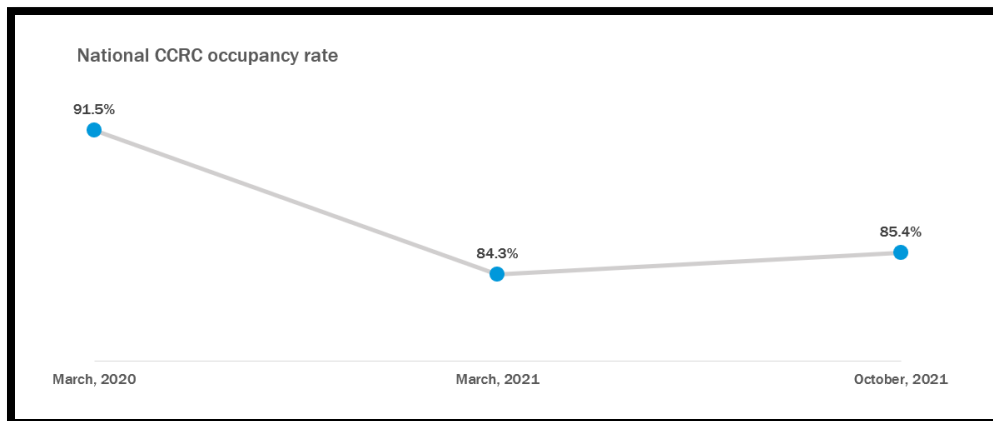
<sup>90</sup> WACCRA Agency Meeting Presentation PowerPoint and Legislative Review (May 21, 2021).

<sup>91</sup> Bragg Financial: *Tax Reform & CCRC Medical Deductions*, by George W. Climer III, CFP, (February 1, 2019) – (<https://braggfinancial.com/tax-reform-ccrc-medical-deductions/>).

<sup>92</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

<sup>93</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, But Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).

As of Jan. 27, 2022, nationally there are approximately 1,900 CCRCs.. National occupancy rate data for CCRCs shows that residency trended lower from 91.5% in the first quarter of 2020 to 84.3% a year later. Occupancy rates then trended back upward to 85.4% in October 2021.<sup>94</sup> This fluctuation in occupancy rate data may be influenced by the COVID pandemic.

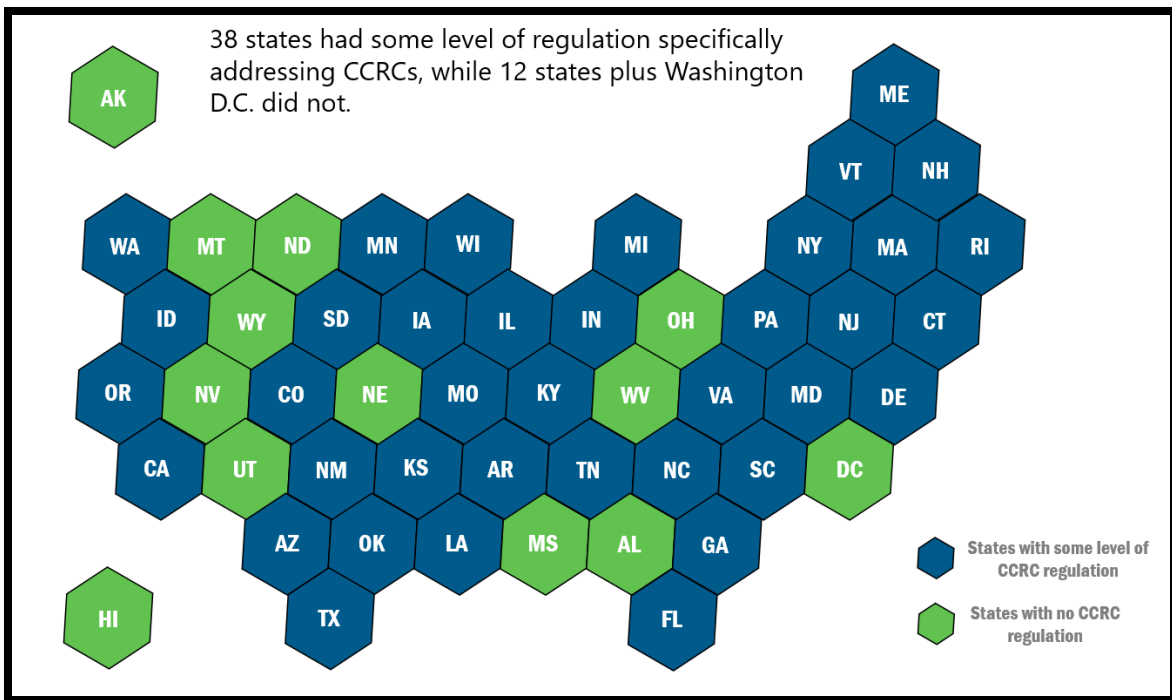


CCRCs can contain multiple long-term care settings within their facilities. Nursing homes, including those that are part of a CCRC, are subject to federal oversight and regulation if they participate in Medicare or Medicaid and are subject to state licensing.<sup>95</sup> In the GAO report, it revealed that in 2010, 38 states had some level of regulation specifically addressing CCRCs, while 12 states plus Washington D.C. did not. The GAO report also found that of the 38 states that had CCRC-specific regulations, the CCRCs were overseen by a variety of state departments, where some states regulate CCRCs through departments that concentrate on insurance, financial services, or banking. There were also other states that regulate CCRCs through departments of social services, aging or elder services, or community affairs.<sup>96</sup> The GAO report is from 2010 and other states may have enacted CCRC laws between 2010 and 2022.

<sup>94</sup> AARP: *How CCRCs Work – CCRCs aim to provide a continuum of care as a resident age. Here’s how to evaluate choices*, by AARP, Jan. 27, 2022 – (<https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html>).

<sup>95</sup> U.S. GAO, *Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System*, GAO-09-216 (Jan. 8, 2009) – (<https://www.gao.gov/assets/gao-09-216.pdf>).

<sup>96</sup> U.S. GAO: Report to the Chairman, Special Committee on Aging, U.S. Senate – *Continuing Care Retirement Communities Can Provide Benefits, But Not Without Some Risk* (June 2010) – (<https://www.gao.gov/assets/gao-10-611.pdf>).



The lack of federal regulation and oversight creates complications with the consistent regulation of CCRCs at the state and national levels. This provides a regulatory system that varies from state to state, not only in how to define CCRCs, but how to regulate the different aspects of CCRC operations. Without federal authorities and guidance on CCRC regulations, states must rely on their own discretion to establish CCRC authorities and associated resident consumer protections. The OIC’s research of CCRC authorities in other states are examined and outlined below, with a focus on regulatory oversight systems, financial requirements and consumer protections.

# Other states – jurisdictional differences

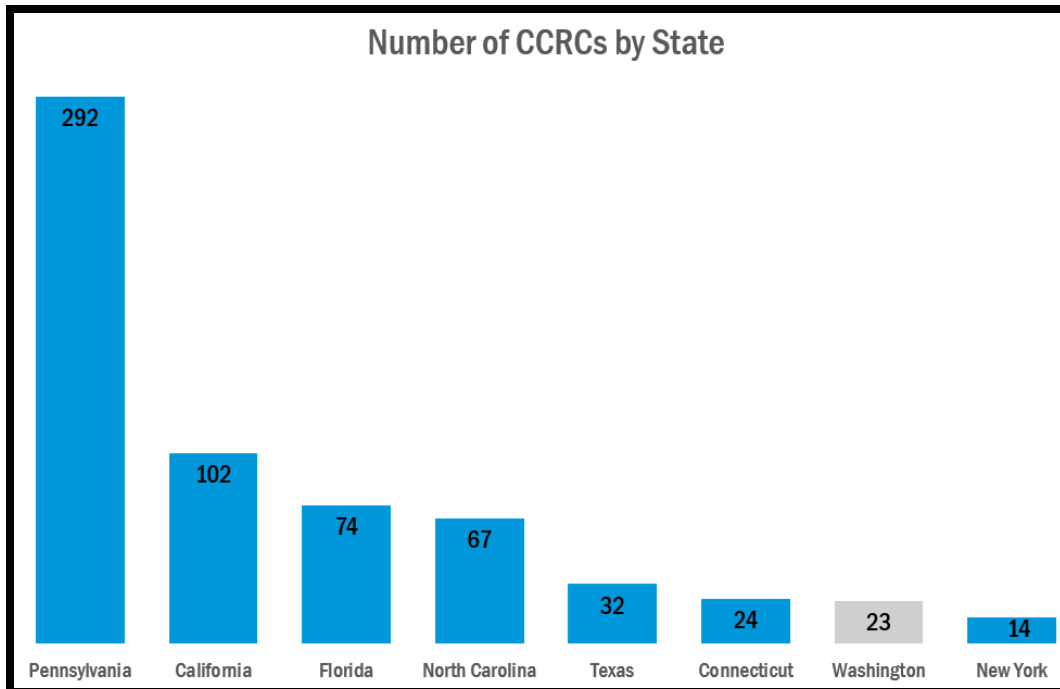
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Regulatory requirements for CCRCs and the degree of regulatory oversight vary between states, where some maintain stringent regulations and others provide little to no oversight. CCRC regulation normally takes place at the state level. Most states have a regulatory framework in place for CCRCs and use different combinations of state agencies and departments to enforce these laws. Some states rely on a single agency to enforce CCRC regulations, while other states rely on a system of shared regulatory oversight between two or more agencies. For instance, many states use insurance, financial services, or banking agencies to regulate CCRCs, whereas others regulate CCRCs through department of social services, aging or elder services, or community affairs.

Some states such as North Dakota have no agency that provides regulatory oversight on CCRCs. This causes residents to rely on the consumer protections afforded from the private sector. Other states like California have taken a sole-regulator approach, where a single agency undertakes all CCRC regulations, without delegating any work to another. There are also states that closely mimic Washington’s regulatory oversight paradigm.

Some states have established independent review boards who convene periodically to review the compliance of CCRCs within their jurisdiction. For example, New York established the CCRC Council that has decision-making authority for CCRC’s Certificates of Authority. Additional information is needed on the additional consumer protections to be achieved or produced by independent review boards, to assess how to best use such a council. Helpful information will include the size of markets to be served by the CCRCs and council.

Washington engages in a regulatory oversight system with DSHS and the AGO. DSHS registers and renews CCRCs, while the AGO processes consumer complaints. There can be benefits associated with a sole regulatory agency, where all CCRC regulations are handled in the same office, and efficiencies are achieved without sharing enforcement with or delegating regulation to another agency. However, there may also be consumer protections offered by engaging a shared regulatory oversight system. Under a strategy of shared regulatory oversight state agencies that specialize in certain areas can focus their consumer protection efforts on subjects they have mastered or achieved expertise in.



\*Washington's data is current as of 2022, but other state data may not be as current (ranging from 2009 – 2022).

It is important to note the distinction between CCRC regulation, which is primarily focused on financial regulation versus healthcare-related regulation, which is focused on the health and safety of residents. For instance, a CCRC's onsite healthcare facility will be strictly regulated by the appropriate licensing body in the state and must meet various standards of care and staffing. However, the stringency of regulations for CCRC-related services in the same facility may be completely different.<sup>97</sup>

Additionally, facilities that accept Medicare and/or Medicaid must be certified in accordance federal guidelines.<sup>98</sup> So even in states where there may not be CCRC regulations, there are still limited protections available to consumers who reside in CCRC onsite healthcare facilities. Health care facilities like nursing homes and assisted living facilities within CCRCs are licensed by the states.

In consultation with WACCRA, LeadingAge Washington and subject matter experts from across the country, the OIC has reviewed the regulatory framework for CCRC protections in the following states:

- California, New York, Florida, Connecticut, New Mexico, Texas, Pennsylvania, North Carolina, Oregon and North Dakota

<sup>97</sup> *Understanding the Regulatory Process for CCRCs* by Brad Breeding, (April 13, 2018). CCRC regulation is different from licensure for care services.

– (<https://mylifesite.net/blog/post/understanding-regulatory-process-ccrcs/#:~:text=There%20are%20currently%2038%20states,to%20continuing%20care%20retirement%20communities>).

<sup>98</sup> *Understanding the Regulatory Process for CCRCs*.



The focus of the OIC's review was in the following areas:

- Single agency versus shared regulatory oversight of CCRCs.
- CCRC financial reporting and reserve requirements, fines and penalties for noncompliance of CCRC laws.
- Resident complaint procedures and requirements.

A more in-depth outline of the other states' CCRC regulations is included in the appendix of this report. The table below provides additional information and highlights on other states' regulation of CCRCs.

## Analysis: Other states and regulatory systems

The regulatory framework of the states discussed above contain common elements, but California, New York and Florida appear to regulate the CCRC industry more stringently than jurisdictions like Connecticut, New Mexico, Texas and Oregon. These four states require at least one state agency to oversee CCRCs. California, Florida and New York require CCRCs to get state certificates of authority to operate, while a state like Connecticut simply reviews and acknowledges receipt of disclosure statements.<sup>99</sup>

All four states require CCRCs to provide substantial disclosures of financial information attesting to their fiscal soundness, provide ongoing reports on their operations and include specific information in their continuing care contracts. All four states have minimum requirements for liquid reserves and allow individuals to cancel contracts and receive funds. In all four states, the laws establish maximum penalties for violations of the CCRC law. Connecticut is the only one of the four states that does not require some form of resident representation in CCRCs. Also, California and New York establish resident bills of rights.<sup>100</sup>

Connecticut allows, but does not require, periodic audits of CCRCs, while the other three require them. States like Texas, New Mexico and Oregon provide lower regulatory oversight, but exceed that of other jurisdictions like North Dakota, which does not regulate CCRCs.

The OIC analysis on other states and regulatory systems is highlighted in the chart included below:






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<sup>99</sup> OLR Research Report. *Regulation of Continuing Care Retirement Communities* by Robin K. Cohen, Principal Analyst with the Office of Legislative Research. Sept. 30, 2010.

(<https://search.cga.state.ct.us/r/olrbasic/dtsearch.asp?cmd=getdoc&DocId=10728&Index=1%3a%5czindex%5c2010&HitCount=6&hits=49+4a+4b+3db+3dc+3dd+&hc=15&req=2010%2DR%2D0397&Item=1>).

<sup>100</sup> OLR Research Report. *Regulation of Continuing Care Retirement Communities*.

## CCRC highlights by state

	<b>Regulator</b>	<b>Maintains CCRC Council</b>	<b>Required certificates and licenses</b>	<b>Required reporting</b>	<b>Remedies for violations</b>	<b>Complaint process for CCRC residents</b>
<b>Washington</b> 	Department of Social and Health Services	No	CCRCs are not licensed, but they must be registered	Initial Disclosure Statement and Biennial Financial Reporting	Civil remedies available for violations (including fines and penalties)	Yes
<b>California</b> 	Department of Social Services	No	Certificate of authority (COA) and license to operate as CCRC	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations (includes fines and penalties)	Yes
<b>New York</b> 	Department of Financial Services, Department of Health	Yes	Certificate of authority (COA)	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations	Yes
<b>Florida</b> 	Office of Insurance Regulation	Yes	Certificate of authority (COA) and license to operate as CCRC	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations	Yes
<b>Connecticut</b> 	Department of Social Services	Yes	CCRCs are not licensed, but they must be registered	Financial Reporting and Financial Reserves	Civil and Criminal remedies for violations (includes fines and penalties)	No

<b>New Mexico</b> 	Aging and Long-Term Services Department	No	CCRCs are NOT licensed	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations (includes fines and penalties)	Yes
<b>Texas</b> 	Department of Insurance, Department of Health and Human Resources	No	CCRCs are NOT licensed	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations	Yes
<b>Pennsylvania</b> 	Department of Insurance	No	Certificate of Authority (COA) to operate as CCRC	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil and Criminal remedies available for violations (includes fines and penalties)	No (Right to organize)
<b>North Carolina</b> 	Department of Insurance	Yes	License to operate as CCRC	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Civil remedies available for violations	No (Right to organize)
<b>Oregon</b> 	Department of Human Services	Yes	CCRCs are NOT licensed	Initial Disclosure Statement, Annual Financial Reporting, and Financial Reserves	Maintains equitable relief	Yes

# Conclusion

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## Limited resident consumer protections in Washington state

Residents in Washington CCRCs currently have the following consumer protections:

- Regulatory oversight
- Financial protections
- Resident expectations.

However, as mentioned previously, Washington's legal framework for resident consumer protections can be limited when compared to other states and their CCRC regulations.

For example, Washington's regulatory oversight is limited to review of completeness of registration submissions, as opposed to review of the substance of the submissions for initial registration and subsequent renewals. Additionally, Washington's financial protections for CCRCs come from varied and limited oversight in the private and public sectors. Lastly, Washington's resident expectations are narrowly drafted under current law and do not cover as broad of a scope or suite of consumer protections when compared to other states.

Other states use increased financial penalties and regulatory oversight to achieve additional consumer protections in these areas. For example, other states established mandated entry fee refunds, solvency standards and surplus requirements. Other states have also used independent review boards, government audits, actuarial analyses, heightened financial review standards and optimized regulatory paradigms.

## Potential solutions to a limited legal framework

### Optimizing regulatory oversight

The regulatory system that shows the most potential to achieve additional consumer protections for residents is that of a single-agency regulator.

States with sole-regulating agencies of CCRCs can achieve administrative efficiencies and additional consumer protections by keeping all work in the same office. Having one agency responsible for all aspects of CCRC regulation and enforcement efforts allows for stronger internal agency communication and collaboration between internal business units. For example, a department responsible for the financial oversight of CCRCs can work directly with other internal departments, such as renewal divisions, to make cohesive policy decisions and eliminate administrative waste. The sole regulator system also provides benefits to all affected parties in working on consumer protection issues related to CCRCs, due to the complex nature of their varied residential and healthcare settings. This prevents the

division and distribution of certain parts of CCRC regulation to other agencies, who may be less educated or experienced on the topic and prevents similar confusion for consumers.

For example, imagine the case of a resident who must traverse back-and-forth from a CCRC to a nursing home, or assisted living facility, due to complications with their health. Then consider the instance that the resident may experience consumer protection concerns or issues in relocating from the CCRC to a new nursing home or assisted living facility. Under the current regulatory scheme, a concerned resident can contact DSHS and AGO for any concerns, complaints or compliance issues connected with these facilities, regardless of whether the resident is in a CCRC or traversing settings.

In the above example, the regulators remain the same regardless of where compliance issues were identified. Having the same regulators regardless of the long-term care setting (nursing homes, adult family homes, assisted living facilities, independent living facilities and CCRCs) results in consistencies and benefits for all parties. The current state provides CCRCs with consistent long-term care setting regulators and regulations to conduct their business.

However, if the OIC were delegated enforcement authority for either CCRCs, residency agreements or both, then skilled nursing, assisted living and CCRC facilities would be regulated by different state agencies, which presents potential for confusion to consumers. Regulators and consumers may need to engage in time and fact sensitive investigations to determine the appropriate agency to handle a consumer concern. This also prevents the convenience and benefit consumers experience in having all regulations with a single regulator.

