United States Government Accountability Office

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

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GAO-10-611

June 2010

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Highlights

Highlights of GAO-10-611, a report to the Chairman, Special Committee on Aging, U.S. Senate

OLDER AMERICANS

Continuing Care Retirement Communities Can Provide Benefits, but Not Without Some Risk

Why GAO Did This Study

A growing number of older Americans are choosing continuing care retirement communities (CCRC) to help ensure that their finances in retirement will cover the cost of housing and care they may require. However, recent economic conditions have placed financial stress on some CCRCs.

GAO was asked to (1) describe how CCRCs operate and the risks they face, (2) describe how state laws address these risks, (3) describe risks that CCRC residents face, and (4) describe how state laws address these risks. To review these areas, GAO analyzed state statutory provisions pertaining to CCRCs with respect to financial oversight and consumer protection, met with selected state regulators, and interviewed CCRC providers, resident's associations, and consumer groups.

While GAO is not recommending specific action at this time, the potential risks to CCRC residents—as well as the potential for this industry to grow—highlight the importance of states being vigilant in their efforts to help ensure adequate consumer protections for residents.

GAO provided a draft copy of this report to the Department of Health and Human Services and the National Association of Insurance Commissioners for review, but neither commented on the draft.

View GAO-10-611 or key components.
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What GAO Found

CCRCs can benefit older Americans by allowing them to move among and through independent living, assisted living, and skilled nursing care in one community. They offer a range of contract types and fees that are designed to provide long-term care and transfer different degrees of the risk of future cost increases from the resident to the CCRC. Developing CCRCs can be a lengthy, complex process that requires significant long-term financing and accurate revenue and cost projections. Once operational, risks to long-term viability include declining occupancy and unexpected cost increases. While few CCRCs have failed, challenging economic and real estate market conditions have negatively affected some CCRCs' occupancy and financial condition.

Seven of the eight states GAO reviewed had CCRC-specific regulations, and these states varied in the extent to which they helped ensure that CCRCs addressed risks to their long-term viability. For example, while each licensed and required periodic financial information from CCRCs, only four either examined trended financial data or required periodic actuarial reviews. The lack of a long-term focus creates a potential mismatch with residents' concerns over their CCRCs' long-term viability. CCRC bondholders and rating agencies, which focus on long-term viability, often place requirements on CCRCs that go beyond those used by states in their licensing and oversight activities. Regulators and CCRC providers GAO spoke with generally believed that current regulations were adequate, but some consumer groups felt more comprehensive oversight was needed.

While CCRCs offer long-term residence and care in the same community, residents can still face considerable risk. For example, CCRC financial difficulties can lead to unexpected increases in residents' monthly fees. And while CCRC bankruptcies or closures have been relatively rare, and residents have generally not been forced to leave in such cases, should a CCRC failure occur, it could cause residents to lose all or part of their entrance fee. Residents can also become dissatisfied if CCRC policies or operations fall short of residents' expectations or there is a change in arrangements thought to be contractually guaranteed, such as charging residents for services that were previously free.

Most of the states GAO reviewed take steps to protect the interests of CCRC residents, such as requiring the escrow of entrance fees and mandating certain disclosures. For example, a number require contracts to be readable, but not all review the content of contracts even though some industry participants questioned residents' ability to fully understand them. Also, not all require disclosure of policies likely to have a significant impact on residents' satisfaction, such as policies for moving between levels of care. According to an industry study, 12 states do not have CCRC-specific regulations, meaning an entity in 1 state may be subject to such regulations while a similar entity in another state may not, and consumers in some states may not receive the same protections as those in others. In contrast, some CCRCs voluntarily exceed disclosures and protections required by state regulations.

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Abbreviations

AAHSA	American Association for Homes and Services for the Aging
ASHA	American Seniors Housing Association
CCAC	Continuing Care Accreditation Commission
CCRC	Continuing Care Retirement Community
HHS	Department of Health and Human Services
NAIC	National Association of Insurance Commissioners
NCAL	National Center for Assisted Living

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United States Government Accountability Office
Washington, DC 20548

June 21, 2010

The Honorable Herb Kohl
Chairman
Special Committee on Aging
United States Senate

Dear Mr. Chairman:

A growing population of older Americans is seeking options for ensuring that their assets and income in retirement will cover the cost of their housing and health care needs. One option for meeting these long-term care needs is to enter a continuing care retirement community (CCRC), which aims to provide lifelong housing, household assistance, and nursing care in exchange for a sometimes sizable entrance fee and ongoing monthly fees. These communities may appeal to older Americans because they offer an independent lifestyle for as long as possible but also provide the reassurance that, as residents age or become sick or frail, they will receive the care they need. But choosing to enter a CCRC can be a difficult decision and is not without risks. Moving to a CCRC generally involves a significant financial and emotional investment, often with hundreds of thousands of dollars at stake. Many older Americans sell their homes, which are often their primary asset, to pay the required fees, and, as a result, their ability to support themselves in the long-run is inextricably tied to the long-term viability of their CCRC. Further, many CCRCs may be financially vulnerable during periods of economic decline—such as the recent downturn—that can result in tight real estate and credit markets.

This report, which responds to your interest in the financial risks associated with CCRCs and consumer protections for CCRC residents, describes

- how CCRCs operate and what financial risks are associated with their operation and establishment;
- how state laws address these risks and what is known about how adequately they protect CCRCs' financial condition;
- risks that CCRC residents face; and

- how state laws address these risks and what is known about their adequacy.

To describe how CCRCs are established, operated, and financed and the risks they face, we interviewed officials from eight CCRCs and obtained relevant documentation to understand their specific experiences developing and operating CCRC facilities. We selected these CCRCs based on a number of criteria, including size, nonprofit/for-profit status, and geographic location. In addition, we interviewed a variety of CCRC industry association officials and experts, including two attorneys who specialize in CCRCs and managers from national financial firms that are involved in the financing of CCRCs and other facilities for older Americans. To describe how states oversee CCRCs' compliance with financial viability and consumer protection requirements and what is known about the effectiveness of such requirements, we reviewed statutory provisions pertaining specifically to CCRCs with respect to financial oversight and consumer protection from eight selected states—California, Florida, Illinois, Ohio, New York, Pennsylvania, Texas, and Wisconsin—and interviewed regulators from those states. We selected these states based on a number of criteria, including extent of regulatory requirements, size of CCRC population, and geographic location. Understanding the extent of oversight the entities themselves receive—or the contracts residents sign—when they are not specifically regulated as CCRCs was beyond the scope of this work, and no national source of such information exists. We also interviewed national industry associations, actuaries specializing in CCRCs, attorneys specializing in senior issues, CCRC providers, national and state residents' associations, and officials involved with CCRC finance and debt ratings. Because we judgmentally selected the states and CCRCs we reviewed, the information we obtained cannot be generalized to additional states and CCRCs.