When reviewing other jurisdictions with a shared regulatory framework, some states like New York typically have one agency responsible for the financial oversight of CCRCs and another agency responsible for registration and licensing activities. A benefit of having a shared regulatory oversight model is the resource conservation and enforcement discretion for the regulating agencies. For instance, having one agency responsible for all aspects of CCRC registration efforts allows that agency to direct resources solely to registration, while the other agency can focus more directly on financial enforcement matters. This allows agencies to focus on their areas of subject matter expertise to determine where to best achieve consumer protections. However, in the shared regulatory oversight system, each agency will have limitations on their regulatory abilities, and thus will need to delegate work to another agency, resulting in fewer efficiencies and more limited policies for additional consumer protections than the sole-regulator approach.

Additionally, agency resources and capacity must be considered in choosing the best regulatory system to achieve additional consumer protections. For example, Texas has a robust suite of consumer protection authorities, but only has a small workforce for enforcement. New Mexico authorities provide significant consumer protections, but no agency is designated for financial oversight. Oregon maintains an advisory council and registers CCRCs, but does not license them.

Considering that consumers receive protections from DSHS and AGO under the current state, it will be more efficient and lead to less confusion, to provide a single agency with more authority to achieve additional consumer protections, rather than adding an additional third agency for CCRC regulation. Legislation can enable a single agency to do the following:

- License CCRCs, rather than register.
- Investigate and enforce consumer complaints related to CCRCs.
- Broaden the resident protections and expectations enforced under current law.

## **Enforcing resident consumer protections**

While it is important to identify the current state of consumer protections for residents of CCRCs in Washington, it is also crucial to consider enforcement. Enforcement results in impacts to the public and private sectors. Enforcement of resident consumer protections also requires robust authorities and agency resources.

Washington requires CCRCs to submit their current financial statements, which are only reviewed for completeness by DSHS. Other states' laws have more extensive financial regulation and regulatory oversight of CCRCs. For example, other states have used government audits, ongoing financial compliance reviews and heightened financial standards for review to establish financial protections for residents. The legislature could establish mandated entry fee refunds, solvency standards and surplus requirements. However, additional information is needed to determine the staffing required to implement a similar regulatory framework.

Careful considerations must also be given to the impacts on the public and private sectors that may result from shifting CCRC policy or increasing regulatory oversight. Balancing consumer protections, business interests and administrative oversight is critical to the regulation and sustainability of CCRCs. Too many regulatory burdens may increase costs of establishing or operating a CCRC to a prohibitive point, where the additional consumer protections to be achieved will be a moot point without CCRCs to regulate. From a business perspective, additional regulatory oversight may also increase CCRC costs of administrative compliance, which can be passed onto the residents in the form of higher entry and monthly fees. Insufficient or incomplete regulations may allow CCRC operations to occur, but do so with lower consumer protections, such as the those offered from the private sector.

Additionally, agencies delegated authority to regulate CCRCs must have adequate resources such as staff, time, funding, subject matter expertise, training, technology and experience to achieve additional resident consumer protections.

## **Washington state agencies and CCRCs**

### **The OIC and insurance**

The OIC was historically created with the main function to regulate and register insurers doing business in Washington. The OIC's regulation of the insurance industry and funding mechanism, are uniquely distinct from that of other state regulatory agencies. For example, the OIC engages in enforcement of the Insurance Code with almost no state general-fund dollars. This is possible because most of the

OIC's budget comes from assessments charged to the insurers the agency regulates.<sup>101</sup> The OIC is also a relatively small state agency in Washington, having only 241 employees.<sup>102</sup>

The OIC's mission is to protect consumers, the public interest and Washington's economy through fair and efficient regulation of the insurance industry. The OIC's strategic plan is to promote a healthy insurance environment. This includes increasing insurance industry compliance with their applicable authorities, cultivating a financially stable industry, increasing the stability of individual health markets, preserving state-based insurance regulation and acting against unlawful insurance activities, including insurance fraud. The OIC's vision is to be recognized as a model for consumer protection and state insurance regulation.<sup>103</sup>

The agency's work in regulating the insurance industry involves the following:

- Evaluating insurers for licensure in Washington.
- Monitoring foreign insurance companies doing business in Washington.
- Processing insurance consumer complaints.
- Insurance industry investigations; including investigating compliance and insurance fraud.
- Assisting with legal research and analysis on insurance inquiries.
- Processing insurance policies through rulemaking and legislation for consumer protections.
- Ensuring proper insurance premium taxes are received for the state general fund.
- Engaging in financial investigations, including premium rate reviews, audits, solvency reviews and actuarial analyses.
- Enforcing the regulations and consumer protections within WAC Titles 284 and RCW 48.

The OIC does have several departments dedicated to advocacy efforts for consumer protections. These business units provide consumer protections by empowering and educating the public about insurance issues. Examples include the Consumer Advocacy Program, Criminal Investigations Unit, Market Conduct Oversight and Statewide Health Insurance Benefits Advisors. The OIC also has divisions dedicated to financial investigations staffed with financial subject matter experts. These divisions include Rates, Forms, & Provider Networks and Company Supervision. However, the work performed by OIC staff in these divisions is specialized to regulating the business of insurance.

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<sup>101</sup> OIC website: Overview and History (Accessed Oct. 18, 2022) – (<https://www.insurance.wa.gov/overview-and-history>).

<sup>102</sup> Washington State Office of Financial Management: Workforce Headcount Website by Agency and County (Sept. 30, 2022) – (<https://ofm.wa.gov/state-human-resources/workforce-data-planning/workforce-data-trends/workforce/number-employees-and-headcount-trends#:~:text=Summary%20of%20workforce%2C%20headcounts%20as,legislative%20branch%20%E2%80%93%20756>).

<sup>103</sup> OIC Strategic Plan (2023) – (<https://www.insurance.wa.gov/sites/default/files/documents/OIC-2017-2023-strategic-plan.pdf>).

Insurance regulation is quite distinct from the regulation of other industries and businesses. Insurance regulation occurs at commercial and personal levels in both the public and private sectors and requires a regulator to certify those engaged in the business of insurance are meeting current authorities and best practices. Insurance is defined as a contract where one undertakes to indemnify another or pay a specific amount upon determinable contingencies.<sup>104</sup>

The Washington state Legislature passed the CCRC law in 2016 and strategically delegated CCRC regulation to DSHS and AGO, as the agencies for implementation and enforcement.<sup>105</sup> The OIC has never engaged in the licensure, registration, renewal or certification of CCRCs, nor any other residential long-term care settings or providers. The OIC also does not currently regulate or engage in administrative enforcement actions on CCRC establishments, finances, consumer complaints, residency agreements, disclosures, notices or resident expectations. This is because CCRC regulation is outside the scope of the insurance code.

## DSHS and CCRCs

DSHS currently has 15,654 state employees on staff. This is 23% of Washington's government workforce.<sup>106</sup> DSHS does not currently employ any actuaries, financial examiners or financial legal examiners. DSHS regulates all long-term care residential settings, including state-licensed nursing homes, adult family homes and assisted living facilities, as well as non-state licensed retirement communities (independent living facilities) and CCRCs.<sup>107</sup>

DSHS has an in-house regulatory paradigm that authorizes continuity of regulation across the compendium of long-term care residential settings. This provides a component of convenience, benefits in regulating all different settings, and offers consistency in available and accessible consumer protections. This also provides DSHS with additional experience and expertise in regulating the different types of long-term care settings, like CCRCs.

The OIC has identified opportunities to achieve additional resident consumer protections. For example, the DSHS CCRC registration website mentions the following:

*"The department's registration activities consist of reviewing an application for completeness and do not signify that the department has otherwise issued a certification or license to the continuing care retirement community or any of its component parts."<sup>108</sup>*

Here, legislation can increase their review standard for investigation of CCRCs. A heightened review standard may investigate aspects beyond completeness, such as actuarial analyses, or accuracy of

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<sup>104</sup> [RCW 48.01.040](#) Definition of insurance.

<sup>105</sup> [RCW 18.390](#)

<sup>106</sup> Washington State Office of Financial Management: Workforce Headcount Website by Agency and County (Sept. 30, 2022).

<sup>107</sup> DSHS Long-Term Care Residential Options website (Accessed Oct. 18, 2022) – (<https://www.dshs.wa.gov/altsa/residential-care-services/long-term-care-residential-options>).

<sup>108</sup> DSHS Long-Term Care Residential Options website (Accessed Oct. 18, 2022) – (<https://www.dshs.wa.gov/altsa/residential-care-services/long-term-care-residential-options>).



financial assessments. This standard can be incorporated into renewals and beyond the initial investigation for registration.

Legislation could also shift CCRC registration to licensure, with more stringent legal and financial thresholds. However, shifting to licensure likely would require adding actuarial staff or financial examiners to DSHS staffing for financial oversight.

## **AGO and CCRCs**

The AGO currently investigates resident consumer complaints. However, the AGO does not have statutory duties established for investigation timeframes, as seen in other states like Oregon. The AGO's current resident consumer complaint process is also based on a limited legal framework and resident expectations.

Here, the AGO can establish a standard for timely CCRC consumer complaint investigations, as seen in other states like Oregon. The AGO can also expand their enforcement scope for additional issues associated with resident consumer protections or expectations, with any necessary statutory changes made.

The AGO processed consumer complaints related to CCRCs at the OIC's request for this study. However, the AGO classifies these consumer complaints along with nursing and residential care facilities. This results in the consumer complaints for CCRCs being connected to those for nursing and residential care facilities.

The AGO provided the OIC with 356 consumer complaints related to nursing and residential care facilities, which may overlap with CCRC complaints. However, additional time and resources are needed to analyze this data further, to discover opportunities in policy gaps for additional consumer protections.

## **Agency recommendations**

The regulation of CCRCs is complex and covers financial and actuarial analyses, consumer complaints, civil and criminal investigations, varied health and residential care settings (each with separate authorities), and several areas of law (including administrative law, contract law and real property). Many states regulate and define CCRCs differently, which can affect any study's ability to accurately compare CCRC regulations and data across multiple jurisdictions. The OIC has included additional resources referred to in this study in the Appendix located below. The agency offers these resources to further inform on the current state of CCRC regulations and consumer protections in Washington and across the country.

The OIC's research in this study revealed the regulatory system that shows the most potential to achieve additional consumer protections for residents is that of a single-agency regulator. States with a single CCRC-regulator can accomplish administrative efficiencies, more cohesive policies and additional consumer protections by keeping all work in the same office. Having a single agency responsible for all aspects of CCRC regulation allows for stronger internal agency communication and coordination. The

sole-regulator system provides benefits to all affected parties in working on consumer protection issues related to CCRCs, due to the complex nature of their varied residential and healthcare settings.

The current agencies with oversight of CCRCs in Washington, present potential to achieve additional resident consumer protections. However, the best path to achieve additional resident consumer protections will result from a sole regulator model with a single regulating agency. Legislation can also require CCRCs to become licensed, rather than just registered, and may broaden resident consumer protections to be enforced.

Consumers in Washington currently contact DSHS and AGO for inquiries and complaints related to CCRCs. However, delegating additional enforcement authority and resources to a single agency can best achieve additional resident consumer protections. Adding another state agency to the current regulation of CCRCs in Washington, presents challenges to achieve additional consumer protections, especially when the added agency has no pertinent authority, experience or expertise. Therefore, the OIC recommends Washington state should use a single agency to provide additional consumer protections in the form of CCRC licensing, financial oversight and enforcement. This is the most efficient and immediate path for Washington to achieve additional resident consumer protections, as it builds upon the existing framework.

# Appendix: References & exhibits

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- [NAELA News and Journal: \*Exercising Control or Giving It Up? What Elder Law Attorneys Should Know About Continuing Care Retirement Communities\*, by Yvonne Troya, JD \(May 2022\) – \(https://www.naela.org/NewsJournalOnline/NewsJournalOnline/Journal\\_Articles/2022/Spring-2022/WhatElderLawAttorneysShould.aspx?subid=1256\)](https://www.naela.org/NewsJournalOnline/NewsJournalOnline/Journal_Articles/2022/Spring-2022/WhatElderLawAttorneysShould.aspx?subid=1256)
- [The New Yorker: \*When Private Equity Takes Over a Nursing Home\*, by Yasmin Rafiei \(Aug. 25, 2022\) – \(https://www.newyorker.com/news/dispatch/when-private-equity-takes-over-a-nursing-home\)](https://www.newyorker.com/news/dispatch/when-private-equity-takes-over-a-nursing-home)
- [The Olympian: \*DSHS Fines long-term care facility after finding residents' rights were violated\*, by Shauna Sowersby \(Aug. 15, 2022\) – \(https://www.theolympian.com/news/state/washington/article264461321.html\)](https://www.theolympian.com/news/state/washington/article264461321.html)
- [U.S. Government Accountability Office \(GAO\) report to the U.S. Senate Special Committee on Aging, \*Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk\* \(June 2010\) – \(https://www.gao.gov/assets/gao-10-611.pdf\)](https://www.gao.gov/assets/gao-10-611.pdf)
- [U.S. Senate: \*Special Committee on Aging – CCRCs: Secure Retirement or Risky Investment?\* \(S. HRG 111-769, Serial Number 111-21, July 21, 2010\) – \(https://www.aging.senate.gov/imo/media/doc/7212010.pdf\)](https://www.aging.senate.gov/imo/media/doc/7212010.pdf)
- [WACCRA: \*CCRC List and Map\* – \(https://waccra.org/wa-ccrc-list-%26-map\)](https://waccra.org/wa-ccrc-list-%26-map)
- [WACCRA: \*Consumer Guide \(Second Edition\) 2019\* – \(https://www.skyline725.com/wp-content/uploads/2019/05/WACCRA-Consumer-Guide-2019.pdf\)](https://www.skyline725.com/wp-content/uploads/2019/05/WACCRA-Consumer-Guide-2019.pdf)
- [WACCRA: \*Consumer Guide \(Third Edition\) 2021\* – \(https://img1.wsimg.com/blobby/go/a344fbc5-f1c4-4135-acc1-bcd6aee04e1a/downloads/WACCRA-ConsumerGuidetoCCRCs-3rdEdition-%202021.0.pdf?ver=1622830795724\)](https://img1.wsimg.com/blobby/go/a344fbc5-f1c4-4135-acc1-bcd6aee04e1a/downloads/WACCRA-ConsumerGuidetoCCRCs-3rdEdition-%202021.0.pdf?ver=1622830795724)

- WACCRA: [Introduction to CCRCs in Washington \(2021\)](https://img1.wsimg.com/blobby/go/a344fbc5-f1c4-4135-acc1-bcd6aee04e1a/downloads/Introduction%20to%20CCRCs%20in%20Washington%20State.pdf?ver=1632771975922#:~:text=As%20of%20February%202021%2C%20Washington,to%20more%20than%208000%20residents.&text=CCRCs%20can%20be%20not%2Dfor,not%2Dfor%2Dprofit%20entitie s.&text=CCRCs%20offer%20a%20variety%20of,very%20wide%20range%20of%20fees.) – (<https://img1.wsimg.com/blobby/go/a344fbc5-f1c4-4135-acc1-bcd6aee04e1a/downloads/Introduction%20to%20CCRCs%20in%20Washington%20State.pdf?ver=1632771975922#:~:text=As%20of%20February%202021%2C%20Washington,to%20more%20than%208000%20residents.&text=CCRCs%20can%20be%20not%2Dfor,not%2Dfor%2Dprofit%20entitie s.&text=CCRCs%20offer%20a%20variety%20of,very%20wide%20range%20of%20fees.>)
- WA AGO [Consumer Complaint Website and Form](https://www.atg.wa.gov/file-complaint) – (<https://www.atg.wa.gov/file-complaint>)
- WA DSHS [CCRC Directory/Registry](https://fortress.wa.gov/dshs/adsaapps/lookup/ccrclookup.aspx) – (<https://fortress.wa.gov/dshs/adsaapps/lookup/ccrclookup.aspx>)
- WA DSHS [CCRC Registration Application](https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc>)
- WA DSHS [CCRC Renewal Application](https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc) – (<https://www.dshs.wa.gov/altsa/home-and-community-services/continuing-care-retirement-community-ccrc>)
- WA OIC [CCRC Study Procurement \(S202307\)](https://www.insurance.wa.gov/sites/default/files/documents/rfp-s202307-continuing-care-retirement-community-assessment.pdf) – (<https://www.insurance.wa.gov/sites/default/files/documents/rfp-s202307-continuing-care-retirement-community-assessment.pdf>)
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## Exhibits

- **Ex. A** - WA OIC Analysis: Other States and CCRC Regulations Across the Country
- **Ex. B** - WACCRA Regulatory Goals for CCRCs in Washington (Sept, 2021)
- **Ex. C** - WACCRA Presentation and Legislative Review PowerPoint (May 21, 2021)
- **Ex. D** - Ziegler: *CCRC/LPC Growth Trends: CCRC National Profile Module* (October 2022)

# OIC Analysis: Other States and CCRC Regulations

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## Other States and Regulatory Systems for CCRCs

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### California

In 1978, the California Department of Health Services was reorganized and retained licensing responsibility for all Health Care Facilities (medical models/institutional settings), and licensing responsibilities for all Community Care Facilities (social models/residential settings) were transferred to the new California Department of Social Services (CDSS).<sup>1</sup>

Today, CCRCs in California are solely regulated by the CDSS. The responsibility is shared by the Continuing Care Contracts Section (CCCS) and the Adult and Senior Care Program (ASCP), both under the Community Care Licensing Division (CCLD) of the CDSS.<sup>2</sup>

All CCRC providers offering continuing care contracts must first obtain a certificate of authority and a residential care facility for the elderly license. In addition, CCRCs that offer skilled nursing services must hold a Skilled Nursing Facility License issued by the Department of Health Services.<sup>3</sup>

CCCS assesses the financial viability of CCRC providers to monitor their capacity to fulfill the long-term promises they make in their continuing care contracts to residents.<sup>4</sup> CCCS does the following:

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<sup>1</sup> California State Department of Social Services (CDSS) Laws and Regulations website (<https://www.cdss.ca.gov/inforesources/community-care-licensing/about-us>)

<sup>2</sup> California State Department of Social Services (CDSS) Laws and Regulations website outlines how the department is solely responsible for enforcing the state's regulatory framework for CCRCs. (<https://www.cdss.ca.gov/inforesources/community-care/continuing-care/laws-and-regulations>)

<sup>3</sup> California State Department of Social Services (CDSS) Continuing Care Retirement Community website defines CCRCs and outlines the regulatory oversight provided by CDSS to enforce CCRC laws. (<https://www.cdss.ca.gov/continuing-care-communities>)

<sup>4</sup> California State Department of Social Services (CDSS) Laws and Regulations website outlines how the department is solely responsible for enforcing the state's regulatory framework for CCRCs. (<https://www.cdss.ca.gov/inforesources/community-care/continuing-care/laws-and-regulations>)

- Enforces the Continuing Care Contract Statutes;
- Evaluates new applicant's and new projects financial feasibility;
- Issues Certificates of Authority to enter continuing care contracts;
- Assesses ongoing financial health of CCRC providers;
- Reviews contracts; and
- Confirms residents and prospective residents are afforded certain disclosures.

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ASCP, on the other hand, regulates adult and elderly care facilities to ensure licensees are properly providing for the health and safety of the residents.<sup>6</sup> They inspect those facilities to enforce compliance with regulations, the required level of care and supervision for residents, facilities' condition, and licensees' day-to-day operations.<sup>7</sup> The ASCP issues residential care facility for the elderly licenses, investigates complaints, and issues citations.<sup>8</sup>

### Regulatory Review

The legislative intent behind Cal. Health & Safety Code § 1770 was the desire to address the issue of elderly residents spending a significant portion of their savings in order to purchase care in a CCRC. This law was designed to address tragic consequences associated with CCRC providers going insolvent or becoming unable to provide responsible care to their residents.<sup>9</sup>

#### **a. CCRC Financial Reporting and Reserve Requirements**

The financial reporting and reserve requirements for CCRCs play an integral role for California's regulatory framework. These requirements help to protect residents who provide large financial commitments in the form of entrance fees and monthly maintenance costs to CCRC providers. Under California law, a CCRC provider is required to deliver a disclosure statement to prospective residents.<sup>10</sup> This disclosure contains the CCRC provider income from operations during the most recent five years for which audited financial statements have been completed.

<sup>5</sup> California Department of Social Services Continuing Care Contract Statutes.. (<https://www.cdss.ca.gov/Portals/9/CCLD/Statutes%202018-Combined%20with%20Cover.pdf?ver=2018-03-16-110020-127>). See also (Cal. Health & Safety Code §1770 et seq)

<sup>6</sup> California State Department of Social Services (CDSS) Laws and Regulations website outlines how the department is solely responsible for enforcing the state's regulatory framework for CCRCs. (<https://www.cdss.ca.gov/inforesources/community-care/continuing-care/laws-and-regulations>)

<sup>7</sup> *Id.* See also (California Code of Regulations, [Title 22](#)).

<sup>8</sup> *Id.*

<sup>9</sup> Continuing Care Contracts section of the California Legislative Information website.

([https://leginfo.legislature.ca.gov/faces/codes\\_displayexpandedbranch.xhtml?tocCode=HSC&division=2.&title=&part=&chapter=10.&article=](https://leginfo.legislature.ca.gov/faces/codes_displayexpandedbranch.xhtml?tocCode=HSC&division=2.&title=&part=&chapter=10.&article=))

<sup>10</sup> [Cal. Health & Safety Code § 1789.1\(a\)](#)

CCRC providers must provide this disclosure statement before executing a deposit agreement or receiving any payment from a depositor or prospective resident.<sup>11</sup> Additionally, in California, CCRC providers must submit an annual report of their financial condition.<sup>12</sup>

California also maintains reserve requirements for CCRCs aimed at providing additional protections to seniors. In California, CCRC providers must satisfy liquid reserve requirements.<sup>13</sup> Additionally, CCRC providers are required to file their annual report with the regulatory agency, which certifies the amount the CCRC provider is required to hold as liquid reserve.<sup>14</sup> Finally, under California law, a CCRC provider is required to maintain liquid reserves to ensure it can meet its operating costs and debt obligations.<sup>15</sup>

### **b. Fines and Penalties Imposed for Noncompliance**

The regulatory framework in California includes civil and criminal remedies for violations of their CCRC laws. For instance, an entity may be found guilty of a misdemeanor for the following reasons:

- An entity accepts deposits and proposes to provide care without having a current and valid permit to accept deposits;
- An entity accepts deposits and fails to place any deposit received into an escrow account;
- An entity executes a continuing care contract without holding a current and valid provisional certificate of authority or certificate of authority; or
- An entity that abandons a CCRC or its obligations under a continuing care contract.

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In California, each violation of this law is subject to a fine up to \$10,000.00, or by imprisonment in the county jail for a period up to one year, or both.<sup>17</sup> California law contains a section for civil penalties.<sup>18</sup> If upon inspection or investigation, the CDSS has probable cause to believe the entity is violating Cal. Health & Safety Code §1771.2 or §1793.5 (valid permits and certificates of authority), the CDSS

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<sup>11</sup> [Cal. Health & Safety Code § 1790\(a\)](#). See also State of California Department of Social Services Continuing Care Contract Statutes. The Health and Safety Code. California Legislative Information website. Article 6. Reporting and Reserve Requirements [1789-1793].

<sup>12</sup> [Id.](#)

<sup>13</sup> [Cal. Health & Safety Code § 1792.5](#).

<sup>14</sup> [Id.](#) Note: This includes the amounts required for the debt service reserve, operating expense reserve, the qualifying assets and their respective values.

<sup>15</sup> [Cal. Health & Safety Code § 1792\(a\)](#)

<sup>16</sup> [Cal. Health & Safety Code § 1793.5-1793.31](#)

<sup>17</sup> [Id.](#)

<sup>18</sup> [Cal. Health & Safety Code § 1793.6](#)

may issue a citation to that entity. CDSS can either institute its own proceedings or ask the attorney general to pursue injunctive relief. The law also gives the district attorney in the state the authority to prosecute violators when CDSS requests such.<sup>19</sup> Additionally, residents in California can seek relief from the courts.

### **c. Resident Complaint Procedures/Requirements**

California has developed resident complaint procedures for CCRCs to protect its residents. Here, each CCRC is required to prominently post a notice in areas accessible to the residents and visitors, with a copy of rights applicable to residents and notice that those rights be made available upon request from the CCRC provider.<sup>20</sup> The notice must state the residents have a right to file a complaint with the Continuing Care Contracts Branch for any violation of those rights and must contain information explaining how a complaint may be filed.<sup>21</sup> Additionally, the CDSS may request a copy of the CCRC provider policies and procedures along with documentation on the conduct and findings of any self-evaluations while reviewing a complaint.<sup>22</sup>

## **New York**

On October 3, 2011, the New York State Banking Department and the New York State Insurance Department were abolished, and the functions and authority of both former agencies transferred to the New York State Department of Financial Services (NY DFS). The legislation that created the NY DFS, known as the Financial Services Law, was introduced as part of Governor Andrew M. Cuomo's budget. The Governor's purpose in consolidating these two agencies and creating the NY DFS, is to modernize regulation by allowing the agency to oversee a broader array of financial products and services, rather than the previous system of limiting regulation to services provided by only certain types of institutions.<sup>23</sup>

Unlike the regulatory framework in California, New York provides on-going financial oversight of these communities by doing the following:

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<sup>19</sup> OLR Research Report. Regulation of Continuing Care Retirement Communities by Robin K. Cohen, Principal Analyst. September 30, 2010. (<https://www.cga.ct.gov/2010/rpt/2010-R-0330.htm>)

<sup>20</sup> Cal. Health & Safety Code § 1771.7(f) – ([https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=HSC&division=2.&title=&part=&chapter=10.&article=1](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=HSC&division=2.&title=&part=&chapter=10.&article=1)).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> New York State Department of Financial Services website ([https://www.health.ny.gov/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/](https://www.health.ny.gov/facilities/long_term_care/retirement_communities/continuing_care/))



- Review and approve the proposed Disclosure Statement and Residency Agreement;
- Evaluates the financial feasibility of the proposed CCRC including financial reserves; and
- Conducts joint periodic operational and financial review of the CCRC with the New York Department of Health (NY DOH).

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Unlike California, New York's regulatory oversight is shared with the NY DOH, which is responsible for the certification and operation of CCRCs. The NY DOH approval is required prior to any marketing of a proposed community. The NY DOH reviews the character and competence of the sponsor, and monitors the legal requirements for CCRCs, including all organizational documents and resident contracts.<sup>25</sup> Construction of a CCRC cannot begin until at least 50% of the units have been pre-sold, and any changes in the CCRC that may affect residents, such as a change in the services offered by the community or a change in the community's operator, require NY DOH approval.<sup>26</sup>

The New York CCRC Council is authorized under New York Public Health (N.Y. P.B.H.) Law Articles 46 and 46-A to meet and discuss matters related to CCRCs. This Council has the decision-making authority for a CCRC's certificate of authority.<sup>27</sup> In New York, a CCRC provider must submit an application to obtain a certificate of authority, which is required before a CCRC can enter into contracts. Additionally, CCRCs are also reviewed and monitored by the New York State Office of the Attorney General based on an equity or cooperative model.<sup>28</sup>

## Regulatory Review

### **a. CCRC Financial Reporting and Reserve Requirements**

New York requires financial reporting from CCRCs and upholds reserve requirements for CCRC providers. In New York, prior to the execution of a contract, a CCRC provider must deliver an initial disclosure statement followed by an annual statement.<sup>29</sup> New York also requires a CCRC provider to file an annual statement with their regulators showing its financial condition of the CCRC provider as of the last day of the preceding calendar or fiscal year.<sup>30</sup> If the regulators do not receive the annual statement within four months of the end of the operator's fiscal year or

<sup>24</sup> [Id.](#)

<sup>25</sup> New York State Department of Health provides an overview of CCRCs including becoming a resident, cost & payment, contracts, entrance fee refunds and keeping facilities operational.

([https://www.health.ny.gov/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/](https://www.health.ny.gov/facilities/long_term_care/retirement_communities/continuing_care/))

<sup>26</sup> [Id.](#)

<sup>27</sup> New York Department of Health website on Continuing Care Retirement Communities Council: Material for CCRC Council Agenda Cycles/Meetings.

([https://www.health.ny.gov/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/meetings.htm](https://www.health.ny.gov/facilities/long_term_care/retirement_communities/continuing_care/meetings.htm))

<sup>28</sup> New York State Department of Health provides an overview of CCRCs including becoming a resident, cost & payment, contracts, entrance fee refunds and keeping facilities operational.

([https://www.health.ny.gov/facilities/long\\_term\\_care/retirement\\_communities/continuing\\_care/](https://www.health.ny.gov/facilities/long_term_care/retirement_communities/continuing_care/))

<sup>29</sup> N.Y. P.B.H. Law § 4606 [N.Y. P.B.H. Law § 4606](#)

<sup>30</sup> N.Y. P.B.H. Law § 4607 [N.Y. P.B.H. Law § 4607](#)

have not granted an extension of time to file, the government may charge a late fee. The annual statement must include financial statements audited by an independent certified public accountant and must also contain: a balance sheet, a statement of income and expenses, a statement of equity or fund balances, and a statement of changes in financial position.<sup>31</sup>

New York's reserve requirements for CCRC's focus on ensuring CCRC providers are properly funded to provide their services to seniors. Under New York Law, a CCRC provider must maintain reserve liabilities and supporting assets in an amount and for the purposes set forth in regulations issued by the NY DFS.<sup>32</sup> Liquid assets must be maintained for the following reserve liabilities:

- Principal and interest payment,
- Payments for taxes and insurance for up to twelve months; and
- Total estimated operating costs for up to six months as set by the superintendent, repairs and replacements for up to twelve months.

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#### **b. Fines and Penalties Imposed for Noncompliance**

New York imposes civil and criminal penalties for CCRC violations. In New York, any CCRC provider that enters into a contract without having first delivered to the prospective resident the disclosure statement and annual report, or delivered to the prospective resident a disclosure statement or annual report that omits a material fact or makes an untrue or misleading statement of material fact, will be liable to the individual contracting for services for damage and repayment of all entrance, application, periodic charge, or other fees paid by such person minus the reasonable cost of care and housing provided until discovery of the violation or until the violation should reasonably have been discovered.<sup>34</sup>

Additionally, in New York, a CCRC provider can be guilty of a class A misdemeanor for knowingly using or employing any act or practice in violation of the New York CCRC regulations.<sup>35</sup>

#### **c. Resident Complaint Procedures/Requirements**

New York allows for complaints to be made to the New York State Adult Care Facility Centralized Complaint Intake Program when there are concerns about the care a loved one is receiving. Parties making a complaint have the option to remain anonymous, but New York

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<sup>31</sup> *Id.*

<sup>32</sup> N.Y. P.B.H. Law § 4611 [N.Y. P.B.H. Law § 4611](#)

<sup>33</sup> N.Y. P.B.H. Law Article 46 [N.Y. P.B.H. Law Article 46](#)

<sup>34</sup> N.Y. P.B.H. Law § 4618 <https://www.nysenate.gov/legislation/laws/PBH/4618>

<sup>35</sup> [N.Y. P.B.H. Law § 4618](#)

encourages complainants leave as much detailed information (if known) regarding the circumstances for the complaint.<sup>36</sup>

## Florida

In late 2015, the Office of Insurance Regulation (OIR) restructured the CCRC section, bringing all key oversight functions under one consolidated unit within OIR Life & Health Financial Oversight program.<sup>37</sup> The CCRC section is composed of 9 positions (supervisors, analysts, and examiners), devoted to ensuring the solvency and statutory compliance of all licensed CCRCs.<sup>38</sup>

There are 4 in-house analyst positions that are assigned a group of facilities, which they consistently monitor on a monthly, quarterly, and annual basis through the review of financial reports and other supplemental filings. The in-house analysts, along with the supervisors, have ongoing dialogue with the management team of licensed CCRCs, addressing any questions and concerns as well as receiving updates on the operations of the facilities.<sup>39</sup> In Florida, licensed means that a CCRC provider has obtained a certificate of authority from the OIR.<sup>40</sup>

Applications for Provisional Certificates of Authority, Certificates of Authority, acquisitions, and expansions are also handled by the in-house analysts. When an application is received, staff review it to ensure applicants have met all requirements of law and the business plan they propose would enable them to meet their financial and contractual obligations.<sup>41</sup>

The in-house analyst also analyzes contract form filings and escrow agreements to ensure that they all meet all the requirements of the law, and reviews disclosure statements to verify that prospective residents receive accurate information.<sup>42</sup> Both statutory financial and market examinations of licensed CCRCs are conducted by the field examiners. These examinations may take place onsite at the facility or remotely at the OIR.<sup>43</sup>

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<sup>36</sup> New York State Department of Health website covers process for filing a complaint for Adult Care facilities/Assisted Living. ([https://health.ny.gov/facilities/adult\\_care/](https://health.ny.gov/facilities/adult_care/))

<sup>37</sup> The internal structure for regulating the CCRC industry is unlike other entities regulated by the OIR. For other entities, financial solvency, forms and rates, and examinations are all reviewed by different areas of the OIR. In contrast, CCRC providers have a "one stop shop," where all aspects of CCRC regulation are consolidated in the CCRC section.

<sup>38</sup> Explanation of Life & Health Financial Oversight Section for the FL Office of Insurance Regulation. ([https://cdn.ymaws.com/www.leadingageflorida.org/resource/resmgr/newsletter/2017/07\\_July/OIR\\_Org\\_Chart.pdf](https://cdn.ymaws.com/www.leadingageflorida.org/resource/resmgr/newsletter/2017/07_July/OIR_Org_Chart.pdf))

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

<sup>40</sup> [FLA. STAT. § 651.011\(17\)](#)

<sup>41</sup> Explanation of Life & Health Financial Oversight Section for the FL Office of Insurance Regulation.

([https://cdn.ymaws.com/www.leadingageflorida.org/resource/resmgr/newsletter/2017/07\\_July/OIR\\_Org\\_Chart.pdf](https://cdn.ymaws.com/www.leadingageflorida.org/resource/resmgr/newsletter/2017/07_July/OIR_Org_Chart.pdf))

<sup>42</sup> *Id.*

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

In Florida, residents living in a facility holding a valid certificate of authority have the right of self-organization, the right to be represented by an individual of their own choosing, and the right to engage in concerted activities for the purpose of keeping informed on the operation of the facility that is caring for them or for the purpose of other mutual aid or protection.<sup>44</sup>

## Regulatory Review

### **a. CCRC Financial Reporting and Reserve Requirements**

Similar to California and New York, Florida maintains CCRC financial reporting and reserve requirements to help protect its residents. Although Florida law does not explicitly provide a provision for an initial disclosure statement, it does require an initial feasibility study as part of the application process for a CCRC provider to obtain a certificate of authority. Under Florida Statute (FLA. STAT.) § 651.0215, an application for the certificate of authority must include a feasibility study prepared by an independent consultant. The study must contain financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for CCRCs adopted by the Actuarial Standards Board.

Additionally, under FLA. STAT. § 651.026(1), a CCRC provider must file an annual report and such other information and data showing its condition as of the last day of the preceding calendar year. This law requires the annual report to be in a prescribed form with OIR and contain a financial report audited by an independent certified public accountant which must contain, for two or more periods if the facility has been in existence that long, all of the following:

- An accountant's opinion and, in accordance with generally accepted accounting principle,
- A balance sheet,
- A statement of income and expenses,
- A statement of equity of fund balances, and
- A statement of changes in cash flows.

Lastly, under FLA. STAT. § 651.035, a CCRC provider shall maintain in escrow a minimum liquid reserve consisting of the aggregate amount of all principal and interest payments due during the fiscal year on any mortgage loan or other long-term financing of the facility, including property taxes.<sup>45</sup>

### **b. Fines and Penalties Imposed for Noncompliance**

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<sup>44</sup> [FLA. STAT. § 651.081](#)

<sup>45</sup> [FLA. STAT. § 651.035](#)

Florida provides both criminal and civil penalties for CCRC provider violations. Under FLA. STAT. § 651.125(1), it is a violation for a CCRC provider to operate without a valid provisional certificate of authority or certificate of authority (and any violation of this authority is a felony of the third degree).<sup>46</sup> Florida laws allow any resident injured by a violation of their CCRC laws to bring a civil action for the recovery of damages plus reasonable attorney's fees.<sup>47</sup> Additionally, if the OIR finds that one or more grounds exist for the discretionary revocation or suspension of a certificate of authority issued under the Florida CCRC laws, the OIR, in lieu of such revocation or suspension, may impose a fine upon the CCRC provider in an amount not to exceed \$1,000 per violation.<sup>48</sup>

### **c. Resident Complaint Procedures/Requirements**

In Florida, residents have the right to present grievances and recommended changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.<sup>49</sup> This right includes access to ombudsman volunteers and advocates and the right to be a member of, an active in, and to the associate with, advocacy or special interest groups or associations.<sup>50</sup>

Furthermore, any person who submits or reports a complaint concerning a suspected violation of a resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint is immune from any civil or criminal liability therefor, unless such person has acted in bad faith or with malicious purpose or if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.<sup>51</sup>

## **Connecticut**

The Connecticut Department of Social Services (CT DSS) is the primary regulator of CCRCs in Connecticut while the Connecticut Department of Public Health (CT DPH) licenses any health care facility located in the community, such as a nursing home. Connecticut's law requires CCRCs to disclose to prospective residents and CT DSS detailed financial information to ensure that people entering contracts do so with complete and accurate information about the CCRC's financial health. This includes financial statements and lists of the goods and services provided. The law also specifies what the contracts must contain, including provisions governing cancellations and refunds.

Like Washington, CCRCs in Connecticut are not licensed under federal or state law, but they must register with CT DSS, which has primary responsibility for overseeing them. Also, CT DPH

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<sup>46</sup> [FLA. STAT. § 651.125](#)

<sup>47</sup> [Id.](#)

<sup>48</sup> [FLA. STAT. § 651.108\(1\)](#)

<sup>49</sup> [FLA. STAT. § 651.083](#)

<sup>50</sup> [Id.](#)

<sup>51</sup> [Id.](#)

must license any health facilities located within those communities. The major regulatory provisions pertaining to CCRCs address:

- Financial disclosures,
- Continuing care contracts,
- Reporting requirements,
- Escrow accounts, and
- DSS' oversight and investigatory authority.