We conducted this performance audit from June 2009 to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CCRCs are one of a number of options older Americans may choose to meet housing and other daily needs and especially to receive long-term care, which Medicare and private health insurance typically do not cover and which can be extremely costly.[1] Older Americans may use a number of options to pay for their short- and long-term care as they age, including relying on savings or investments, purchasing long-term care insurance or annuities, entering into a reverse mortgage, or relying on government-financed programs such as Medicare and Medicaid.[2] For CCRCs specifically, many use the proceeds from the sale of their homes and any retirement assets to pay for the housing and care arrangements.

CCRCs are generally residential facilities established in a campus-like setting that provide access for older Americans to three levels of housing and care: independent homes or apartments where residents live much as they did in their own homes; assisted living, which provides help with the daily tasks of living; and skilled nursing care for those with greater physical needs. Most residents must be able to live independently when they enter into a contract with a CCRC, with the intent of moving through the three levels of care as their needs change.

According to industry sources, the CCRC model has existed for over 100 years, starting with religious and fraternal organizations that provided care for older Americans who turned over their homes and assets to those organizations. As of July 2009, some 1,861 individual CCRCs existed in the United States, most of them nonprofit organizations. Over the last 2 decades, the CCRC industry has grown and diversified, with religious, fraternal, nonprofit, and for-profit entities operating CCRCs of various sizes that have different structures, residential and care choices, and payment options.

CCRCs are primarily regulated by states rather than by the federal government. State CCRC regulation developed over time and in some instances grew out of the need to address financial and consumer

[1]Other options for short- and long-term care include home-based care, adult day care, and hospice or palliative care, as well as stand-alone assisted living and skilled nursing facilities.

[2]Medicare, the federal health care program for elderly and disabled individuals, covers up to 100 days of skilled nursing home care following a hospital stay but does not cover long-term care. Medicaid, the joint federal-state health care financing program for certain categories of low-income individuals, pays for the nursing home care of qualifying individuals who can no longer live at home.

protection issues, including insolvency, which arose in the CCRC industry in the 1970s and 1980s. 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.

While states primarily regulate CCRCs, Congress has considered proposals to introduce greater federal oversight. For example, in 1977 Representatives William Cohen and Gladys Spellman introduced a bill that would provide federal oversight of certain continuing care institutions that received Medicare or Medicaid payments or were constructed with federal assistance. The bill proposed, among other things, requiring that CCRC contracts clearly explain all charges and that CCRCs provide full financial disclosures, maintain sufficient financial reserves, and undergo an annual audit. While the bill did not pass, one industry source noted that several states at the time were developing or refining their own CCRC regulation.

CCRCs Can Help Ensure That Older Americans Have Long-Term Care, but Face Financial and Operational Risks

CCRCs Can Provide Older Americans with Ongoing Housing and Health Care Services

CCRCs offer older Americans a range of housing and health care options that include independent living, assisted living, and skilled nursing units all within the same community. CCRCs generally offer independent living units such as apartments, cottages, town homes, or small single-family homes for incoming residents who are relatively healthy and self-sufficient. They also provide residents opportunities to arrange for certain convenience services, including meals, housekeeping, and laundry and provide amenities such as fitness centers, libraries, health clinics, and emergency services. While residents may move back and forth among the levels of care to meet changing health needs, residents generally move to a CCRC's assisted living facility when they need assistance with specific

activities of daily living, including eating, dressing, and bathing. CCRCs' assisted living units are usually located separately from the independent living units and skilled nursing facilities. If a resident needs 24-hour monitoring, assistance, and care, CCRCs can offer skilled nursing care that includes supervision by nurses or other medical staff.

CCRCs typically offer one of three general types of contracts that involve different combinations of entrance and monthly fee payments. Some CCRCs may offer residents a choice of the following contract types, while others may choose to offer only one.

- Type A, extensive or Life Care contracts, include housing, residential services, and amenities—including unlimited use of health care services—at little or no increase in monthly fees as a resident moves from independent living to assisted living, and, if needed, to nursing care. Type A contracts generally feature substantial entrance fees but may be attractive because monthly payments do not increase substantially as residents move through the different levels of care. As a result, CCRCs absorb the risk of any increases in the cost of providing health and long-term care to residents with these contracts.

- Type B, or modified contracts, often have lower monthly fees than Type A contracts, and include the same housing and residential amenities as Type A contracts. However, only some health care services are included in the initial monthly fee. When a resident's needs exceed those services, the fees increase to market rates. For example, a resident may receive 30, 60, or 90 days of assisted living or nursing care without an increased charge. Thereafter, residents would pay the market daily rate or a discounted daily rate—as determined by the CCRC—for all assisted living or nursing care required and face the risk of having to pay high costs for needed care.

- Type C, or fee-for-service contracts, include the same housing, residential services, and amenities as Type A and B arrangements but require residents to pay market rates for all health-related services on an as-needed basis. Type C contracts may involve lower entrance and monthly fees while a resident resides in independent living, but the risk of higher long-term care expenses rests with the resident.

- Some CCRCs offer a fourth type of contract, Type D or rental agreements, which generally require no entrance fee but guarantee access to CCRC services and health care. Type D contracts are essentially pay-as-you-go:

CCRCs charge monthly fees of residents based on the size of the living unit and the services and care provided.[3]

According to CCRC providers, prospective residents are generally screened to determine their general health status in order to determine the best living situation. Prospective residents must also submit detailed financial information that includes income and tax records to ensure that they can pay CCRC fees over time. Industry participants noted that entry fees—typically made as a large lump-sum payment—can represent a substantial portion, if not all, of potential residents' assets.[4] Residents must also be able to pay monthly fees, which typically cover housing and convenience services associated with housing and are based on the type of contract, size of the living unit, and level of care provided. As we have seen, these fees may also include all or some health care services. CCRCs use a variety of techniques to determine fees, including actuarial studies and financial analyses. For example, one CCRC we reviewed uses actuarial studies with mortality and morbidity tables to assess the likely inflow, outflow, and turnover of the CCRC occupants. Other CCRCs use some combination of resident statistics, Medicare and Medicaid reimbursement rates, marketing needs, and operating costs. Table 1 provides information on the range of entrance and monthly fee costs for the eight CCRCs we reviewed and illustrates how—depending on contract type—costs may change for consumers as they move among the independent, assisted, and skilled nursing living units.

[3]Some CCRCs may also admit consumers into their nursing home facilities as if it were a stand-alone facility, and have them pay the nursing home per diem rate or market rate. Other CCRCs may temporarily admit older Americans directly into assisted living or nursing facilities to broaden their customer base and generate revenue.

[4]In this report, we use the term "industry participants" to refer to those entities with a role in the CCRC industry, including CCRCs, regulators, actuaries, attorneys that specialize in housing and health care for older Americans, and industry and resident associations.