## Regulatory Review

### **a. CCRC Financial Reporting and Reserve Requirements**

Connecticut law contains financial reporting and reserve requirements designed to provide additional protections for its seniors. Under Connecticut General Statutes (Conn. Gen. Stat.) § 17b-522(a)(15), before the execution of a contract to provide continuing care, a CCRC provider must provide a conspicuous statement notifying the prospective resident of the CCRC provider's financial statements, including a balance sheet, income statement and statement of cash flow, which is audited by an independent certified public accounting firm.

Connecticut law, like other jurisdictions previously mentioned, contains provisions designed to ensure that CCRC providers are financially solvent. In Connecticut, the CCRC provider must establish and maintain on a current basis, in escrow with a bank, trust company, or other escrow agent having a place of business in Connecticut, a portion of all entrance fees.<sup>52</sup> The aggregate amount maintained by the CCRC provider must be sufficient to cover: (1) all principal and interest, rental or lease payments due during the next six months on account of any first mortgage loan or another long-term financing of the facility; and (2) the total cost of operations of the facility for a one-month period, excluding debt service, rental or lease payments as described in subdivision (1) of this subsection and excluding capital expenditures.<sup>53</sup>

### **b. Fines and Penalties Imposed for Noncompliance**

Connecticut also has fines and penalties as part of its regulatory framework. Penalties for CCRC providers include a maximum of ten thousand dollars or imprisoned for a period not to exceed one year, or both for those whom willfully and knowingly violate CCRC laws under Conn. Gen. Stat. § 17b-530.

### **c. Resident Complaint Procedures/Requirements**

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<sup>52</sup> [Conn. Gen. Stat. § 17b-522\(a\)](#)

<sup>53</sup> [Conn. Gen. Stat. § 17b-525. \(Formerly Sec. 17a-365\). Reserve fund escrow account.](#)

Connecticut does not have a law to address resident complaint procedures or requirements. However, under Conn. Gen. Stat. § 17b-523b(a), each CCRC provider shall develop a process for facilitating communication between residents and the personnel, management, board of directors and owner of the CCRC provider. This process includes allowing residents at each facility to form a resident council.<sup>54</sup> The council is duly elected by residents at a facility to advocate for residents' rights and function as an advisory board to the CCRC provider with respect to resident welfare and interests.<sup>55</sup>

## New Mexico

The New Mexico Legislature has recognized that CCRCs are an important and growing alternative for the provision of long-term residential, social and health maintenance needs for the elderly; however, the legislature also finds that severe consequences to residents may result when a CCRC provider becomes insolvent or unable to provide responsible care.<sup>56</sup> Therefore, the legislature passed the Continuing Care Act, the purpose of which is to provide for disclosure and the inclusion of certain information in continuing care contracts in order that residents may make informed decisions concerning continuing care; to provide protection for residents; and to ensure the solvency of communities.<sup>57</sup>

The Continuing Care Act, New Mexico Statute Annotated (N.M. Stat. Ann.) §§ 24-17-1 to 24-17-18, requires that CCRCs in New Mexico provide to actual and potential residents information concerning ownership, operation, and finances. Residents have the right to organize a resident association and to engage in concerted activities for the purpose of keeping themselves informed of the operation of the facility or for the purpose of other mutual aid and protection.<sup>58</sup> In addition, the Act specifies certain information that must be in the contract you sign.<sup>59</sup>

However, New Mexico is different from some of the other jurisdictions previously discussed. There is no state agency responsible for overseeing the operations of communities to assure that finances remain adequate to provide care and services promised. Therefore, New Mexico recommends that residents do a thorough investigation of any community in which they are

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<sup>54</sup> Conn. Gen. Stat. § 17b-523b. Development of Process for Facilitating Communication. Management of Continuing Care Facilities. – ([https://www.cga.ct.gov/current/pub/chap\\_319hh.htm#sec\\_17b-523a](https://www.cga.ct.gov/current/pub/chap_319hh.htm#sec_17b-523a))

<sup>55</sup> Conn. Gen. Stat. § 17b-520 (Formerly Sec. 17a-360) Definitions. – ([https://www.cga.ct.gov/current/pub/chap\\_319hh.htm#sec\\_17b-525](https://www.cga.ct.gov/current/pub/chap_319hh.htm#sec_17b-525))

<sup>56</sup> N.M. Stat. Ann. Chapter 24 –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208267/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj4A2AOwBKADTJspQhACKiQrgCe0AOSapEQmFwJlqjdt37DIAMp5SAIQ0AIAKIAZZwDUAggDkAws5SpGAARtCk7BISQA>)

<sup>57</sup> *Id.*

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

<sup>59</sup> New Mexico Consumer's Guide to Continuing Care Communities. ([https://sclonm.org/wp-content/uploads/2012/05/Continuing\\_Care\\_Consumer\\_Guide.pdf](https://sclonm.org/wp-content/uploads/2012/05/Continuing_Care_Consumer_Guide.pdf))

interested, including talking to a lawyer or financial adviser, before signing a contract.<sup>60</sup> Except for their health care facilities, CCRCs in New Mexico are not licensed by the state.<sup>61</sup>

## Regulatory Review

### **a. CCRC Financial Reporting and Reserve Requirements**

Despite New Mexico not having an agency which oversees operations for CCRCs, it does maintain financial reporting and reserve requirements for CCRC providers. New Mexico law requires CCRCs to provide a current annual disclosure statement to each actual resident and to a prospective resident at least seven days before the CCRC provider enters a continuing care contract with the prospective resident, or prior to the prospective resident's first payment, whichever occurs first.<sup>62</sup> The disclosure statement must include a statement as to whether the CCRC provider or any of its officers, directors, trustees, partners, managers, or affiliates, within 10 years prior to the date of application had a prior discharge in bankruptcy or was found insolvent in any court action.<sup>63</sup> The disclosure statement must also include the community's or corporation's liquid reserves to assure payment of debt obligations and an ongoing ability to provide services to residents.<sup>64</sup>

For communities that provide Type A and Type B agreements, the disclosure statement must provide a summary of a comprehensive actuarial analysis within the last five years and an annual future-service obligation calculation by an actuary who is a member of the American Academy of Actuaries and who is experienced in analyzing CCRCs.<sup>65</sup> This also includes an audited financial statement and an audit report prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by a certified public accountant, including:

- An income statement or statement of activities;
- A cash-flow statement or sources; and
- Application of funds statement and a balance sheet as of the end of the CCRC provider's fiscal year.

The balance sheet should accurately reflect the deferred revenue balance, including entrance fees and any other prepaid services, and should include notes describing the community's long-

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<sup>60</sup> [\*Id.\*](#)

<sup>61</sup> [\*Id.\*](#)

<sup>62</sup> N.M. Stat. Ann. § 24-17-4. Disclosure. –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208267/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj4A2AOwBKADTJspQhACKiQrgCe0AOSapEQmFwJlqjdt37DIAMp5SAIQ0AIAKIAZZwDUAggDkAws5SpGAARtCk7BISQA>)

<sup>63</sup> [\*Id.\*](#)

<sup>64</sup> [\*Id.\*](#)

<sup>65</sup> [\*Id.\*](#)



term obligations and identifying all the holders of mortgages and notes.<sup>66</sup> Under N.M. Stat. Ann. § 24-17-7, a CCRC provider must file a copy of the disclosure statement and any amendments to that statement annually with the state agency on aging for public inspection.<sup>67</sup>

To protect residents' financial investments with the CCRC, N.M. Stat. Ann. § 24-17-6(A) requires any deposits or entrance fees paid by or for a resident to be held in trust for the benefit of the resident in a federally insured New Mexico bank until the resident had occupied the resident's unit or the resident's contract cancellation period has ended, whichever occurs later.<sup>68</sup>

Under Subsection B of N.M. Stat. Ann. § 24-17-16, the amounts held in trust for specific residents under Subsection A, a community that provides a type A agreement shall always maintain liquid reserves equal to the principal and interest payments due for a twelve-month period on all accounts of any mortgage loan and other long-term debt, as well as three months' worth of net operating expenses.<sup>69</sup> Additionally, under Subsection C, reserves must be calculated on a prorated basis for residents who fall under type B agreements.<sup>70</sup>

#### **b. Fines and Penalties Imposed for Noncompliance**

New Mexico provides civil remedies for CCRC violations. Under N.M. Stat. Ann. § 24-17-15(A), residents, as a class or otherwise, may bring an action in a court of competent jurisdiction to recover actual and punitive damages for injury resulting from a violation of the Continuing Care Act.<sup>71</sup> The court may award reasonable attorney's fees and costs to the prevailing party.<sup>72</sup>

#### **c. Resident Complaint Procedures/Requirements**

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<sup>66</sup> *Id.*

<sup>67</sup> N.M. Stat. Ann. § 24-17-7. Disclosure Statements filed with the Aging and Long-Term Services Department for Public Inspection. –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208277/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj4B2EQEoANMmylCEAlqJCuAJ7QA5BskRCYXaiUr1WnXoMgAynlIAhdQCUAogBknANQCCAOQDCTyVlwACNoUnZxcSA>)

<sup>68</sup> N.M. Stat. Ann. § 24-17-6, Requirements for Financial Reserves. –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208275/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj4B2AKwBKADTJspQhACKiQrgCe0AOSapEQmFwJlqjdt37DIAMp5SAIQ0AIAKIAZZwDUAggDkAaws5SpGAARtCk7BISQA>)

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

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

<sup>71</sup> N.M. Stat. Ann. § 24-17-15. Right to Civil Action for Damages. –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208277/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj4B2EQEoANMmylCEAlqJCuAJ7QA5BskRCYXaiUr1WnXoMgAynlIAhdQCUAogBknANQCCAOQDCTyVlwACNoUnZxcSA>)

<sup>72</sup> *Id.*

Like other jurisdictions above, New Mexico maintains a complaint process for residents. Under N.M. Stat. Ann. § 24-17-18(A), a person may report an alleged violation of the Continuing Care Act or rules related to that act to the attorney general or to the aging and long-term services department.<sup>73</sup> Under N.M. Stat. Ann. § 24-17-18(B), any time after the aging and long-term services department issues a notice of the violation, the department may send the attorney general a written report alleging a possible violation of the Continuing Care Act or any rule adopted pursuant to that act. Upon receipt of the report from any source alleging a violation of the Continuing Care Act or rules promulgated pursuant to that act, the attorney general must review the allegation. If the allegation is deemed credible, the attorney general shall file an appropriate action against the alleged violator in a court of competent jurisdiction.

## Texas

Texas has a shared regulatory framework with the Texas Department of Insurance handling annual registration of CCRCs and Health and Human Services handling the licensing. Under Tex. Health & Safety Code § 246.021, a CCRC provider may not (1) acquire a facility, (2) enter a continuing care contract; or (3) enter into a reservation agreement unless a CCRC provider holds a certificate of authority and the agreement provides for the full refund, for any reason, of a deposit paid in connection with the agreement.<sup>74</sup>

### Regulatory Review

#### **a. CCRC Financial Reporting and Reserve Requirements**

Under Tex. Health & Safety Code § 246.050(a), the disclosure must describe any provisions made or to be made to provide reserve funding or security to enable the CCRC provider to fully perform its obligation under a continuing care contract, including:

- The establishment of escrow accounts, trusts, or reserve funds and the manner in which those funds will be invested;
- The name and experience of any individual in the direct employment of the CCRC provider who will make the investment decisions; and
- Provide financial statements with a balance sheet as of the end of the most recent fiscal year along with income statements and a statement of cash flow for each of the three most recent fiscal years.

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<sup>73</sup> N.M. Stat. Ann. Chapter 24, Health and Safety. –

(<https://nmonesource.com/nmos/nmsa/en/item/4384/index.do#!fragment/zoupio-Toc109208296/BQCwhgziBcwMYgK4DsDWszlQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgEYAGATgCYuADj48AbAEoANMmylCEAlqJCuAJ7QA5BskRCYXaiUr1WnXoMgAynlIAhdQCUAogBknANQCCAQQDCTyVlwACNoUnZxcSA>)

<sup>74</sup> Tex. Health & Safety Code Chapter 246, Continuing Care Facilities. Subchapter A. General Provisions. – (<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>)

<sup>75</sup> Tex. Health & Safety Code § 246.050. Contents of Disclosure Statement: Financial Information. – (<https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>)

The financial statements required by Texas law must be prepared with generally accepted accounting principles and must be audited by an independent certified public accountant, who must state in the audit report whether the financial statements were prepared with those principles.

Under Tex. Health & Safety Code § 246.051, the disclosure statement must contain estimated annual income statements for the facility for at least five fiscal years, including:

- Anticipated earning on any cash reserves;
- Estimates of net receipts from entrance fees;
- An estimate of gifts or bequests to be relied on to meet operating expenses;
- A projection of estimated income from fees and charges;
- Projection of the facility's operations expenses; and
- An estimate of annual payments of principal and interest required by a mortgage loan or other long-term financing arrangement relating to the facility.

Under Tex. Health & Safety Code § 246.054, a CCRC provider must file a revised disclosure statement no later than 120 days after the CCRC providers fiscal year ends. Additionally, the revised disclosure statement must contain following:

- A description of any material difference between the estimated income after the start of the CCRC providers most recently completed fiscal year; and
- The actual result of operations during that fiscal year with the revised estimated income statements filed as part of the revised disclosure statement.

*\*It is important to note that the Commissioner must review the disclosure statement for completeness but is not required to review the disclosure statement for accuracy.*

Under Tex. Health & Safety Code § 246.077(a), when a facility is first occupied by a resident, the CCRC provider shall establish and maintain in an escrow account with a bank or trust company, as escrow agent, that is in Texas a reserve fund equal to the total of all principal and interest payments due during the next 12 months on any first mortgage loan or other long-term financing arrangement for the facility. This financial requirement of Texas law may be met in

whole or in part by other reserve funds held for the purpose of meeting loans obligations if the total amount equals or exceeds the amount required by this subsection.<sup>76</sup>

Under Tex. Health & Safety Code § 246.091(a), the regulator may place a CCRC provider or facility under supervision if:

- The CCRC provider draws on the CCRC provider's entrance fee escrow in an amount greater than permitted by Tex. Health & Safety Code § 246.073;
- The CCRC provider draws on the CCRC provider's loan reserve fund escrow in an amount greater than permitted or more frequently than permitted by Tex. Health & Safety Code § 246.078;
- The commissioner determines, after a complaint and investigation, that the CCRC provider is financially unsound or is unable to meet the income or available cash projections previously filed by the CCRC provider and that the ability of the CCRC provider to fully perform its obligations under continuing care contracts is endangered; or
- The CCRC provider is bankrupt, insolvent, or has filed for protection from creditors under federal or state reorganization, bankruptcy, or insolvency law.

#### **b. Fines and Penalties Imposed for Noncompliance**

Under Tex. Health & Safety Code § 246.116(a), a person commits an offense if the person intentionally violates this law. Under subsection (b) an offense under this section is a Class A misdemeanor.<sup>77</sup> Additionally, under Tex. Health & Safety Code § 246.117(a), a CCRC provider who makes a continuing care contract without complying with the disclosure statement requirement under subchapter C, or who makes a continuing care contract with a person who has relied on a disclosure statement that omits a material fact required to be stated in the statement or necessary to make the statement accurate, is liable to the person with whom the continuing care contract is made for the following:

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<sup>76</sup> Tex. Health & Safety Code § 246.077. Reserve Fund Escrow. – <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>

<sup>77</sup> Tex. Health & Safety Code § 246.077. Criminal Penalty. – <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>

- Actual damages;
- Repayment of all fees paid to the CCRC provider minus the reasonable value of care and lodging provided to the person by or on whose behalf the continuing care contract was made before the violation, misstatement, or omission was discovered or reasonably should have been discovered;
- Interest at the legal rate for judgments;
- Court costs; and
- Reasonable attorney's fees.

A CCRC provider is liable under this section regardless of whether the CCRC provider had actual knowledge of the misstatement or omission.<sup>78</sup> Under Tex. Health & Safety Code § 246.115(a), the Texas State Board of Insurance (Texas board) may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and to order compliance with this chapter if the Texas board determines, after a complaint or by other means, that the act or practice violates this law or an order made.

### **c. Resident Complaint Procedures/Requirements**

Under Tex. Health & Safety Code § 246.115, the Texas board may request that the attorney general bring an action to prohibit a person from engaging in an act or practice and order compliance with this chapter if the Texas board determines, after a complaint or by other means, that the act or practice violates this law.<sup>79</sup>

Additionally, under Tex. Health & Safety Code § 246.091, the Texas Commissioner may place a CCRC provider or facility under the supervision if the commissioner determines, after a complaint and investigation, that the provider is financially unsound or is unable to meet the income or available cash projections previously filed by the province and that the ability of the CCRC provider to fully perform its obligations under the continuing care contracts is endangered.<sup>80</sup>

## **Pennsylvania**

In Pennsylvania, only those communities which charge large upfront entrance fees are regulated by the Insurance Department. CCRCs are required to disclose the state of their finances so that

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<sup>78</sup> Tex. Health & Safety Code § 246.117 Civil Liability. – <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>

<sup>79</sup> Tex. Health & Safety Code Chapter 246, Continuing Care Facilities. – <https://statutes.capitol.texas.gov/Docs/HS/htm/HS.246.htm>

<sup>80</sup> *Id.*

the prospective residents can assess their long-term viability. These statements are updated annually and must be made available upon request.<sup>81</sup>

## Regulatory Review

### **a. CCRC Financial Reporting and Reserve Requirements**

Pennsylvania requires financial reporting and maintains reserve requirements to make sure CCRC providers are solvent. Pennsylvania law in 31 Pa. Code § 151.7(c) requires disclosure statements to contain a sample of fees charged to residents based upon occupancy of a one-bedroom unit by one and two persons, including entrance and periodic fees. Under subsection (b), the disclosure statement must provide the certified financial statements.<sup>82</sup> Additionally, at the time the annual disclosure statement is filed, 31 Pa. Code § 151.11(a) states that each CCRC provider must submit to the Insurance Department an annual statement detailing its financial status as of the close of business on the last day of the CCRC provider's fiscal year.<sup>83</sup>

Pennsylvania requires entrance fees to be maintained in an escrow account and the CCRC provider must invest these funds in good faith. Additionally, CCRCs in Pennsylvania are required to adhere to reserving requirements.<sup>84</sup>

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<sup>81</sup> Pennsylvania Insurance Department website on Continuing Care Communities.