Table 1: 2009 Entrance and Monthly Fees for Selected CCRCs by Contract Type

	Range of CCRC Fees by Contract Type[a]			
	A–Life Care	B–Modified	C–Fee for Service	D–Rental
Entry fee	$160,000 to $600,000	$80,000 to $750,000	$100,000 to $500,000	$1,800 to $30,000
Independent living monthly fee	$2,500 to $5,400	$1,500 to $2,500	$1,300 to $4,300	$900 to $2,700
Assisted living monthly fee	$2,500 to $5,400	$1,500 to $2,500[b]	$3,700 to $5,800	$4,700 to $6,500
Nursing care monthly fee	$2,500 to $5,400	$1,500 to $2,500[b]	$8,100 to $10,000[c]	$8,100 to $10,700[c]

Source: GAO analysis of information obtained from eight selected CCRCs.

[a]Fee ranges reflect different size living units among the CCRCs GAO visited, with smaller units being less expensive. The entrance and monthly fees above were for single occupancy. Additional fees may apply for double occupancy, additional meal service, or other amenities.

[b]Agreement provides 60 days of assisted living or skilled nursing care, after which the prevailing rate for either assisted living or skilled nursing services, less a 10 percent discount, is charged.

[c]One CCRC noted that their facility would bill Medicare Part A, Medicare Advantage plans, or any other available insurance for any qualified skilled nursing stays before billing the resident for nursing care, when available.

Establishing a CCRC Is a Complex Process That Involves Several Risks

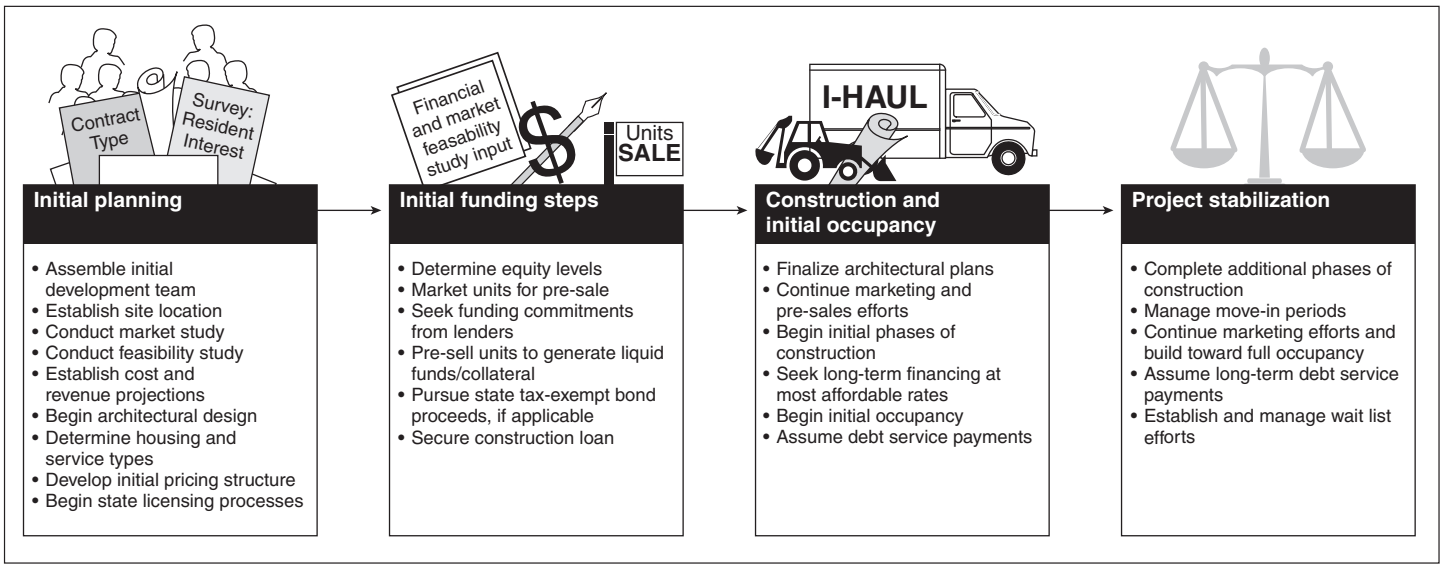
According to industry participants, building and operating a CCRC is a complex process that typically begins with an initial planning phase. During this phase, the company assembles a development team, makes financial projections, assesses market demand, and determines the kinds of housing and services to be offered.[5] Initial and longer-term planning also entails assessing funding sources and seeking funding commitments from investors and lenders, particularly construction loans and state tax-exempt bond proceeds, where applicable.[6] During the developmental

[5]Assessing market demand may occur through market and financial feasibility studies that assess key variables such as the number of older Americans that may demand CCRC or other living options, the income level of potential residents, average age and age subgroups within the immediate market area, housing values of prospective residents, marital, religious, or other personal characteristics, and interest in various architectural designs and amenities.

[6]Qualified governmental units are permitted to issue qualified private activity bonds to provide tax-exempt financing for certain private activities. In these cases, the qualified governmental unit generally acts as a conduit, meaning that the qualified governmental unit issues the bonds, but the nongovernmental entity receiving the benefit of tax-exempt financing is required to provide the funds to repay the bonds.

phase, developers will presell units to begin building capital to fund construction of CCRC housing and other facilities and begin construction. Once the initial phases of construction are complete, CCRC providers have move-in periods for new residents, continue marketing efforts to build toward full occupancy, complete construction, and begin making long-term debt service payments (fig. 1).

Figure 1: Summary of General Steps CCRC Developers Use to Establish and Finance CCRCs



Sources: GAO analysis; Art Explosion (images).

CCRCs, like other businesses, face a number of risks during the start-up phase. First, actual construction costs and consumer demand may not match developers' forecasts. To attract financing from lenders and ensure adequate underwriting for CCRC projects, developers need to generate sufficient pre-sales and deposits prior to construction to show a tangible commitment from prospective residents. In addition, facilities in the start-up stage need to reach full occupancy as quickly as possible in order to generate income that will not only cover operational costs once built but also help pay down construction loans. As a result, accurate projections of future revenues and costs are important as a CCRC becomes operational.

Second, entrance fees and monthly fees may ultimately prove to be inadequate to cover the CCRC's costs. CCRCs generally have to keep prices low enough to attract residents and stay competitive but high enough to meet short- and long-term costs. Determining appropriate fees can, in itself, be a complex process because it involves projecting a

number of variables into the future, including occupancy levels, mortality rates, medical and labor costs, and capital improvement costs. For this reason, many CCRCs use actuarial consultants to help in these determinations. CCRCs that set fees too low may have to significantly raise entrance and other fees to meet the costs of care and future capital improvements. Fee increases can take the form of larger-than-projected monthly fees for assisted living or nursing care and fees on other miscellaneous services, both of which can affect residents' long-term ability to pay and the competitive position of the CCRC in the marketplace.

CCRCs may face other financial risks, including unforeseen events that lead to higher-than-expected costs. For example, many nonprofit CCRCs rely on property tax exemptions when estimating CCRC costs and developing CCRC projects. According to industry associations and a state regulator, however, difficult economic times are causing some municipalities to look for new sources of revenue, and some may be reevaluating property tax exemptions previously granted to CCRCs. Loss of these exemptions can be very costly; for example, industry participants attributed one recent CCRC failure in Pennsylvania in part to the loss of its property tax exemption.

Established CCRCs Face Risks from Low Occupancy Levels and Challenging Market Conditions

Once operational, CCRCs generally depend on high occupancy rates to remain financially viable in the long term and may be at risk if occupancy levels drop below certain levels. Several industry participants—including actuaries, CCRC managers, and industry groups—noted that high occupancy and the ability to quickly fill vacancies is necessary for CCRCs to fund general operations, build financial reserves, including reserves to satisfy refund obligations with respect to entrance fees, when applicable. CCRCs' general operational model depends on having residents enter independent living units and pay entrance and monthly fees. The often large entrance fees can help CCRCs maintain cash reserves, and the monthly fees collected from independent living residents—whose cost to the CCRC is generally lower—help subsidize care for residents who require assisted living or nursing care. CCRCs also rely on high occupancy levels and the ability to quickly fill vacancies to help finance refunds of entrance fees, which under some contracts may be required when a

Erickson Retirement Communities

Erickson Retirement Communities was one of the largest CCRC developers. Typically it built large non-profit CCRC facilities, each with 1,500 to 2,000 units, for middle-income residents. Erickson established a construction firm to build CCRCs and a management company to help operate its facilities. Another part of Erickson's CCRC business model generally involved leasing the land and facilities it developed to separate independent, non-profit CCRCs, which it created. These non-profits would then often eventually end up purchasing the CCRC facilities. As of February 2010, Erickson had developed 18 CCRCs that provided homes and services to approximately 22,000 residents.

Erickson, however, filed for bankruptcy in 2009. Like many CCRCs, Erickson used construction loans and other financing instruments to meet the considerable cost of building CCRC facilities and ready them for occupancy by older Americans. According to Erickson officials, a number of conditions contributed to their financial challenges and bankruptcy filing. Declining economic and real estate conditions slowed the demand for and purchase of CCRC units and challenged Erickson's ability to raise revenue needed to develop CCRCs. Simultaneously, tightening credit markets reduced or eliminated Erickson's ability to access new sources of capital or to restructure or refinance existing loan arrangements. These conditions prevented Erickson from meeting debt service and other CCRC expenses and led to its bankruptcy filing. Ultimately, Erickson emerged from bankruptcy with a new owner, Redwood LLC, in May 2010. Despite the ownership change, Erickson officials do not expect any CCRC residents' contracts or living conditions to be impacted, as those contracts were with the CCRCs themselves, which were not part of the bankruptcy filing.

resident vacates a unit.[7] These refunds represent substantial financial obligations that CCRCs must meet and can significantly affect operations because fees are used to maintain a certain level of liquidity, or cash on hand. CCRC officials said that refunds were usually contingent on having a new resident move into the vacated unit and that a recent reduction in occupancy levels has meant former residents and their families have had to wait longer for refunds. For example, some CCRC officials noted that due to real estate market and other factors, refunds are taking several months longer than during stronger market conditions.

CCRCs also face risks from external economic factors that are out of their control and could adversely affect occupancy levels and financial condition. First, slow real estate markets, such as those of the last several years, can make it very difficult for older Americans to sell their homes to pay CCRC entrance fees. As a result, according to CCRC providers, occupancy levels at many CCRCs have fallen over the past several years. In addition, because older Americans may be staying in their homes longer and thus moving into CCRCs at a higher age, residents may spend less time in independent living units than they had in the past. This can negatively affect CCRCs' long-term financial condition because residents in independent living may help subsidize those living in assisted living or nursing care. Second, declining equity and credit markets, which have also been a feature of the recent financial crisis, can also affect occupancy and financial condition. During the development phase, CCRCs often depend on access to credit in order to complete construction, and reduced access to funds can be problematic. For example, CCRC and state regulatory officials suggested that tightening credit and real estate markets, combined with Erickson Retirement Communities' reliance on borrowed funds, were the primary financial challenges that resulted in Erickson's 2009 filing for bankruptcy protection (see sidebar on Erickson Retirement Communities). In addition, occupancy can depend on CCRCs' ability to remain attractive to new residents by maintaining and upgrading their facilities. While the ability to maintain and upgrade facilities depends in part on long-range planning, it can also depend on access to credit. CCRC

[7]CCRCs may offer refund options to residents, which are part of some contracts. According to industry participants, these options include: (1) fully refundable entrance fees, which tend to be more expensive at the outset but involve the full return of the entrance fee amount to the resident or the resident's family; (2) partially refundable entrance fees that allow for the return of a certain percentage of the entrance fee within specified time limits; (3) declining scale entrance fees, which involve reducing the amount of a refund by a certain percentage each month over a specified period of time; and (4) nonrefundable entrance fees that are not refundable after a certain period of time.

officials said that over the last several years the availability of both state financing and commercial bank financing had diminished due to tightened credit markets.[8]

Although few CCRCs have closed or declared bankruptcy over the last 20 years, recent economic conditions have negatively affected the financial condition of many facilities and highlighted some of the risks that they face. One rating firm, which produces an annual industry outlook for CCRCs, said the outlook for CCRCs in 2009 and into 2010 is negative because of their declining liquidity and other financial ratios, tightening financial markets, and difficult real estate markets. The firm also noted, however, that the negative effect of the slow real estate market and falling occupancy levels could be softened somewhat by some favorable factors, including strong demand for entrance into CCRCs, effective management practices, and favorable labor costs.

States We Reviewed Varied in the Extent to Which They Ensured CCRCs Address Risks to Their Financial Viability

States We Reviewed Generally Used Similar Licensing Requirements, but Some Required More Information Than Others

To help ensure that CCRCs address the risks they face during their start-up period, seven of the eight states we reviewed used a similar application and licensing process. For example, these seven states required CCRC providers to submit detailed financial information on CCRC projects for review by regulators. Most states we reviewed also required financial feasibility studies as part of the licensing process.[9] These studies included

[8]According to industry participants, non-profit CCRCs may try to obtain financing from states, which sometimes have funds available through the issuance of bonds. They also added that banks' letters of credit have been important for CCRCs because they have helped CCRCs access capital for development and operational purposes.

[9]Texas law does not require CCRC applicants to conduct feasibility studies but if one is available, the applicant is required to submit it.

projected income and expense information, alternative pricing structures, and, for CCRCs planning to charge entrance fees, estimates of the CCRCs' ability to resell its units that are based on actuarial assumptions.

Among the states we reviewed that license CCRCs, some required more information from CCRCs than others. For example, California, Florida, and New York required CCRCs to conduct and provide a market study as part of its application for licensing, while others—Illinois, Pennsylvania, and Wisconsin—did not.[10] Such studies can include descriptions of the market area and targeted consumers as well as projections of how long it might take the CCRC to reach a stable occupancy level. Pennsylvania required CCRCs to provide a market study only if one was being conducted to help obtain project financing. One state we reviewed—New York—required CCRC providers that offer Type A or B contracts to conduct an actuarial study during the licensing process to help project long-term expenses and revenues and help regulators assess financial viability over time.