(<https://www.insurance.pa.gov/Coverage/ContinuingCare/Pages/default.aspx>)

<sup>82</sup> 31 Pa. Code § 151.7 Disclosure statements. –

(<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter151/s151.7.html&d=reduce>)

<sup>83</sup> 31 Pa. Code § 151.11 Annual statements. –

(<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter151/s151.11.html&d=reduce>)

<sup>84</sup> Under 31 Pa. Code § 151.10(a), funds of a CCRC provider which are permitted or required under the act must be invested in good faith and with the degree of care that an ordinarily prudent individual in a like position would exercise under similar circumstances. Under subsection (1), funds which are required to be invested shall include the entrance fees maintained in an escrow account, under section 12 of the act (40 P.S. Section 3212). Under subsection (2), funds which are permitted to be invested shall include liquid reserves established under section 9 of that act (40 P.S. section 3209), and reserve fund escrow accounts established under section 10 of the act (40 P.S. Section 3210).

This requires CCRC providers to exercise due care with respect to the following factors:<sup>85</sup>

- The protection of the principal invested;
- The liquidity of the invested funds;
- The relationship between the maturity date of invested funds and the current liabilities; and
- The anticipated investment yield.

**b. Fines and Penalties Imposed for Noncompliance**

Pennsylvania maintains civil and criminal authority on CCRC violations. Under Section 17(a) of the Continuing Care Provider Registration and Disclosure Act, a CCRC provider is civilly liable for damages and repayment of all fees paid to the CCRC provider, facility or person violating the act, less the reasonable value of care and lodging provided to the resident. Liability under this authority shall exist regardless of whether or not the CCRC provider or person liable had actual knowledge of the misstatement or omission.

Under Section 22, a person may be criminally liable if they willfully and knowingly violate any provision of the Continuing Care Provider Registration and Disclosure Act. Upon conviction, a person may be sentenced to pay a fine of not more than \$10,000.00 or to imprisonment for not more than two years, or both for each violation.

**c. Resident Complaint Procedures/Requirements**

Pennsylvania law does not address resident complaint procedures; however, it does recognize residents' right to organization. Under the Continuing Care Provider Registration and Disclosure Act, Section 15(a), residents living in a facility holding a valid certificate of authority under this act shall have the right of self-organization. Under subsection (b), the board of directors, a designated representative or other such governing body of a continuing-care facility shall hold quarterly meetings with the residents of the continuing-care facility for the purpose of free discussion of subjects which may include income, expenditures and financial matters as they apply to the facility and proposed change in policies, programs and services.<sup>86</sup>

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<sup>85</sup> 31 Pa. Code § 151.10 Investments.

(<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/031/chapter151/s151.10.html&d=reduce>)

<sup>86</sup> N.C.G.S. § 15; Right to Organization. –

(<https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1984&sessInd=0&smthLwInd=0&act=82&chpt=0&sctn=15&subsctn=0>)

## North Carolina

North Carolina has a Continuing Care Advisory Committee that acts as an advisory capacity to the North Carolina Department of Insurance (Department) on matters relating to the continuing care. The members of the Committee are experienced in matters concerning the continuing care industry and are appointed by the Commissioner of the North Carolina Department of Insurance.<sup>87</sup>

The Committee consists of nine members: two residents of facilities, two representatives of the LeadingAge North Carolina, a certified public accountant, an individual skilled in the field of architecture or engineering, an individual who is a health care professional, and two at large members. All members are appointed to a two-year term and may serve two or more consecutive terms.<sup>88</sup>

The Committee has many functions, including making recommendations regarding changes in the Department's rules and regulations and providing advice regarding problems relating to the management or operation of any CCRC.<sup>89</sup> Under Section 58-64-5, no CCRC provider can engage in the business of offering or providing continuing care in the State without a license to do so obtained from the Commissioner.

### Regulatory Review

#### **a. CCRC Financial Reporting and Reserve Requirements**

Under North Carolina General Statutes (N.C.G.S.) § 58-64-20(a), at the time of, or prior to, the execution of a contract to provide continuing care, or at the time of, or prior to, the transfer of any money or other property to a CCRC provider by or on behalf of a prospective resident, whichever occurs first, the CCRC provider shall deliver a current disclosure statement to the person with whom the contract is to be entered into, the text of which shall contain at least twelve forecasted financial statements for the CCRC provider of the next five years, including:

- A balance sheet,
- A statement of operations,
- A statement of cash flows, and
- A statement detailing all significant assumptions, compiled by an independent certified public accountant.

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<sup>87</sup> North Carolina Department of Insurance website section on Continuing Care Retirement Communities. (<https://www.ncdoi.gov/insurance-industry/continuing-care-retirement-communities-ccrc>)

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*



Reporting routine, categories and structure may be further defined by regulations or forms adopted by the Commissioner.<sup>90</sup> The disclosure statement is required by law to be given to the person with whom a continuing care contract is being entered into, at the time of, or prior to, the transfer of any money or other property to a CCRC provider by, or on behalf of, a prospective resident.<sup>91</sup>

Under N.C.G.S. § 58-64-33(a), a CCRC provider shall maintain after the opening of a facility: an operating reserve equal to fifty (50%) of the total operating costs of the facility forecasted for the 12-month period following the period covered by the most recent disclosure statement filed with the Department.

All licensed continuing care CCRC providers are required, pursuant to N.C.G.S. § 58-64-33, to maintain, after the opening of a facility, an operating reserve equal to fifty percent (50%) of the total operating costs forecasted for the twelve-month period following the period covered by the most recent disclosure statement filed with the North Carolina Department of Insurance. However, if a facility maintains an occupancy level (independent and assisted living) in excess of ninety percent (90%), then the CCRC provider shall only be required to maintain a twenty-five percent (25%) operating reserve upon the approval of the commissioner.<sup>92</sup>

#### **b. Fines and Penalties Imposed for Noncompliance**

Under NCGS Sec 58-64-70(a), a CCRC provider who enters into a contract for continuing care that omits a material fact required is liable to the person contracting for this continuing care for actual damages and repayment of all fees paid to the CCRC provider.<sup>93</sup>

Any person who willfully and knowingly violates any provision of this law is guilty of a Class 1 misdemeanor.

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<sup>90</sup> N.C.G.S. Chapter 58; Insurance: The General Statutes include changes through SL 2021-192. Disclosure Statement. – ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_58/GS\\_58-64-20.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_58/GS_58-64-20.pdf))

<sup>91</sup> 2019 North Carolina Department of Insurance CCRC Reference Guide. (<https://files.nc.gov/doi/documents/continuing-care-retirement-communities/2019-ccrc-reference-guide.pdf>)

<sup>92</sup> *Id.*

<sup>93</sup> N.C.G.S. § 58-64-70. Civil Liability. – ([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_58/GS\\_58-64-70.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_58/GS_58-64-70.pdf))

The North Carolina Insurance Commissioner may refer such evidence as is available concerning the violation of the law or of any rule or order to the Attorney General or a district attorney who may, with or without such reference institute the appropriate criminal proceedings under this law.<sup>94</sup>

### **c. Resident Complaint Procedures/Requirements**

North Carolina does not have laws designed to address complaint procedures; however, it does provide the right to organize. Under N.C.G.S. § 58-64-40(a), a resident living in a facility operated by a CCRC provider licensed under this law has the right of self-organization, the right to be represented by an individual of the resident's own choosing, and the right to engage in concerted activities to keep informed on the operation of the facility in which the resident resides or for other mutual aid or protection.<sup>95</sup>

## **Oregon**

### Regulatory Review

A variety of licensed facilities in Oregon provide care for people who need help with activities of daily living, personal care and taking medication. The Oregon Department of Human Services, Aging and People with Disabilities, Office of Safety, Oversight and Quality, coordinates, and issues licenses for the following types of facilities: residential care facilities, assisted living facilities and nursing facilities.<sup>96</sup> However, like New Mexico, Oregon does not license CCRCs. Under Oregon Revised Statutes (ORS) 101.030(1), a new CCRC provider shall register with the Department of Human Services before the CCRC provider enters into a residency agreement with a nonresident, solicits either prospective resident or nonresident to pay an application fee or execute a resident agreement or collects an entrance fee.<sup>97</sup>

Oregon maintains an advisory council, which operates like community councils in other jurisdictions. Under ORS 101.140, a CCRC advisory council is created and shall consist of nine members appointed by the Director of Human Services or designee and shall represent the geographic location of CCRC providers in this state. A member must be a resident of the state. Three members must represent CCRC providers that are registered and must have been actively engaged in the offering of residency agreements in Oregon for five years before appointment to the council. The additional members must include:

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<sup>94</sup> N.C.G.S. § 58-64-75. Criminal penalties. –

([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_58/GS\\_58-64-75.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_58/GS_58-64-75.pdf))

<sup>95</sup> N.C.G.S. § 58-64-40. Right to organization. –

([https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter\\_58/GS\\_58-64-40.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_58/GS_58-64-40.pdf))

<sup>96</sup> Oregon Department of Human Services. Licensing Standards for Long-Term Care Facilities.

(<https://www.oregon.gov/dhs/seniors-disabilities/LTC/pages/facilities-licensing.aspx>)

<sup>97</sup> ORS 101.030 Registration of continuing care retirement community CCRC providers. –

([https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html))

- A representative of the business community with expertise in management;
- A certified public accountant;
- An attorney; and
- Three Oregon residents of CCRCs or other consumer representatives.

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The purpose of the council is to act as advisory to the Oregon Department of Human Services, which includes maintaining records of all reports made to the council and making recommendations to the department on all proposed rules under ORS Chapter 101.

a. **CCRC Financial Reporting and Reserve Requirements**

Under ORS 101.050, a CCRC provider must provide a resident with an initial disclosure statement, which among other things, must contain the following information:

- The CCRC providers most recent audited financial statement prepared in accordance with generally accepted accounting principles by a certified public accountant;
- A full description of all contracts a CCRC provider has entered into with affiliated organizations and an explanation of the financial impact that the contract may have on residents;
- A description of any mortgage loan or other long-term financing intended to be used for the financing of the CCRC;
- An estimate of the total entrance fees to be received from the residents at or prior to the commencement of operation of the continuing care community based on projected occupancy at the time the CCRC begins operation; and
- An estimate of the funds, if any, anticipated to be necessary to pay for start-up losses.

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<sup>98</sup> ORS 101.140 Advisory council; membership; compensation; duties. – [https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html)

<sup>99</sup> ORS 101.050 Preparation of disclosure statement by CCRC provider; notice and review of statement by prospective residents; contents of statement. – [https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html)

Under ORS 101.052, the CCRC provider shall file an annual disclosure statement with the Department of Human Services and must include the following information:

- An audited financial statement prepared in accordance with generally accepted accounting principles for the preceding fiscal year;
- A disclosure of any change in ownership or manager;
- The frequency of resident’s council meetings and the dates of those meetings; and
- Copies of all notices of changes in regular periodic charges or notices of proposed changes in fees or services that were given to residents during the CCRC provider’s most recently completed fiscal year.

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Oregon also maintains requirements for financial reserves. Under ORS 101.060, a CCRC provider is required to maintain a liquid reserve in an amount equal to or exceeding the total of all principal and interest payments due during the next 12 months on account of a mortgage loan or other long-term financing of the CCRC taking into consideration any anticipated refinancing. This requirement extends to maintaining enough liquid reserve in an amount equal to or exceeding the total of the CCRC’s projected operating expenses for three months.<sup>101</sup>

#### **b. Fines and Penalties Imposed for Noncompliance**

Unlike some of the other jurisdictions discussed above, Oregon does not have specific provisions dedicated to civil and criminal penalties associated with CCRC violations. However, under ORS 101.110, a CCRC provider is subject to having its registration revoked for the following reasons:

- Failure to file an annual disclosure statement;
- Failure to make available to prospective and current residents the disclosure statements;
- Providing residents with financial statements that makes an untrue statement of material fact or omits a material fact and the CCRC provider, at the time of delivery of the disclosure statement, knew or should have known of the misstatement or omission; or
- Failure to maintain reserves.

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<sup>100</sup> ORS 101.052 Annual disclosure statement. –

([https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html))

<sup>101</sup> ORS 101.060 CCRC provider to maintain financial reserves; amount; escrow account; withdrawal from reserves. – ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html))

Additionally, under ORS 101.120, the Oregon Department of Human Services may issue an order requiring the person to cease and desist from the unlawful practice after notice and hearing, that a person has violated or is about to violate any CCRC law. If it appears that a person has engaged or is about to engage, in act or practice which constitutes a violation of CCRC laws, the Oregon Department of Human Services may bring an action in the circuit court to enjoin the acts or practices or to enforce compliance with its CCRC laws.<sup>102</sup>

**c. Resident Complaint Procedures/Requirements**

Under ORS 101.150, the department is required to adopt a procedure for a resident to file a complaint with the department concerning the CCRC's failure to comply with CCRC laws. The department must:

- CCRC provider a response to the complaint no later than 14 days after the date the complaint is filed;
- Complete an investigation of the complaint no later than 90 days after the date the complaint is filed; and
- CCRC provider a written report of the results of the investigation to the CCRC provider and to the complainant.

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<sup>102</sup> ORS 101.120 Power of department to prevent violations; cease and desist order; injunction. – [https://www.oregonlegislature.gov/bills\\_laws/ors/ors101.html](https://www.oregonlegislature.gov/bills_laws/ors/ors101.html)

WASHINGTON



CONTINUING CARE  
RESIDENTS ASSOCIATION

WACCRA  
Recommendations to  
the OIC on  
Modernization of  
CCRC Resident  
Protections

September 2021

## WACCRA in brief

### Our purpose

Educating present and future residents on relevant Continuing Care Retirement Communities (CCRC) topics, supporting and collaborating with the CCRC executive teams to achieve our mutual common goals and advocating for CCRC resident's rights.

### Key achievement to date

Orchestrated the initial 2016 Washington State law recognizing and requiring registration of CCRCs.

### Beneficiaries of the new law

More than 8000 seniors in 23 CCRCs in Washington State and their families.

### WACCRA members

Residents, relatives and other individuals who want to learn about CCRCs are WACCRA members. Members live at: Bayview, eliseo (formerly Tacoma Lutheran), Emerald Heights, Franke Tobey Jones, Horizon House, Mirabella, Panorama, Parkshore, Riverview, Skyline, Rockwood South Hill, The Hearthstone, Timber Ridge at Talus, and Wesley Des Moines.

Washington's senior care environment is facing challenges, which makes now the time to modernize statutory protection for CCRC residents.

- Washington's adoption of the Washington Cares Fund highlights the lack of longterm care resources that many citizens face.
- The Office of the Insurance Commissioner's interest in adoption of legislation, similar to the NAIC Life and Health Insurance Guaranty Association Model Act (#520), to address issues and concerns with guaranty fund coverage and assessments for any future Long Term Care Insurance insolvencies recognizes the unique risks associated with the provision of longterm healthcare.
- Critical to the financial strength of CCRCs is their ability to attract new residents and accurately predict the cost of longterm care for those residents. Dropping occupancy levels in CCRCs and higher cost of services due to both economic and societal impacts of COVID are putting pressure on CCRC financing over and above those they face due to increased resident longevity and the rising costs of healthcare.
- Bankruptcies and financial failures of CCRCs have motivated other states to regulate CCRCs significantly beyond Washington's requirements for CCRCs.



## WACCRA's goals for regulation of CCRCs include:

- Periodic financial reviews by the State to ascertain the ability of the CCRC to meet both their short term operational and long-term care contractual obligations. Audited financial statements prepared using current accounting standards and periodic actuarial studies using actuarial standards of practice should be part of the review. The State should be able to oversee management of CCRCs that are not meeting the State's financial requirements.
- Reporting of the State's financial analysis be made public to residents and prospective residents in a form accessible to a layperson.
- Oversight of and requirements regarding the use of a CCRC's funds for services not directly beneficial to residents of that CCRC.
- Protection of CCRC residents in bankruptcy as secured parties versus as un-secured creditors.
- Support to address resident issues with CCRC management in a constructive, collaborative manner.

## Activity in other states regarding WACCRA’s key goals for CCRC reform in Washington:

Desired Protection	State	Key Statute References
Robust Financial Review	Florida,	Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.026; SECTION 651.0261; SECTION 651.018
	California	State of California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 – 1790.
Mandatory Actuarial Reporting	California	State of California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 - 1792.10.
Reporting Made Public	Florida	Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.091.
Oversight of Use of CCRC Funds for Non-resident Purposes	New York	New York Codes, Rules and Regulations, Title 11 - INSURANCE Chapter XIII - Life Care Communities, Part 350 - Continuing Care Retirement Communities, Section 350.11 - Transactions between a continuing care retirement community and its parent corporation, affiliates and subsidiaries.

See Appendix for specific legislative language noted above

## Activity in other states regarding WACCRA’s key goals for CCRC reform in Washington: (cont.)

Desired Protection	State	Key Statute References
Resident Protection in Bankruptcy	Florida	Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.071.
Dispute Resolution Support	Florida	690-193.062 : CONTINUING CARE CONTRACTS - Florida Administrative Rules, Law, Code, Register.

See Appendix for specific legislative language noted above

Based on WACCRA's evaluation of Washington and other states' CCRC regulations, we believe that to ensure financially sound CCRCs and consumer protection of CCRC residents in Washington, the Office of the Insurance Commissioner is the best equipped state agency to oversee CCRCs.

Next steps:

- Review by the OIC of existing CCRC contract samples (provided under separate cover) to identify potential overlap with current insurance/annuity OIC regulatory responsibilities.
- OIC buy-in on additional needed CCRC oversight.
- Identify funding for additional OIC oversight efforts.
- Draft legislation to authorize the expansion of the State's regulation of CCRCs.

WASHINGTON

WA CCRA

CONTINUING CARE  
RESIDENTS ASSOCIATION

# Appendix

The following legislative language is shared to assist the Washington State Office of the Insurance Commission to become familiar with the steps taken in other states to regulate CCRCs. This language was downloaded September 5, 2021 from various websites and may not reflect the most current statutes and regulations . Also attached is a reference for the Florida House of Representatives Staff Analysis, House Bill 1033 which modified the Florida Statutes regarding CCRCs.

## Robust Financial Review

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.026 – Annual Report [SECTION 651.026.](#)  
[Annual reports., CHAPTER 651. CONTINUING CARE CONTRACTS, TITLE XXXVII. INSURANCE, Florida Constitution \(elaws.us\)](#)

Annually, on or before [date to be determined], the provider shall file an annual report and such other information and data showing its condition as of the last day of the preceding calendar year, except as provided in subsection (5). If the office does not receive the required information on or before May 1, a late fee may be charged. The office may approve an extension of up to 30 days.

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(a) Any change in status with respect to the information required to be filed under s. [651.022\(2\)](#).

(b) A financial report audited by an independent certified public accountant which must contain, for two or more periods if the facility has been in existence that long, all of the following:

1. An accountant's opinion and, in accordance with generally accepted accounting principles:

a. A balance sheet;

b. A statement of income and expenses;

c. A statement of equity or fund balances; and

d. A statement of changes in cash flows.

2. Notes to the financial report considered customary or necessary for full disclosure or adequate understanding of the financial report, financial condition, and operation.

(c) The following financial information:

1. A detailed listing of the assets maintained in the liquid reserve as required.

## Robust Financial Review

### Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.026 (cont.)