States We Reviewed Varied in Their Efforts to Ensure That CCRCs Addressed Risks to Their Operations, with Some Focusing More on Long-Term Viability Than Others

To help ensure that CCRCs addressed risks to their operations, states we reviewed generally required that CCRCs periodically submit financial information, but the type of information required and what they did with it varied. Of the states we reviewed that license and oversee CCRCs, most required CCRCs to submit audited financial statements each year to demonstrate their basic financial health, including balance sheet, income, and cash flow information. These statements generally reflect financial performance for the past year and provide a financial snapshot of a point in time, and are not assessments of longer-term financial trends or financial stability.

To help ensure that CCRCs addressed risks to their long-term viability, a few states we reviewed required periodic actuarial studies, but the others did not. In particular, California, New York, and Texas required periodic actuarial studies, but only for CCRCs that offered contracts which incur long-term liabilities by guaranteeing health care services over the long term.[11] One state we reviewed—Florida—did not require periodic actuarial

[10]Texas law does not require CCRC applicants to conduct market studies but if one is available, the applicant is required to submit it.

[11]California requires CCRC providers to perform actuarial studies for type A contracts. New York and Texas require providers to submit actuarial studies for all Type A contracts and those Type B contracts that result in long-term liabilities.

studies but did analyze financial trend and projection data to help track the direction of the financial condition of CCRCs over time. Florida regulators said that they maintained a spreadsheet containing financial information on CCRCs dating back over a decade and used the data to develop financial trend information on each CCRC, including trends of ratios related to CCRCs' revenues and expenses. Florida officials said that since CCRCs generally do not go from stable 1 year to financially distressed the next, their trend data enabled them to identify early on CCRCs that might be in trouble.

According to industry participants, actuarial studies can help in quantifying long-term liabilities and planning for ways to meet them. For example, some said that the studies can provide CCRC management with the information needed to make appropriate plans to meet future liabilities and contractual obligations and to set appropriate prices for short- and long-term housing and care options. In addition, some noted that actuarial studies can help regulators identify potential threats to CCRCs' long-term viability. For example, New York officials noted that requiring an actuarial study from CCRCs every 3 years provided 10-year cash flow projections and CCRC information on actuarial assets and liabilities that were critical to understanding long-term viability. According to industry participants, only an actuarial study incorporates mortality, morbidity, and other information unique to a CCRC to help it anticipate and make plans to address risks to its long-term viability, such as lower-than-expected occupancy levels and higher-than-expected costs. Without actuarial studies, they said, a CCRC may appear financially stable in the short term yet still face threats to its long-term viability.

To help ensure that CCRCs have funds available to pay for expenses such as debt service and operations, most of the states we reviewed also required CCRC providers to maintain some minimum level of financial reserves. According to state regulators, the primary purpose of reserve requirements is to ensure enough time for a financially distressed CCRC to reorganize or restructure financing while keeping the CCRC operational for its residents. For example, these reserves could be used to help make debt service principal and interest payments, pay for operating expenses, or assist with difficult economic times or other types of contingencies. Reserve requirements in the states we reviewed were typically expressed in terms of total debt service payments for a time period ranging from 6 months in Illinois to 1 year in states such as California, Florida, New York, Pennsylvania, and Texas. Some states also required a reserve for operating costs that ranged from 2-½ months to 1 year. New York, by comparison, required debt service and operating cost reserves along with an additional

reserve for CCRC facility repairs and replacement. One state—Wisconsin—did not have reserve requirements. Wisconsin state officials said that their statutory authority generally focused on the content of CCRC resident contracts. While these reserve requirements can provide a CCRC with enough time to work to improve financial conditions, several industry participants said that reserves are not intended to ensure viability over the long term. In addition, one industry official said that CCRCs experiencing financial difficulties are often purchased by other CCRCs.

Finally, though most states required CCRCs to submit financial information, not all states we reviewed did financial examinations. According to regulatory officials, California, Florida, Illinois, New York, Pennsylvania, Texas, and Wisconsin all had the regulatory authority to financially examine CCRCs to assess financial condition or viability, but only Florida, New York, and Pennsylvania had conducted examinations.[12] Some states also said that they maintained ongoing communication with CCRC management, particularly when regulators had any questions or needed clarification on financial documents under review. These state regulators said that the informal communication channels helped them to understand CCRC operations better than they would if they relied on periodically reported information alone.

Industry Information Suggests Most States Regulate CCRCs and Do So with Various State Departments, but Some Have No CCRC-Specific Regulations

While we did not survey all 50 states as part of our review, according to one industry study, 38 states have some level of regulation specifically addressing CCRCs, while 12 states plus the District of Columbia do not.[13] Among the 38 states that have CCRC-specific regulation, CCRCs are overseen by a variety of state departments. Some states oversee CCRCs through departments that concentrate on insurance, financial services, or banking. Other states regulate CCRCs through departments of social services, aging or elder services, or community affairs. Figure 2 provides information as of 2009 on the states that specifically regulate CCRCs, the type of department with oversight responsibility, and the number of

[12]Of the states we reviewed that had examination authority, the required examination frequency ranged from "as-needed" to about every 4 years.

[13]American Association of Homes and Services for the Aging (AAHSA) and American Seniors Housing Association (ASHA), *The Assisted Living and Continuing Care Retirement Community State Regulatory Handbook, 2009*.

CCRCs in each state.[14] In addition, all nursing homes—including those that are part of a CCRC—are subject to federal oversight if they participate in Medicare or Medicaid programs.[15] Because some states do not appear to have CCRC-specific regulations, an entity in one state might be licensed and regulated as a CCRC while a similar entity in another state may not. While we did not review laws and regulations in the states that did not appear to have specific CCRC regulations, to the extent that states do not license CCRCs and oversee their contracts, residents in those states may not receive the same protections as CCRC residents in states with such regulations. One of the eight states we reviewed—Ohio—did not specifically license or regulate CCRCs. However, an industry official from Ohio said the separate components of CCRCs operating within that state are generally regulated as if they were stand-alone entities. For example, Ohio's Department of Health regulates assisted living and nursing home facilities. In prior work that also looked at the regulation of financial contracts across states, we have pointed out the importance of ensuring that consumers entering similar contracts receive similar regulatory protections across states. That work, which was designed to provide insights for the development of a federal financial services regulatory framework, also highlighted the importance of, among other things, providing consistent consumer protections in similar situations and ensuring consumers receive useful information and disclosures.[16] In a recent report looking at regulation of the insurance industry, a function

[14]Ziegler Capital Markets provided the data contained in Figure 2. For information on the number of CCRCs in each state, Ziegler considered CCRCs to be age-restricted properties that make a combination of independent living, assisted living, and skilled nursing services (or independent living and skilled nursing) available to residents. Resident payment plans vary and include entrance fee, condo/co-op, and rental programs. Not all of the living components, particularly nursing care, must be on the same campus with independent living. Ziegler's definition may differ from those used by states for regulatory purposes.

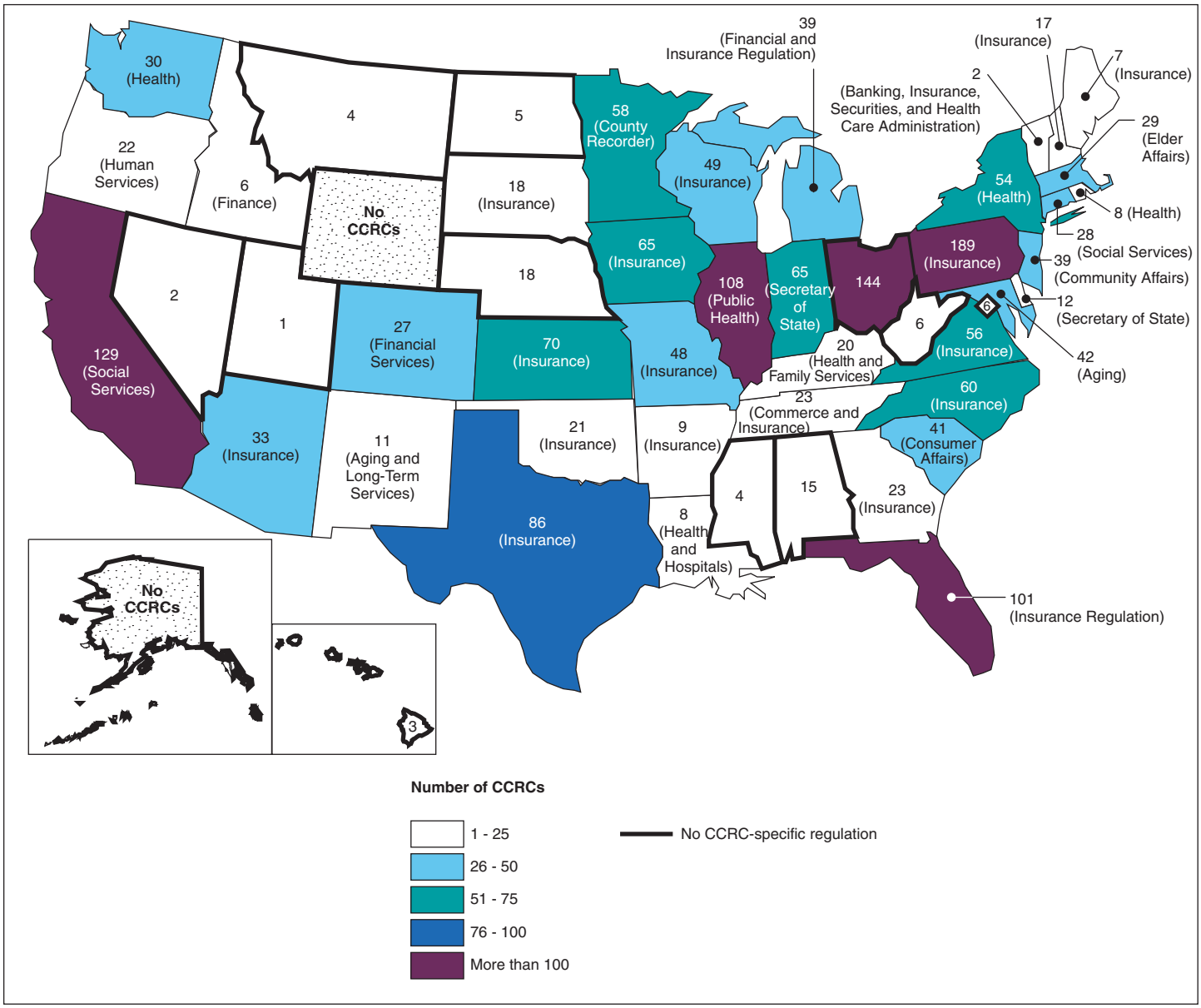
[15]Nursing homes must meet minimum standards set by the Social Security Act in order to participate in Medicare and Medicaid programs. The federal standards focus on the delivery of care, resident outcomes, and facility conditions provided by each nursing home. These quality standards, totaling approximately 200, are grouped into 15 categories, such as Resident Rights, Quality of Care and Facility Practices. State agencies assess the compliance of a nursing home to the federal quality standards by conducting comprehensive assessments. These assessments occur on average once a year, and complaint investigations are performed as needed.

[16]GAO, *Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System*, GAO-09-216 (Washington, D.C.: Jan. 8, 2009).

carried out by the states, we pointed out the importance of state regulation supporting the goals of this framework.[17]

[17]GAO, *Insurance Reciprocity and Uniformity: NAIC and State Regulators Have Made Progress in Producer Licensing, Product Approval, and Market Conduct Regulation, but Challenges Remain*, GAO-09-372 (Washington, D.C.: Apr. 6, 2009).

Figure 2: Number of CCRCs and Regulatory Departments Used for State Oversight of CCRCs



Sources: GAO analysis of CCRC industry data; Art Explosion (map).

Debt-Related Requirements and Accreditation Standards Generally Exceed Those of State Regulators and Often Focus on Long-Term Viability

When CCRCs obtain financing through debt instruments such as loans or bonds, creditors and bondholders often impose financial requirements and standards that are designed to ensure that CCRCs can repay the borrowed funds. For example, state regulators and industry participants said states and lenders require CCRCs to maintain levels of reserves that are intended to give the facilities enough time to meet financial challenges such as refinancing or restructuring debt. According to regulators and industry officials, lender and bondholder reserve requirements generally exceed those of state regulators. As noted earlier, most states we reviewed have reserve requirements that focus on a short period such as 6 months or a year. But a CCRC provider noted that lender and bondholder requirements are generally more stringent and may require reserve levels twice as high. In addition, bondholders may conduct analyses that appear to go beyond those used by states. For example, according to one company that facilitates financing for CCRCs, bondholders might require quarterly financial statements as well as annual statements.

In addition, some nonprofit CCRCs that obtain state-based financing choose to be assessed by rating firms to help determine their ability to repay long-term debt.[18] We reviewed one rating firm's guidelines, which contain many quantitative and qualitative variables to assess CCRCs' credit quality and financial solvency. The guidelines include financial ratio analysis, trend analysis of financial ratios, review of cash flow statements, and the use of recent actuarial studies for CCRCs offering Type A contracts as well as certain qualitative factors—such as strength of management and governance—to make assessments about long-term viability. Officials from the rating firm noted that their metrics were more focused on CCRCs' ability to pay on their bond obligations over the long term.

Some CCRCs may also choose to become accredited by an independent organization. As of April 2010, 300 CCRCs had become accredited by the Continuing Care Accreditation Commission (CCAC), according to a commission official.[19] Accreditation involves an initial review that assesses CCRCs on an extensive set of standards. For example, the financial aspects of the accreditation process include analyses of many financial

[18]Higher credit ratings can improve the terms or reduce the cost of financing for the CCRC.