2. A schedule giving additional information relating to property, plant, and equipment having an original cost of at least \$25,000, so as to show in reasonable detail with respect to each separate facility original costs, accumulated depreciation, net book value, appraised value or insurable value and date thereof, insurance coverage, encumbrances, and net equity of appraised or insured value over encumbrances. Any property not used in continuing care must be shown separately from property used in continuing care;
  3. The level of participation in Medicare or Medicaid programs, or both;
  4. A statement of all fees required of residents, including, but not limited to, a statement of the entrance fee charged, the monthly service charges, the proposed application of the proceeds of the entrance fee by the provider, and the plan by which the amount of the entrance fee is determined if the entrance fee is not the same in all cases;
  5. Any change or increase in fees if the provider changes the scope of, or the rates for, care or services, regardless of whether the change involves the basic rate or only those services available at additional costs to the resident;
  6. If the provider has more than one certificated facility, or has operations that are not licensed under this chapter, it shall submit a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of cash flows for each facility licensed under this chapter as supplemental information to the audited financial report; and
  7. The management's calculation of the provider's debt service coverage ratio, occupancy, and days cash on hand for the current reporting period.
- (d) Such other reasonable data, financial statements, and pertinent information as the commission or office may require with respect to the provider or the facility, or its directors, trustees, members, branches, subsidiaries, or affiliates, to determine the financial status of the facility and the management capabilities of its managers and owners.

## Robust Financial Review

### Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.026 (cont.)

(e) Each facility shall file with the office annually, together with the annual report required by this section, a computation of its minimum liquid reserve calculated as prescribed by the commission.

(f) If, due to a change in generally accepted accounting principles, the balance sheet, statement of income and expenses, statement of equity or fund balances, or statement of cash flows is known by any other name or title, the annual report must contain financial statements using the changed names or titles that most closely correspond to a balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows.

(3) The commission shall adopt by rule additional measures of assessing the financial viability of a provider.

(4) If the provider is an individual, the annual statement shall be sworn to by him or her; if a limited partnership, by the general partner; if a partnership other than a limited partnership, by all the partners; if any other unincorporated association, by all its members or officers and directors; if a trust, by all its trustees and officers; and, if a corporation, by the president and secretary thereof.

(5) A provider may declare at the time of application a fiscal year other than the calendar year, and may use such fiscal year for its accounting period. A provider may subsequently adopt a fiscal year upon providing the office with a copy of the Internal Revenue Service approval of such change, if such approval is required. The annual report filing with the office must be made within 120 days of the last day of the fiscal year of the provider.

(6) The workpapers, account analyses, descriptions of basic assumptions, and other information necessary for a full understanding of the annual statement of a provider as filed with the office shall be made available for visual inspection by the office at the facility or, if the office requests, at another agreed-upon site. Photocopies may not be made unless consented to by the provider.



## Robust Financial Review

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.026 (cont.)

- (7) A filing fee in the amount of \$xxxx shall accompany each annual report required by this section.
- (8) All financial reports and any supplemental financial information submitted to the office shall be prepared in conformity with generally accepted accounting principles.
- (9) The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable form compatible with the electronic data format specified by the commission.
- (10) By [date to be determined] of each year, the office shall publish on its website an annual industry report for the preceding calendar year which contains all of the following:
  - (a) The median days cash on hand for all providers.
  - (b) The median debt service coverage ratio for all providers.
  - (c) The median occupancy rate for all providers by setting, including independent living, assisted living, skilled nursing, and the entire facility.
  - (d) Documentation of the office's compliance with the requirements relating to examination timeframes. The documentation must include the number of examinations completed in the preceding calendar year, the number of such examinations for which the report has been issued, and the percentage of all examinations completed within the statutorily required timeframes.
  - (e) The number of annual reports submitted to the office pursuant to this section in the preceding calendar year and the percentage of such reports that the office has reviewed in order to determine whether a regulatory action level event has occurred.

## Robust Financial Review

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.0261. Quarterly and monthly statements- [Chapter 651 Section 0261 - 2019 Florida Statutes - The Florida Senate \(flsenate.gov\)](#)

(1) Within 45 days after the end of each fiscal quarter, each provider shall file a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by commission rule and days cash on hand, occupancy, debt service coverage ratio, and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035. The last quarterly statement for a fiscal year is not required if a provider does not have pending a regulatory action level event, impairment, or a corrective action plan. If a provider falls below two or more of the thresholds set forth in s. 651.011(25) at the end of any fiscal quarter, the provider shall submit to the office, at the same time as the quarterly statement, an explanation of the circumstances and a description of the actions it will take to meet the requirements.

(2) If the office finds that such information is needed to properly monitor the financial condition of a provider or facility or is otherwise needed to protect the public interest, the office may require the provider to file:

(a) Within 25 days after the end of each month, a monthly unaudited financial statement of the provider or of the facility in the form prescribed by the commission by rule and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035.

(b) Such other data, financial statements, and pertinent information as the commission or office may reasonably require with respect to the provider or the facility, its directors, or its trustees; or with respect to any parent, subsidiary, or affiliate, if the provider or facility relies on a contractual or financial relationship with such parent, subsidiary, or affiliate in order to meet the financial requirements of this chapter, to determine the financial status of the provider or of the facility and the management capabilities of its managers and owners.

## Robust Financial Review

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.0261. Quarterly and monthly statements- (cont.)

(3) A filing under subsection (2) may be required if any of the following applies:

(a) The provider is:

1. Subject to administrative supervision proceedings;
2. Subject to a corrective action plan resulting from a regulatory action level event and for up to 2 years after the factors that caused the regulatory action level event have been corrected; or
3. Subject to delinquency or receivership proceedings or has filed for bankruptcy.

(b) The provider or facility displays a declining financial position.

(c) A change of ownership of the provider or facility has occurred within the previous 2 years.

(d) The provider is found to be impaired.

(4) The commission may by rule require all or part of the statements or filings required under this section to be submitted by electronic means in a computer-readable format compatible with an electronic data format specified by the commission.



## **Robust Financial Review**

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.018. - Administrative supervision

- [Chapter 651 Section 018 - 2021 Florida Statutes - The Florida Senate \(flsenate.gov\)](#)

The office may place a facility in administrative supervision pursuant to part VI of chapter 624..

## Robust financial review

State of California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 – 1790. – Annual Reports - [Statutes 2018-Combined with Cover.pdf \(ca.gov\)](#)

(a) Each provider that has obtained a provisional or final certificate of authority and each provider that possesses an inactive certificate of authority shall submit an annual report of its financial condition. The report shall consist of audited financial statements and required reserve calculations, with accompanying certified public accountants' opinions thereon, the reserve information required by paragraph (2), Continuing Care Provider Fee and Calculation Sheet, evidence of fidelity bond as required by Section 1789.8, and certification that the continuing care contract in use for new residents has been approved by the department, all in a format provided by the department, and shall include all of the following information: (1) A certification, if applicable, that the entity is maintaining reserves for prepaid continuing care contracts, statutory reserves, and refund reserves. 66 (2) Full details on the status, description, and amount of all reserves that the provider currently designates and maintains, and on per capita costs of operation for each continuing care retirement community operated. (3) Disclosure of any amounts accumulated or expended for identified projects or purposes, including, but not limited to, projects designated to meet the needs of the continuing care retirement community as permitted by a provider's nonprofit status under Section 501(c)(3) of the Internal Revenue Code, and amounts maintained for contingencies. The disclosure of a nonprofit provider shall state how the project or purpose is consistent with the provider's tax-exempt status. The disclosure of a forprofit provider shall identify amounts accumulated for specific projects or purposes and amounts maintained for contingencies. Nothing in this subdivision shall be construed to require the accumulation of funds or funding of contingencies, nor shall it be interpreted to alter existing law regarding the reserves that are required to be maintained. (4) Full details on any increase in monthly care fees, the basis for determining the increase, and the data used to calculate the increase. (5) The required reserve calculation schedules shall be accompanied by the auditor's opinion as to compliance with applicable statutes. (6) Any other information as the department may require. (b) Each provider shall file the annual report with the department within four months after the provider's fiscal yearend. If the complete annual report is not received by the due date, a one thousand dollar (\$1,000) late fee shall accompany submission of the reports.

## Robust financial review

State of California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 – 1790. – Annual Reports – (cont.)

If the reports are more than 30 days past due, an additional fee of thirty-three dollars (\$33) for each day over the first 30 days shall accompany submission of the report. The department may, at its discretion, waive the late fee for good cause. (c) The annual report and any amendments thereto shall be signed and certified by the chief executive officer of the provider, stating that, to the best of his or her knowledge and belief, the items are correct. (d) A copy of the most recent annual audited financial statement shall be transmitted by the provider to each transferor requesting the statement. (e) A provider shall amend its annual report on file with the department at any time, without the payment of any additional fee, if an amendment is necessary to prevent the report from containing a material misstatement of fact or omitting a material fact. (f) If a provider is no longer entering into continuing care contracts, and currently is caring for 10 or fewer continuing care residents, the provider may request permission from the department, in lieu of filing the annual report, to establish a trust fund or to secure a performance bond to ensure fulfillment of continuing care contract obligations. The request shall be made each year within 30 days after the provider's fiscal yearend. The request shall include the amount of the trust fund or performance bond determined by calculating the projected life costs, less the projected life revenue, for the remaining continuing care residents in the year the provider requests the 67 waiver. If the department approves the request, the following shall be submitted to the department annually: (1) Evidence of trust fund or performance bond and its amount. (2) A list of continuing care residents. If the number of continuing care residents exceeds 10 at any time, the provider shall comply with the requirements of this section. (3) A provider fee as required by subdivision (c) of Section 1791. (g) If the department determines a provider's annual audited report needs further analysis and investigation, as a result of incomplete and inaccurate financial statements, significant financial deficiencies, development of work out plans to stabilize financial solvency, or for any other reason, the provider shall reimburse the department for reasonable actual costs incurred by the department or its representative. The reimbursed funds shall be deposited in the Continuing Care Contract Provider Fee Fund. 1791

## Mandatory Actuarial Reporting

State of California Department of Social Services Continuing Care Contract Statutes Health and Safety Code Chapter 10 of Division 2 – 1792.10. – Actuarial Study Required - [Statutes 2018-Combined with Cover.pdf \(ca.gov\)](#)

(a) Each provider that has entered into Type A contracts shall submit to the department, at least once every five years, an actuary's opinion as to the provider's actuarial financial condition. The actuary's opinion shall be based on an actuarial study completed by the opining actuary in a manner that meets the requirements described in Section 1792.8. The actuary's opinion, and supporting actuarial study, shall examine, refer to, and opine on the provider's actuarial financial condition as of a 76 specified date that is within four months of the date the opinion is provided to the department. (b) Each provider required to file an actuary's opinion under subdivision (a) that held a certificate of authority on December 31, 2003, shall file its actuary's opinion before the expiration of five years following the date it last filed an actuarial study or opinion with the department. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department. (c) Each provider required to file an actuary's opinion under subdivision (a) that did not hold a certificate of authority on December 31, 2003, shall file its first actuary's opinion within 45 days following the due date for the provider's annual report for the fiscal year in which the provider obtained its certificate of authority. Thereafter, the provider shall file its required actuary's opinion before the expiration of five years following the date it last filed an actuary's opinion with the department. (d) The actuary's opinion required by subdivision (a) shall comply with generally accepted actuarial principles and the standards of practice adopted by the Actuarial Standards Board. The actuary's opinion shall also include statements that the data and assumptions used in the underlying actuarial study are appropriate and that the methods employed in the actuarial study are consistent with sound actuarial principles and practices. The actuary's opinion must state whether the provider has adequate resources to meet all its actuarial liabilities and related statement items, including an appropriate surplus, and whether the provider's financial condition is actuarially sound.

## Reporting Made Public

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.091 - Availability, distribution, and posting of reports and records; requirement of full disclosure. - [Chapter 651 Section 091 - 2021 Florida Statutes - The Florida Senate \(flsenate.gov\)](#)

- (1) Each continuing care facility shall maintain as public information, available upon request, records of all cost and inspection reports pertaining to that facility which have been filed with or issued by any governmental agency. A copy of each report shall be retained for at least 5 years after the date the report is filed or issued. Each facility shall also maintain as public information, available upon request, all annual statements that have been filed with the office. For purposes of this section, a management company or operator is considered an agent of the provider.
- (2) Every continuing care facility shall:
  - (a) Display the certificate of authority in a conspicuous place inside the facility.
  - (b) Post in a prominent position in the facility which is accessible to all residents and the general public a concise summary of the last examination report issued by the office, with references to the page numbers of the full report noting any deficiencies found by the office, and the actions taken by the provider to rectify such deficiencies, indicating in such summary where the full report may be inspected in the facility.
  - (c) Post in a prominent position in the facility, accessible to all residents and the general public, a notice containing the contact information for the office and the Division of Consumer Services of the department and stating that the division or office may be contacted for the submission of inquiries and complaints with respect to potential violations of this chapter committed by a provider. Such contact information must include the division's website and the toll-free consumer helpline and the office's website and telephone number.
  - (d) Provide notice to the president or chair of the residents' council within 10 business days after issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department and include a copy of such document.
  - (e) Post in a prominent position in the facility which is accessible to all residents and the general public a summary of the latest annual statement, indicating in the summary where the full annual statement may be inspected in the facility. A listing of any proposed changes in policies, programs, and services must also be posted.
  - (f) Distribute a copy of the full annual statement and a copy of the most recent third-party financial audit filed with the annual report to the president or chair of the residents' council within 30 days after filing the annual report with the office, and designate a staff person to provide explanation thereof.



## Reporting Made Public

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.091 - Availability, distribution, and posting of reports and records; requirement of full disclosure. – (cont.)

- (g) Deliver the information described in s. [651.085](#)(4) in writing to the president or chair of the residents' council and make supporting documentation available upon request.
- (h) Deliver to the president or chair of the residents' council a summary of entrance fees collected and refunds made during the time period covered in the annual report and the refund balances due at the end of the report period.
- (i) Deliver to the president or chair of the residents' council a copy of each quarterly statement within 30 days after the quarterly statement is filed with the office if the facility is required to file quarterly.
- (j) Upon request, deliver to the president or chair of the residents' council a copy of any newly approved continuing care or continuing care at-home contract within 30 days after approval by the office.
- (k) Provide to the president or chair of the residents' council a copy of any notice filed with the office relating to any change in ownership within 10 business days after such filing by the provider.
- (l) Make the information available to prospective residents pursuant to paragraph (3)(d) available to current residents and provide notice of changes to that information to the president or chair of the residents' council within 3 business days.
- (3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, obtain written acknowledgment of receipt, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:
  - (a) The contract to furnish continuing care or continuing care at-home.
  - (b) The summary listed in paragraph (2)(b).
  - (c) All ownership interests and lease agreements, including information specified in s. [651.022](#)(2)(b)8.
  - (d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's governing board and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.
  - (e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.

## Reporting Made Public

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.091 - Availability, distribution, and posting of reports and records; requirement of full disclosure. – (cont.)

- (e) Copies of the rules and regulations of the facility and an explanation of the responsibilities of the resident.
- (f) The policy of the facility with respect to admission to and discharge from the various levels of health care offered by the facility.
- (g) A copy of s. [651.071](#).
- (h) A copy of the resident's rights as described in s. [651.083](#).
- (i) Notice of the issuance of a final examination report or the initiation of any legal or administrative proceeding by the office or the department, including where the report or filing may be inspected in the facility, and that, upon request, an electronic copy or specific website address will be provided from which the document can be downloaded at no cost.
- (j) Notice that if the resident does not exercise the right to rescind a continuing care contract within 7 days after executing the contract, the resident's funds held in escrow pursuant to s. [651.055](#)(2) will be released to the provider.
- (k) A statement that distribution of the provider's assets or income may occur or a statement that such distributions will not occur.
- (l) Notice of any holding company system or obligated group of which the provider is a member.
- (4) A true and complete copy of the full disclosure document to be used must be filed with the office before use. A resident or prospective resident or his or her legal representative may inspect the full reports referred to in paragraph (2)(b); the charter or other agreement or instrument required to be filed with the office pursuant to s. [651.022](#)(2), together with all amendments thereto; and the bylaws of the corporation or association, if any. Upon request, copies of the reports and information shall be provided to the individual requesting them if the individual agrees to pay a reasonable charge to cover copying costs.

## Oversight of Use of CCRC Funds for Non-resident Purposes

**New York Codes, Rules and Regulations, Title 11 – INSURANCE, Chapter XIII - Life Care Communities, Part 350 - Continuing Care Retirement Communities, Section 350.11 - Transactions between a continuing care retirement community and its parent corporation, affiliates and subsidiaries - [New York Codes, Rules and Regulations, Part 350, Section 350.11 - Transactions between a continuing care retirement community and its parent corporation, affiliates and subsidiaries](#) | [New York Codes, Rules and Regulations](#) | [Justia](#)**

- (a) In any transactions between a continuing care retirement community and its parent corporation or any affiliate or subsidiary:
  - (1) the terms of the financial transactions shall be fair and equitable to the continuing care retirement community at the time of the transaction;
  - (2) charges or fees for services performed shall be reasonable; and
  - (3) expenses incurred and payments received shall be allocated to the continuing care retirement community on an equitable basis in conformity with customary accounting practices consistently applied.
- (b) The books, accounts and records of each person to all such transactions shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including accounting information as is necessary to support the reasonableness of the charges or fees to the respective persons.
- (c) Services to be provided to or by a continuing care retirement community by or to its parent corporation, or any affiliate or subsidiary shall be set forth in a services agreement signed by the contracting persons.
- (d) The records, reports and accounts of each continuing care retirement community shall be maintained separately from those of its parent corporation, affiliates and subsidiaries.
- (e) A continuing care retirement community shall not guarantee the obligations of its parent corporation or any affiliate or subsidiary.

**New York Codes, Rules and Regulations, Title 11 – INSURANCE, Chapter XIII - Life Care Communities, Part 350 - Continuing Care Retirement Communities, Section 350.11 - Transactions between a continuing care retirement community and its parent corporation, affiliates and subsidiaries – (cont.)**

(f)

(1) A continuing care retirement community shall not enter into any of the following transactions with its parent corporation or any affiliate or subsidiary unless it has obtained the superintendent's prior approval of the transaction: sales, purchases, exchanges, loans or extensions of credit, or investments, involving five percent or more of the continuing care retirement community's total assets, in excess of capital assets, as defined herein, at last year-end.

(2) A continuing care retirement community shall not enter into any of the following transactions with its parent corporation or any affiliate or subsidiary unless the continuing care retirement community has notified the superintendent in writing of its intention to enter into any such transaction at least 30 days prior to entering into the transaction and the superintendent has not disapproved it within that period:

(i) sales, purchases, exchanges, loans or extensions of credit, or investments involving less than five percent of the continuing care retirement community's total assets, in excess of capital assets, as defined herein, at last year-end;

(ii) rendering of services on a regular or systematic basis;

(iii) any management agreements, tax allocation agreements, service contracts, or cost sharing arrangements; or

(iv) any lease of real or personal property that does not provide for the rendering of services on a regular and systematic basis.

(3) Nothing in this subdivision shall be deemed to authorize or permit any transaction that would be otherwise contrary to law.