[19]The Continuing Care Accreditation Commission is part of the Commission on the Accreditation of Rehabilitation Facilities, a nonprofit organization that operates accreditation programs for various health and human services, including CCRCs.

ratios, including profitability, liquidity, and capital structure, to assess a CCRC's financial solvency, identify trends, and compare them to industry benchmarks. While accreditation standards do not require periodic actuarial studies, according to CCAC officials CCRCs are expected to use actuarial and other information to appropriately set their fees. Two CCRC providers and accreditation officials suggested CCAC's standards represent best practices and guidelines for CCRCs and they help to assess short- and long-term financial stability.

Regulators and Industry Participants Held Different Views on the Effectiveness of State Financial Oversight of CCRCs

State regulators from the eight states we reviewed generally reported that their regulations and regulatory efforts were adequate to properly oversee the financial condition of CCRCs. Some suggested that the small number of CCRCs that were financially distressed, insolvent, or had filed for bankruptcy pointed to the adequacy of state regulatory oversight. In addition, officials from one state noted that they periodically review audited financial statements and other required information, and have the authority to do on-site inspections of CCRCs' books and records. However, they noted that audited financial statements generally do not contain information that would cause further review through inspection. One state agency had broader statutory authority but an official there said that financially regulating CCRCs was not their central mission. Another state official commented that they lacked the staffing resources to do more than review audited financial statements.

Officials from one residents' association we spoke to expressed concerns about the overall financial condition of CCRCs and how it affects their housing and care, while another believed regulatory requirements were generally adequate. Residents' association officials who expressed concerns said regulators needed to provide more overall financial oversight to compensate for the short-term focus that most CCRCs have on their financial solvency. They said that most CCRCs tended to emphasize the availability of liquid assets to cover operating costs such as debt servicing as the most significant indicator of financial health. The officials noted that this approach emphasized short-term liquidity and current asset and liability information and did not sufficiently consider long-term liquidity, liabilities, capital planning, and budgeting. Another state residents' association official provided a different view and said that its state statute established strict financial requirements that helped discourage speculative CCRC operators from entering the market and encouraged long-term stability in the state's CCRC market.

CCRC providers did not convey strong positive or negative views about the strength or effectiveness of CCRC regulation but did provide various insights. One CCRC provider said that the extent and effectiveness of regulators' financial oversight of CCRCs varied from state to state but noted that for oversight to be effective, states would need specific expertise. The provider also felt that state agencies that had devoted few resources to CCRC oversight might lack the requisite expertise. Another CCRC provider said its state regulator required each provider to annually submit a report containing a number of financial indicators and expressed hope that the regulator would use the data to create a database to monitor financial trends. The provider said that the statutes were adequate, noting that few CCRCs had failed in their state. By contrast, actuaries GAO spoke with said that, overall, only a few states nationwide were appropriately using actuarial studies to assess CCRC providers and that many states were using very little actuarial information for financial oversight. Actuaries said this situation reflected the wide variety of state laws and regulations on CCRCs and noted that states that did not require actuarial studies could have a difficult time assessing the adequacy of CCRCs' short- and long-term pricing structures and long-term financial position.

CCRC Residents Face Many Major Financial and Other Risks

CCRC Residents Face a Number of Financial Risks

Although CCRCs offer older Americans the benefit of long-term residence and care in a single community, residents face a number of financial risks in the course of their relationship with their CCRC. For example, residents could lose the refundable portion of their entrance fees—which may amount to hundreds of thousand of dollars or more—if a CCRC encountered financial difficulties. According to state officials in two states and a CCRC expert, residents are at a disadvantage because any claim they have on a CCRC that is forced into bankruptcy is subordinate to the claims of secured creditors, such as tax-exempt bondholders and mortgage lenders. As a result, residents are grouped with all other unsecured creditors, which generally include everyone who does business with the CCRC, for recouping any financial losses in the case of CCRC financial distress.

We identified no national data that would reflect the incidence of such losses, and several state officials believed that they are rare. For example,

a California official told us that there had been at least two situations in the 1990s in which California residents had nearly lost their entrance fees but that these situations had been resolved in the residents' favor. However, Pennsylvania officials told us about a financially insolvent CCRC in Pennsylvania whose residents lost the refundable portion of their entrance fees in 2009 when the facility was sold to a new operator. According to the officials, the CCRC became financially distressed and filed for bankruptcy after it lost its tax-exempt status and became liable for substantial state and local taxes.[20] As part of the negotiations to fulfill residents' contracts and maintain services under the new owner, residents relinquished the refundable portion of their entrance fees. The state officials noted that this concession had limited residents' ability to move to another CCRC, since they would no longer receive a portion of their entrance fee to pay the entrance fee at the new facility. In addition, residents' heirs were deprived of the refundable portion of the entrance fee.

Residents can also face greater-than-expected increases in monthly and other fees that can erode their existing assets or make the CCRC unaffordable to them. Officials of CCRCs, an expert, and resident advocates told us that CCRC residents were at risk of having to pay monthly fees that rise beyond their ability to pay. According to some state and CCRC officials we contacted, CCRCs in financial distress may need to increase monthly fees beyond the typical yearly increase outlined in the contract. Such increases can occur for a number of reasons—for example, to continue to operate when occupancy rates drop, to make necessary or deferred physical improvements, cover unplanned increases in operational expenses such as rising labor costs, or to keep the facility competitive in order to attract new residents.

Residents may be living on a fixed income and may not be able to afford these increases, especially over an extended period. CCRC providers in Florida and Wisconsin said that they had had residents who exhausted their assets earlier than planned because of monthly fee increases. According to CCRC operators, residents are not generally at risk of being required to leave a CCRC when they exhaust their assets but instead use

[20]According to a state official, after construction, the tax-exempt status of the CCRC was challenged, and it was determined that the facility was in fact liable for local taxes, which amounted to about $4.5 million in back taxes, in addition to future unanticipated taxes. This led to the financial insolvency of the CCRC, which filed for bankruptcy and faced a need to restructure.

the refundable portion of their entrance fee, if there is one, to cover monthly costs. When these funds are gone, the CCRC uses charitable funds, voluntarily contributed by other CCRC residents, to support the residents.

CCRC residents also face the risk of losing their residence and familiar surroundings in the event of a CCRC closure. According to CCRC and elder care experts, closures occur for a number of reasons, including bankruptcy or an operator's decision to consolidate multiple CCRCs and close less profitable locations. Although state officials and other CCRC experts indicated that such events are rare, they have happened. For example, a residents' advocate and state regulators told us that in 2007, a CCRC in California that had lost $11 million over 10 years closed due to consistently low occupancy rates. Several residents were dissatisfied with the CCRC's handling of their contracts and resisted the proposed transfer to an alternate facility, and filed a lawsuit against the facility. Ultimately, they were removed from their residence when the CCRC closed. According to CCRC and elder care experts, residents who must move when their CCRC closes face the risk of trauma during and after the transfer to a new CCRC facility. One resident advocacy group told us that a forced move can be very disruptive to members of a CCRC population, in some cases with consequences for their physical and emotional well-being.