(4) The superintendent, in reviewing any transaction described in paragraph (1) or (2) of this subdivision will consider whether the transaction complies with the standards set forth in subdivisions (a) through (d) of this section and whether it may adversely affect the interests of residents of that continuing care retirement community.

(5) Any series of transactions designed to evade the provisions of this subdivision shall be subject to the filing requirements described in paragraph (1) or (2) of this subdivision.

## Resident Protection in Bankruptcy

Florida Constitution Title XXXVII Insurance Chapter 651 Continuing Care Contracts SECTION 651.071. Contracts as preferred claims on liquidation or receivership [Chapter 651 Section 071 - 2021 Florida Statutes - The Florida Senate \(flsenate.gov\)](#)

- (1) In the event of receivership or liquidation proceedings against a provider, all continuing care and continuing care at-home contracts executed by a provider are deemed preferred claims against all assets owned by the provider; however, such claims are subordinate to any secured claim. For purposes of s. [631.271](#), such contracts are deemed Class 2 claims.
- (2) Any other claims not set forth in subsection (1) shall be considered as general creditors' claims.
- (3) Nothing in this section shall be construed to impair the priority, with respect to the lien property, of mortgages, security agreements, or lease agreements or installment sales agreements on property not otherwise encumbered entered into by a provider with an issuer of bonds or notes, which has financed a facility, and which bonds are secured by a resolution, ordinance, or indenture of trust, if such mortgages or agreements were duly recorded at least 4 months prior to the institution of receivership or liquidation proceedings.

## Dispute Resolution Support

69O-193.062 : CONTINUING CARE CONTRACTS - Florida Administrative Rules, Law, Code, Register. -Mediation of Resident/Provider Disputes -[69O-193.062 : Mediation of Resident/Provider Disputes - Florida Administrative Rules, Law, Code, Register - FAC, FAR, eRulemaking \(flrules.org\)](#)

(1) Scope of Rule. This rule implements section 651.123, F.S., and applies to a dispute between a resident and a provider except a dispute over increases in monthly maintenance fees.....

(5) Request for Mediation. Upon the Office's receipt of a complaint that is within the scope of this rule, the Office shall furnish the provider (or the resident if the provider is the complainant) with the details of the complaint. The resident and the provider shall have 21 days from receipt of that notification within which to resolve the matter. For good cause shown, the Office is authorized to extend this period for up to an additional 14 days. Good cause in this instance includes unavailability of the resident for health reasons, inability to contact the resident, or other impediments to the resident's ability to resolve the matter which the resident could not control and which cannot reasonably be remedied during the initial 21 day period. If the matter is not resolved within that period of time, the provider shall immediately notify the Office, in writing, that the matter is unresolved. A copy of that notification shall be furnished to the resident and the resident shall be advised of his right to mediate the dispute if he elects to do so. The cost of mediation shall normally be paid by the provider, except for second and subsequent mediations which shall be allocated as set forth in paragraph (9)(b). However, if the provider believes the complaint is frivolous, the provider may include in its notification that the matter remains unresolved, a written explanation as to why the provider believes the complaint is frivolous. That explanation shall be supplied to the resident and the resident shall be advised that, if he elects to mediate the complaint and the mediator determines that his complaint is frivolous, the costs of the mediation shall be charged to him and not to the provider....

(10) Arbitration. Any portion of a dispute which qualifies for mediation under this rule and is not settled through mediation may be submitted by a party to binding arbitration under rule 69O-193.063, F.A.C., if all parties agree in advance to be bound by the arbitrated result.

WASHINGTON

WA CCRA

CONTINUING CARE  
RESIDENTS ASSOCIATION

## Other Resources

House of Representatives Staff Analysis, House Bill 1033; July 2, 2019; Florida House of Representatives; 2019 Regular Session -

[h1033z1.IBS.PDF \(flsenate.gov\)](https://www.flsenate.gov/h1033z1.IBS.PDF)



# WACCRA/OIC Meeting

May 21, 2021

Attendees: Jon Noski/OIC, Mandy Weeks-Green/OIC, Donna Kristaponis/WACCRA, Allan Affleck/WACCRA, Putnam Barber/WACCRA, Kim Hickman/WACCRA; Donna Christensen/WACCRA Lobbyist





## **WACCRA in brief**

### **Our purpose**

Educating present and future residents on relevant CCRC topics, Supporting and collaborating with the CCRC executive teams to achieve our mutual and common goals, and Advocating for CCRC resident's rights.

### **Key achievement to date**

Orchestrated the initial Washington State law recognizing and protecting CCRC residents.

### **Beneficiaries of the new law**

More than 8000 seniors in 23 CCRCs in Washington State, and their families.

### **WACCRA members**

As of May 2021 some 850 CCRC residents, relatives and other individuals who want to learn about CCRCs are WACCRA members. Members live in 11 different CCRCs: Emerald Heights, Horizon House, Mirabella, Panorama, Parkshore, Riverview, Skyline, Tacoma Lutheran, The Hearthstone, Timber Ridge at Talus, and Wesley Des Moines.

## Today's Meeting Agenda

- Update from OIC on LTC legislation/regulation
- WACCRA concerns about financial stability of CCRCs in Washington
  - Concerns regarding contractual entrance fee refunds
  - Adequacy of reserves for the provision of Long-Term Care
  - Appropriate use of financial reserves by management
  - Bankruptcy protections
- Review of other States' regulatory protections for CCRC residents
  - Recent strengthening of laws in California, Florida and New Mexico
- CCRC Regulation in Washington – where does it fit?
  - Long term care coverage component
  - Adequacy and monitoring of reserves
  - Contract holder advocacy
- Next Steps

## Status of Long-term Care Legislative Issue

- Previous discussion indicated the OIC was concerned about the stability of the Long-term Care market and was considering modifications to protect consumers in cases of liquidation
- Update?

## CCRC Residents' Financial Concerns

- Residents seek assurance of the financial stability of their CCRC and its ability to meet its future obligations
  - Independent verification that the CCRC can meet its long-term obligations
    - Independent confirmation that the refund of their entrance fee is assured
    - Assurance that Assisted Living, Skilled Nursing and Memory Care facilities have sufficient capacity to accommodate needed care in the future
  - Guarantees that funds paid by current residents are not being diverted by management to support initiatives not related to the facility where they live
  - Protection of residents in bankruptcy
    - Continued care of residents – independent living through long-term care
    - Residents as secured parties, versus unsecured creditors

## WACCRA Legislative Review

- WACCRA subcommittee was formed to gather information on how CCRCs are regulated in various States. States were selected based on a variety of characteristics including:
  - Size of senior population
  - Length of experience with CCRCs
  - Recent legislative activity
- States' legislative approaches to a variety of issues regarding CCRCs were reviewed and subjectively rated as Weak/Average/Strong, or not available or articulated in legislative materials
- Washington State's legislation was likewise analyzed

## WACCRA Legislative Review

- Four states stood out as providing robust protections for seniors

	Florida	New Mexico	New York	California
Active, ongoing review of CCRC operations and financials	★		★	★
Specific fines and penalties imposed for non-compliance		★	★	★
Actuarial disclosure requirements		★		★
Resident complaint procedures/requirements	★		★	★

See Appendix for additional analysis on these and other states researched by WACCRA

## CCRC Regulation in Washington – where does it fit?

- States have taken different approaches to CCRC regulation
  - Of the states reviewed, regulatory departments included Public Health, Insurance and Consumer Affairs
  - New York, Florida and California have multiple departments responsible for CCRC monitoring and enforcement with all three including their insurance departments
- Where does the OIC see its responsibility for CCRC regulation?
  - Is there an insurance arrangement for LTC under a CCRC contract? Most residents take a federal tax deduction for a portion of the fees they pay as prepaid medical expenses
  - Do the significant funds being paid in entrance fees for care provided in the future mimic an annuity?
  - How should current and future residents be protected should the CCRC fail?
- What other regulatory departments should be included or educated about the potential CCRC issues?

Next Steps?



# Appendix

	Washington	New York	California	Florida	Pennsylvania	New Mexico
<b>Agency</b>	Department of Social & Health Services (DSHS); Attorney General for resident complaints	Department of Financial Services, Public Health and Insurance Departments	Department of Social Services	Office of Insurance Regulation and Agency for Health Care Regulation	Department of Insurance	Aging and Long Term Care Department
<b>Reporting (consumer protection)</b>	Average	Average	Average	Average	Average	Average
<b>Regulation (oversight; review)</b>	Weak	Strong	Strong	Strong	Average	Average
<b>ENFORCEMENT</b>	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations
<b>Fines and penalties</b>	Weak	Strong	Strong	Average	Strong	Strong
<b>De-licensing</b>	Weak	Not apparent in regulations	Strong	Not apparent in regulations	Strong	Not apparent in regulations
<b>Litigation (private or A.G.)</b>	Average	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations	Not apparent in regulations	Average
<b>Dispute Resolution</b>	Not apparent in regulations	Strong	Not apparent in regulations	Strong	Not apparent in regulations	Not apparent in regulations
<b>Resident rights enumeration</b>	Average	Average	Average	Average	Average	Average
<b>Resident complaint procedure</b>	Average	Strong	Strong	Strong	Weak	Average

Interpretation of the Strength of Legislation

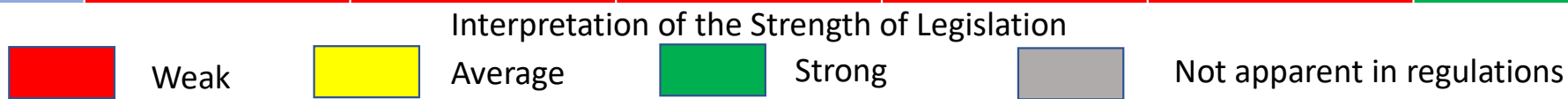
 Weak

 Average

 Strong

 Not apparent in regulations

	Washington	New York	California	Florida	Pennsylvania	New Mexico
Reserves (funded)	N/A	Average	Average	Average	Average	Strong
Reserves (balance sheet only)	Weak	N/A	N/A	N/A	N/A	N/A
Actuarial mandated	Not apparent in regulations	Not apparent in regulations	Strong	Not apparent in regulations	Not apparent in regulations	Strong
Actuarial disclosed to residents	N/A	N/A	Not apparent in regulations	N/A	N/A	Strong
Refundable entrance fees protected?	Weak	Weak	Weak	Weak	Weak	Weak
Disclosure / preapproval	Average	Average	Average	Average	Average	Average
"Affiliate" oversight (mgt. companies)	Weak	Average	Average	Average	Average	Average
Plan for resident relocation upon closure	Weak	Weak	Weak	Weak	Weak	Strong



Based on review of online sources of state specific regulations as of May 2021



ZIEGLER INVESTMENT BANKING

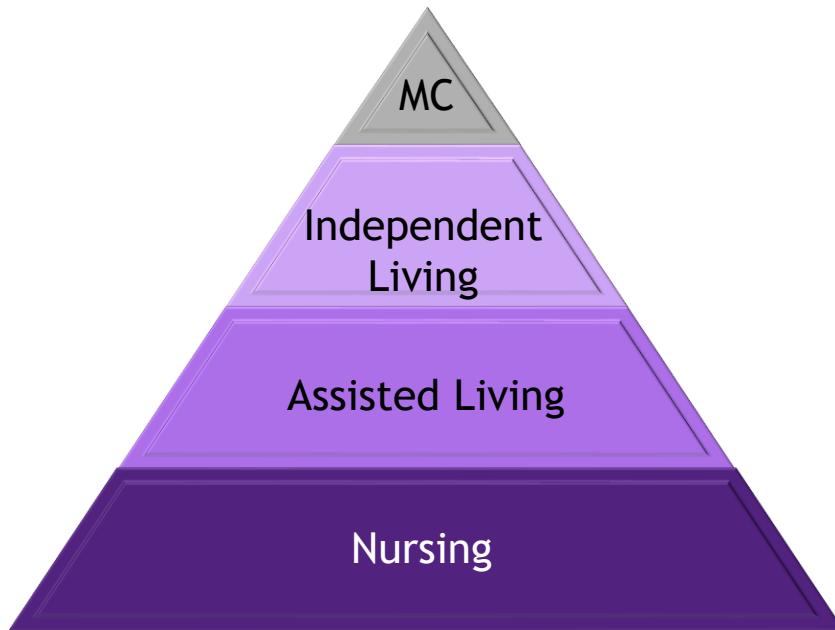
# CCRC/LPC GROWTH TRENDS: ZIEGLER CCRC NATIONAL PROFILE MODULE

# DEFINITIONS

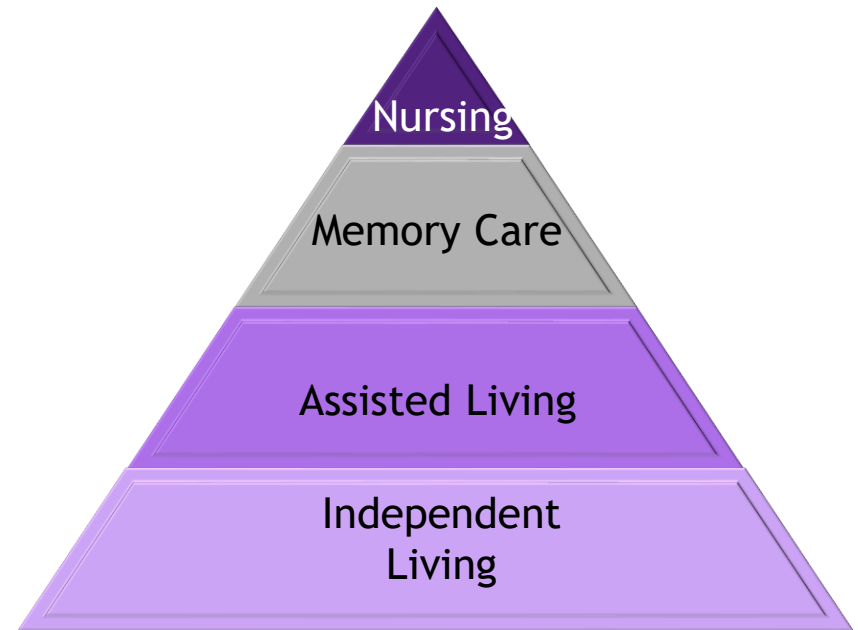
**CCRC/LPC:** Age-restricted properties that include a combination of independent living, assisted living and skilled nursing services (or independent living and skilled nursing) available to residents all on one campus. Resident payment plans vary and include entrance fee, condo/co-op and rental programs.

# WHAT IS A CCRC/LIFE PLAN COMMUNITY?

- “Modern” vs. “Evolved” (Purpose-built vs. Non-purpose-built)
  - Modern → “purpose-built”
  - Evolved → nursing first, then ILU



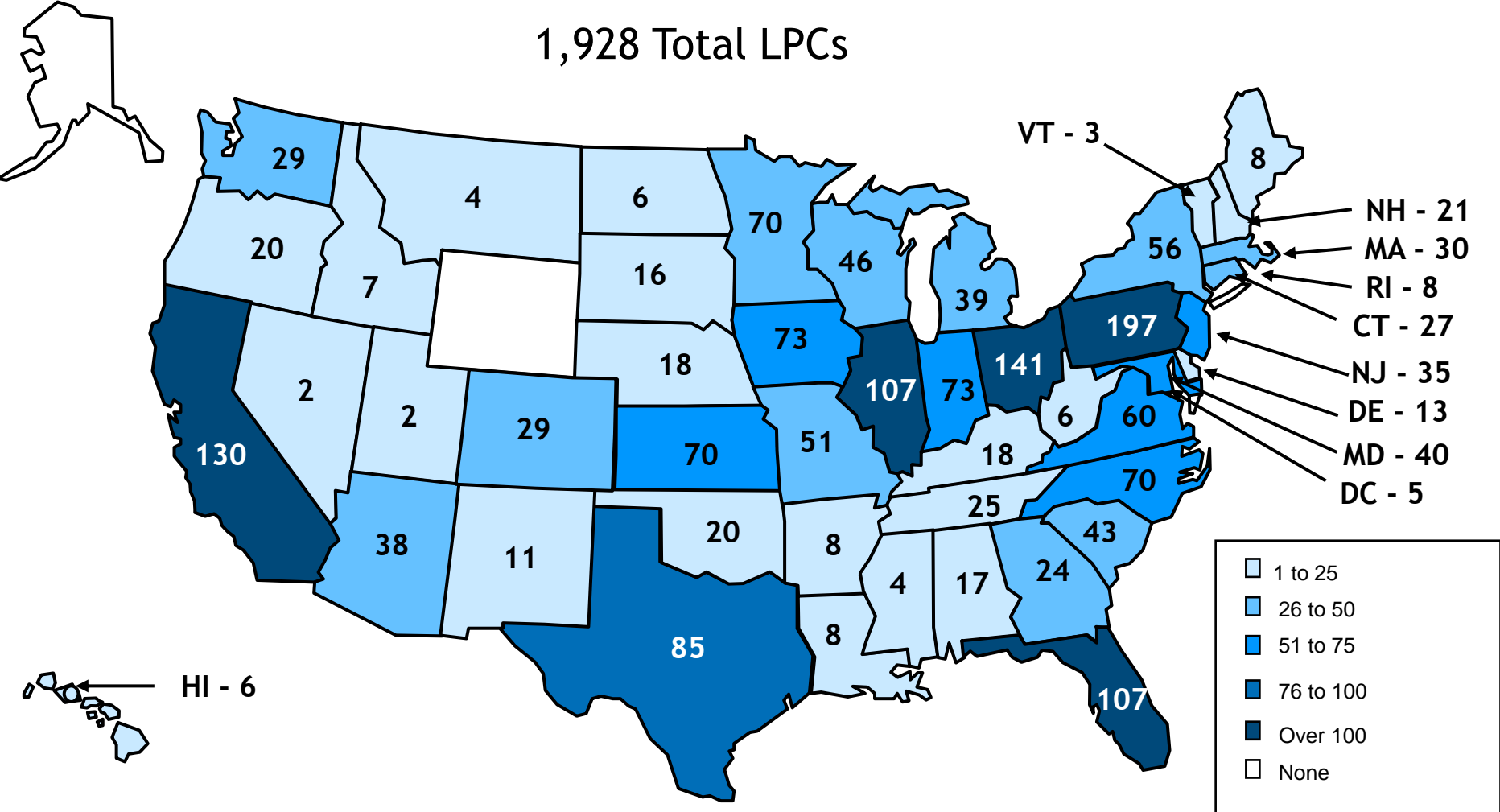
**Historical Business Model**



**Repositioned Business Model**

# NATIONAL LPC (CCRC) DATABASE NFP AND FP PROVIDERS

1,928 Total LPCs



Source: Ziegler Investment Banking, October, 2022  
LPC defined as having at least IL and SN on the same campus; in many cases, also includes AL

# NATIONAL LPC/CCRC PROFILE

**Life Plan Communities  
(LPCs)**

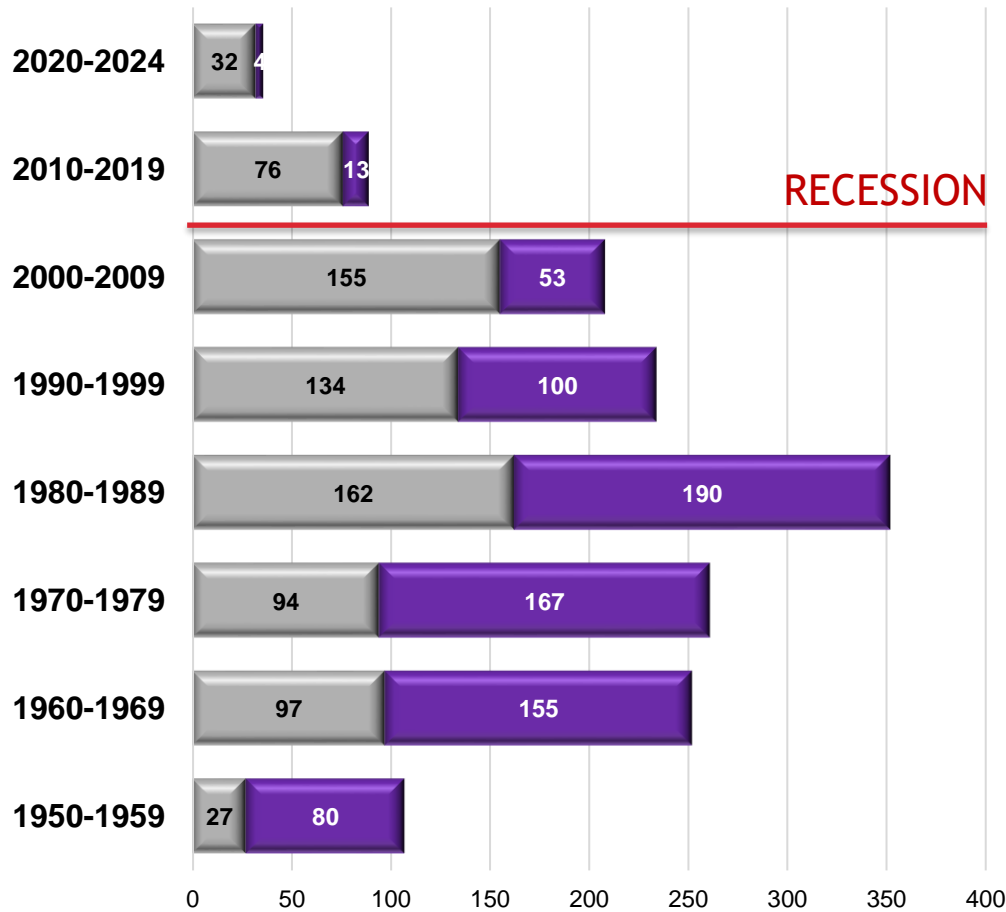
**1,930 communities  
600,000 residents**

- Roughly 75% of LPCs nationally are sponsored by not-for-profit (NFP) organizations
- Among NFP Life Plan Communities:
  - 71% are faith-based
  - 2% are sponsored by a Not-for-Profit Fraternal organization (e.g. Masons)
  - .8% are military-rooted
- In total, roughly 67% are sponsored by a multi-site organization
  - 84% among for-profit owned LPCs
  - 62% among NFP sponsored LPCs



# CCRC/LIFE PLAN COMMUNITY GROWTH

CCRC Incremental Growth, By Type  
1950 to Present



**SLOWDOWN IN LPC GROWTH**

**INCREASED FP COMPETITION  
(NON-LPC)**

**MAJORITY OF LPCs ARE NFP  
SPONSORED**

**NEW GROWTH  
INCREASINGLY w/o SN**

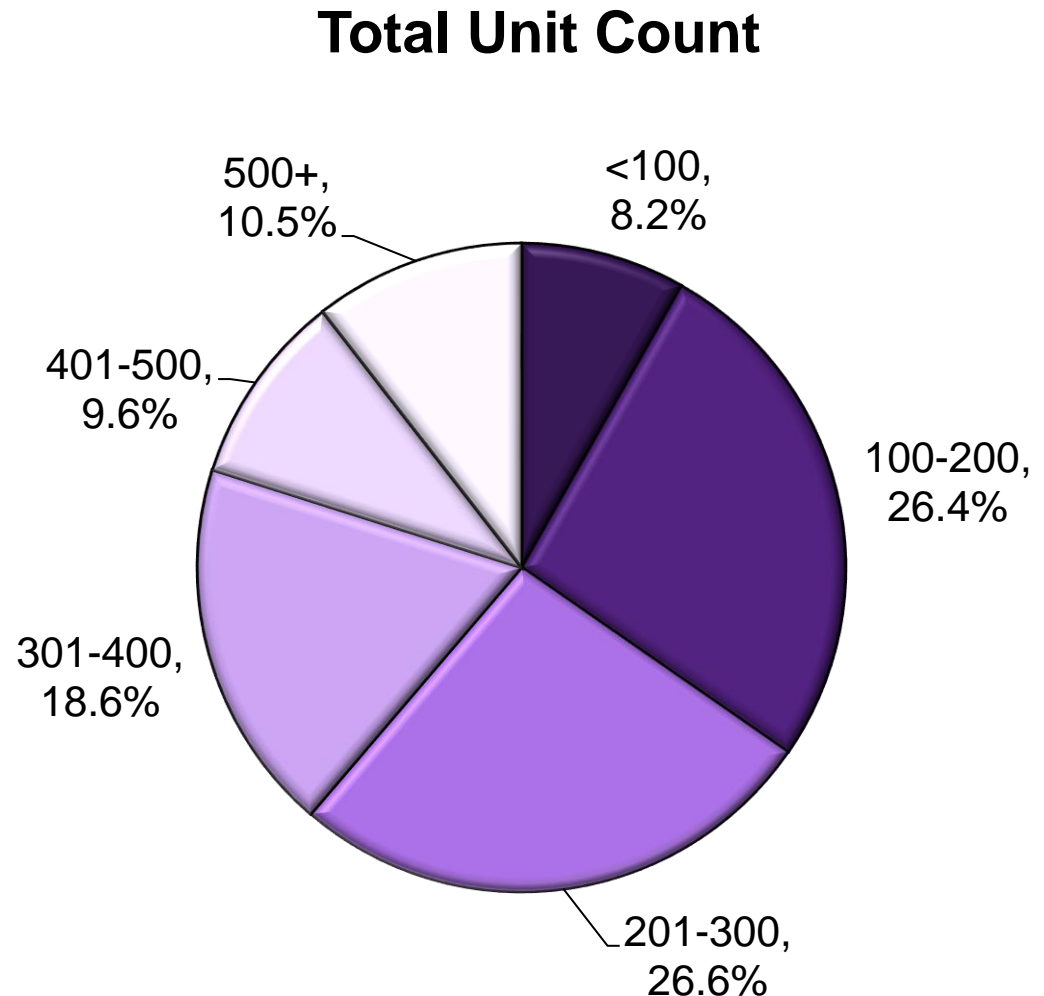
Source: Ziegler LPC (CCRC) Listing; Sept. 2021; Projections for 2021-2024

Note, a small proportion of communities are excluded as year of opening is unknown as well as pre-1950 openings

# ZIEGLER NATIONAL LPC LISTING & PROFILE

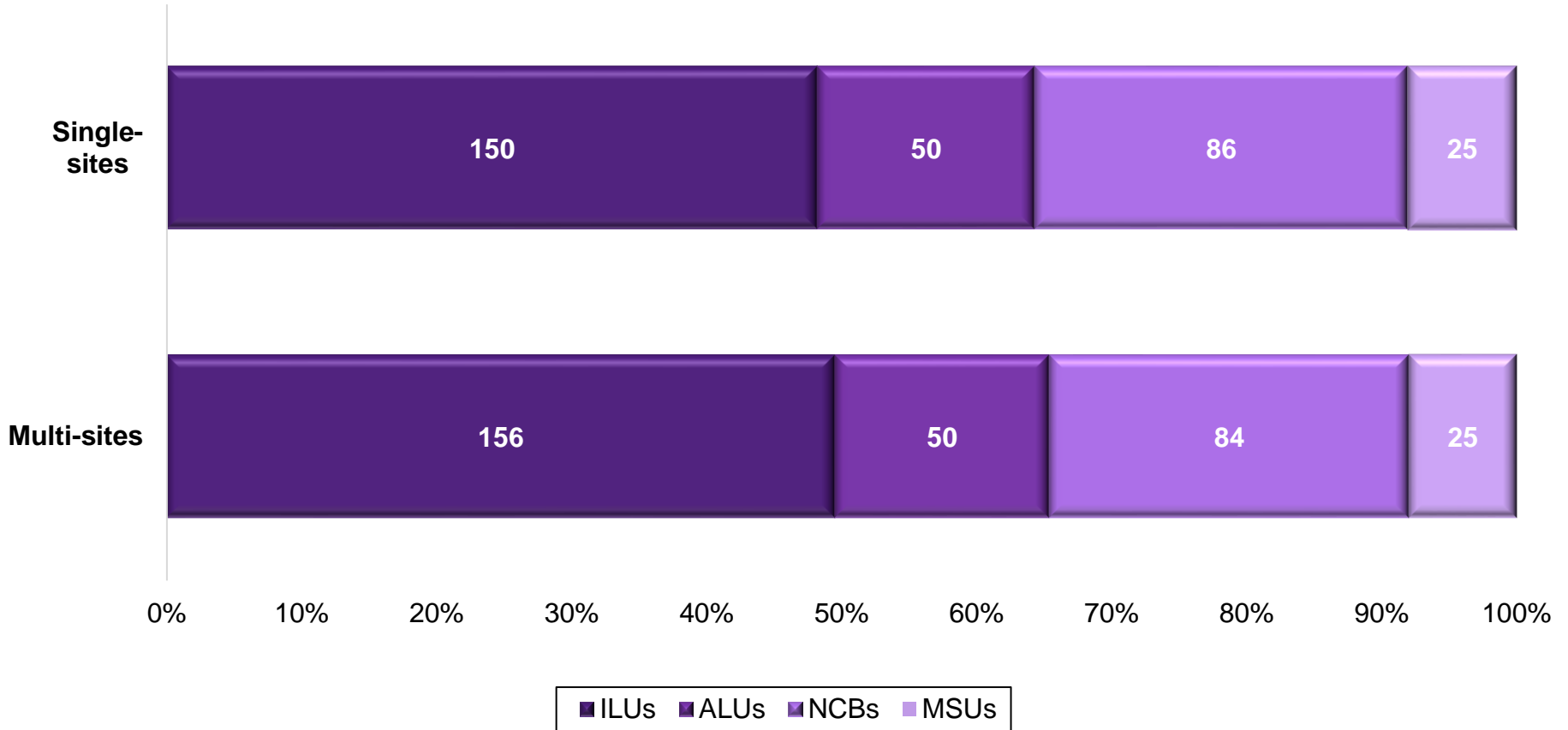
## LPC SIZE: NUMBER OF UNITS

- Largest proportion of Life Plan Communities are between 100 and 300 total units
- Median number of units:
  - IL is 118
  - AL is 42
  - MS is 20
  - SN is 68



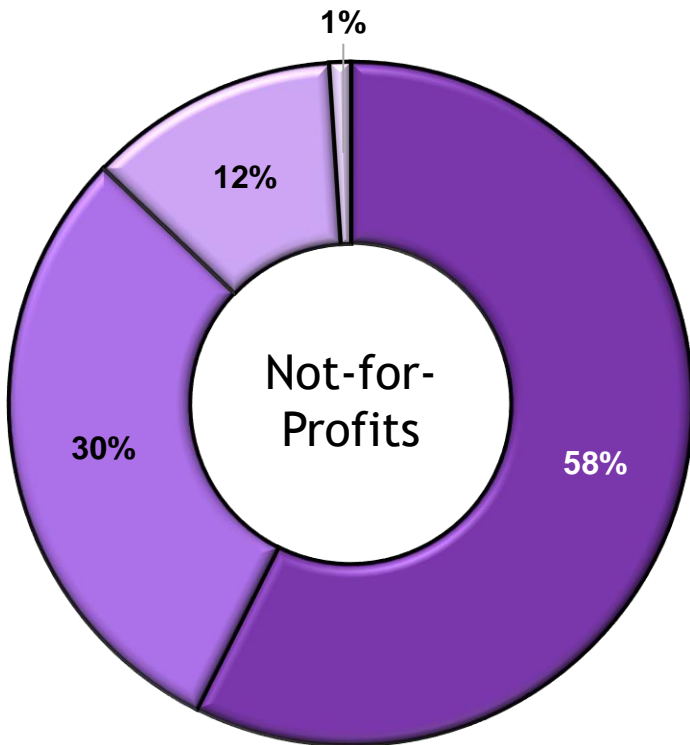
# LIFE PLAN COMMUNITIES: UNIT MIX

Average Number of Units by Level



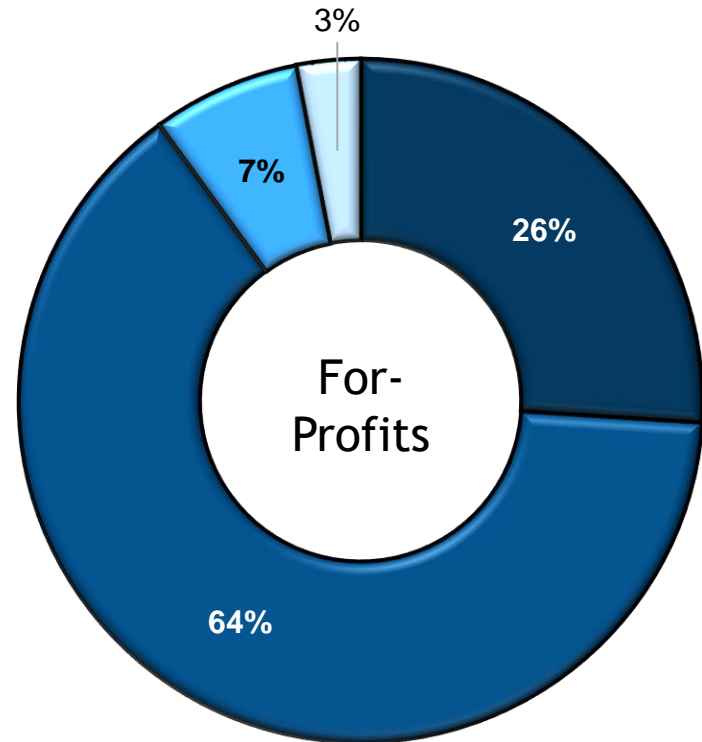
# LIFE PLAN COMMUNITIES: PREDOMINANT CONTRACT TYPE

Predominant Contract Type



■ EFee ■ Rental ■ Blend ■ Equity

Predominant Contract Type



■ EFee ■ Rental ■ Blend ■ Equity

# ZIEGLER NATIONAL DATABASE

## TOP 10 MSAS (BY HIGHEST NUMBER OF LIFE PLAN COMMUNITIES)

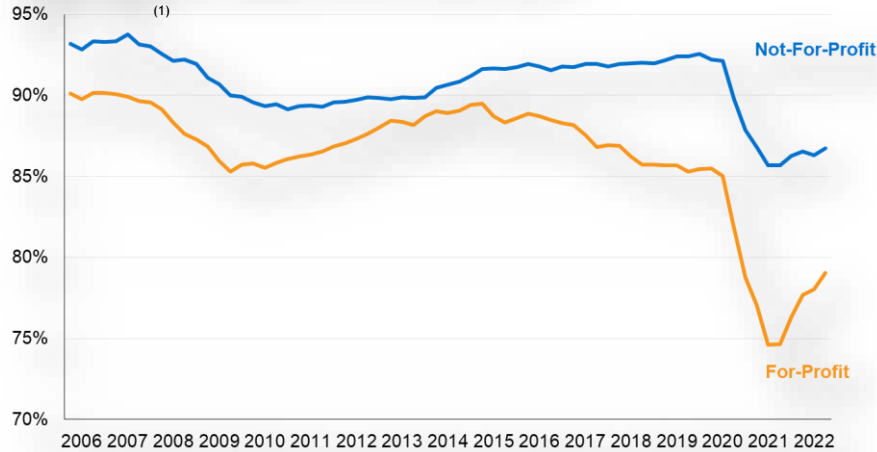
MSA Rank	Metropolitan Statistical Area (MSA)	# of CCRCs
8	Philadelphia, PA	86
3	Chicago, IL	61
1	New York, NY	37
30	Cincinnati, OH	36
16	Minneapolis, MN	34
2	Los Angeles, CA	34
6	Washington, DC	32
20	St. Louis, MO	29
10	Phoenix, AZ	29
7	Miami, FL	25

# LIFE PLAN COMMUNITY CLOSURES

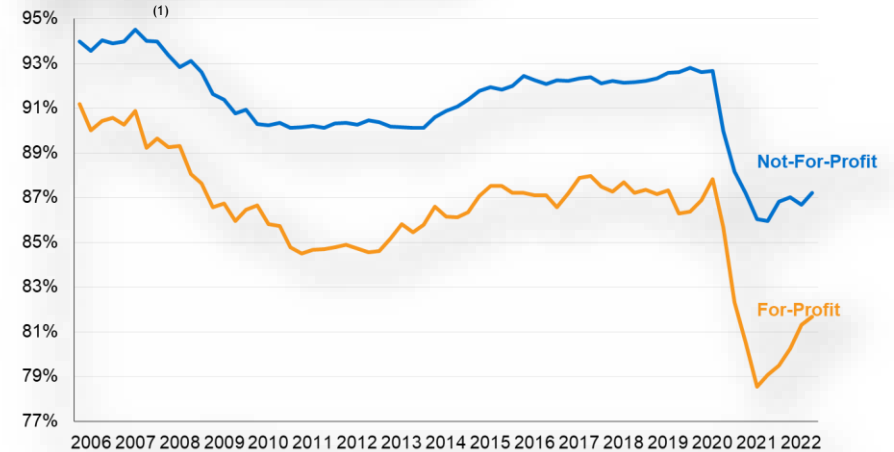
- The greatest number of closures nationally is among freestanding nursing homes
- Very few closures nationally among Life Plan Communities
  - Recorded eight closures among LPCs throughout the entire country from 2016-YTD 2022
  - Synopsis of those eight communities:
    - “Upside down” model whereby they were majority skilled nursing with very few Independent Living residences; more of a nursing home than a modern-day LPC
    - Often in rural markets (e.g. Evangelical Lutheran Good Samaritan Society, SD, has accounted for a number of the closures)

# OCCUPANCY – THE CURRENT STORY

Seniors Housing Occupancy by Profit Status; MAP31  
4Q05 – 2Q22



CCRC Occupancy by Profit Status; MAP31  
4Q05 – 2Q22



Q2 2022 Occupancy	LPC	Non-LPC
IL Segment	89.1%	81.4%
AL Segment	84.8%	79.3%
MC Segment	84.0%	78.9%
SN Segment	80.5%	78.3%

Q2 2022 NFP LPC Occupancy	LPC
Mid-Atlantic	89.7%
West North-Central	89.5%
Southeast	88.1%
Southwest	86.6%
Mountain	85.4%
Northeast	85.2%
Pacific	84.8%
East North Central	83.9%

Source:  
NIC MAP; Q2 2022