Residents also Face Other Risks Related to CCRC Operations

Residents may not be satisfied initially—or over the long term—with the CCRC into which they have moved and may have limited financial and other recourse. For example, dissatisfied residents may have limited ability to move out. According to an expert on CCRCs, some residents may experience "buyer's remorse" after entering a CCRC if the community, services, or other aspects of the CCRC do not match their initial perceptions. These advocates told us that residents were often focused on certain elements of care and housing, such as amenities and culture, when choosing a CCRC and might not, for example, pay enough attention to financial information that could affect them. Residents who wish to move, for instance, may find that the contractually designated rescission period has ended and that moving will result in significant fines or reductions to the refundable portion of their entrance fee. But these financial losses can limit their choice of other long-term care options that require a similar investment. Residents also face the risk of being transferred involuntarily from one level of care to another or of not being able to obtain on-site assisted living or nursing care when needed. Policies regarding admission and discharge from different levels of care can be subject to state law, but

this decision can be a point of contention as well.[21] One 2009 study states that relocation within a CCRC and between levels of health care is one of the most stressful events older adults face because it threatens their autonomy—that is, their ability to make decisions for themselves.[22] Individuals representing various parts of the CCRC community told us that the transfer from one level of care to another is often regulated by state law and that, while residents may disagree with the decision to transfer, the CCRC, in some cases must move them over their objections. CCRC residents generally enjoy continuous residency in the same community regardless of the level of care. However, state regulators and resident advocates told us that while many CCRCs without space in assisted living or skilled nursing guarantee space to residents in a nearby facility for no additional cost, residents can face additional stress due to the transfer outside of their contracted community.

Residents' dissatisfaction with CCRC management, policies, or services can grow out of a lack of full understanding of contracts and related disclosure documents or may result from ambiguities in the contract, according to representatives of CCRC management and resident organizations. Although state officials told us that many CCRC residents are highly affluent and educated consumers, others noted that some consumers do not understand the contractual provisions or disclosures. Further, experts and resident advocacy groups said that the contracts are very lengthy and detailed, containing terms that are difficult to understand and potential ambiguities, and they noted that some residents might not fully understand their rights and responsibilities or the obligations of the CCRC. Finally, a statewide resident's association in Florida noted that some residents have become unhappy with service or policy changes made through the residents' handbook that they believed were contractually guaranteed. CCRC contracts and the residents' handbook are different documents and some residents do not fully appreciate the difference until an issue arises. Further, some CCRCs may impose additional fees during times of financial hardship. According to Florida

[21]For example, members of one state CCRC residents' organization said that if room in the next level of care is not available, the CCRC contract will require that a resident be placed in another facility until on-site space becomes available. However, the other facility could be some distance away, which could create difficulties for the residents and their family. They added that this had not been a frequent problem.

[22]Tetyana Pylypiv Shippee, "But I Am Not Moving" Residents' Perspectives on Transitions Within a Continuing Care Retirement Community," *The Gerontologist*, Vol. 49, No. 3, 418–27, (Apr. 16, 2009).

CCRC operators, for example, CCRCs may impose fees on services that were previously free, such as transportation to activities in the local community.

State Laws Designed to Protect Residents Vary, and Some States Do Not Mandate Key Disclosures or Contract Provisions

Regulating Contract Content and Clarity

According to a CCRC industry study, of the 38 states that have some level of regulation specifically addressing CCRCs, 34 states collect and review the standard form contract that the CCRC enters into with residents.[23] Based on our analysis of CCRC industry data, about four out of every five CCRCs are located in states that collect and review these contracts. The industry summary also indicates that, of the 38 states with CCRC-specific licensure laws, 30 require that CCRC contracts include a provision that confers on residents a "cooling off" period in which the resident has the right to cancel a contract and receive a full refund of the entrance fees, less certain costs. The prescribed periods during which such cancellation rights may be exercised range from prior to occupancy to as long as 1 year after occupancy, and they allow residents to cancel the contract without penalty or forfeiture of previously paid funds.

Of the eight states we reviewed, seven require that CCRC license applicants, as part of the licensure process, submit a copy of the contract form to be entered into with residents. In some of those states the contract form must be approved by the state. A few of the states we reviewed required that the contract be legible or written in clear and understandable language. Regulators from New York, Pennsylvania, and Wisconsin said that they review the contract for understandable language. Seven of the

[23]American Association of Homes and Services for the Aging (AAHSA) and American Seniors Housing Association (ASHA), *The Assisted Living and Continuing Care Retirement Community State Regulatory Handbook, 2009*.

state laws we reviewed also require CCRC contracts to provide for a minimum time period in which a resident has the right to cancel the CCRC contract without forfeiting their paid entrance fees. Such cancellation periods vary across these seven states from 7 days after signing the contract to 90 days after occupancy.

States we reviewed varied in how they collected and reviewed the contract. For example, officials in Wisconsin told us that they played an active role in ensuring that the contract contained the items required by law and met readability criteria. In some states, such as Pennsylvania, staff uses checklists or other tools to ensure that the content meets state requirements and readability standards. Officials in Wisconsin told us that contract reviews there were less structured and that staff generally used their own judgment to decide whether contracts were deceptive, incomplete, or obscure. States can also levy significant penalties if they find that a CCRC uses a contract that has not been reviewed and approved by the state. For example, California officials told us that if they found that a resident had an unapproved contract, the provider would be required to return all entrance and monthly fees (in total, including the costs incurred for services) to the resident. The state can also revoke the CCRC's certificate of authority, rendering the facility unable to accept entrance fees or offer new contracts.

Protecting CCRC Residents' Fees and Deposits

Some states directly protect the financial interests of residents by (1) establishing requirements for fees and deposits to be escrowed, (2) addressing criteria for monthly fee increases, or (3) placing liens on CCRC assets on behalf of residents or confer a preferred status on resident claims on such assets in the event of liquidation.[24] As table 2 shows, escrow requirements varied among the eight states we reviewed but in general mandated setting aside some portion of the down payment or entrance fee for all units in a CCRC. The portion of down payments or entrance fees required to be set aside in an escrow account varied among the eight states we reviewed. Escrow requirements are aimed at ensuring the stability of a CCRC during start-up and construction and its ability to provide the services set out in the contract with residents. Six of the states we reviewed required that CCRCs escrow some portion of consumer deposits or entrance fees it received and such funds are not released to the

[24]Escrow is a deed, a bond, money, or piece of property held in trust by a third party to be turned over to the grantee only upon fulfillment of a condition.

CCRC until ascertainment of certain benchmarks, such as a certain percentage of construction completed or long-term financing committed.

Table 2: Financial Protections in Selected States

States	Escrow requirements–Percentage of entrance fee from specified percentage of units, conditions for release	Policies on fee increases	Liens, preferred claims, or other protections for fees paid
CA	Escrowed funds: 10% of entrance fees from 60% of pre-sale units. Conditions of release: 50% of construction completed and long-term financing committed.	CCRCs must include a statement in the contract that says changes in monthly care fees shall be based on projected costs, prior year per capita costs, and economic indicators.	Preferred claim for residents if necessary, subordinate to secured creditors.
FL	Escrowed funds: 100% of entrance fees from 70% of presales. Conditions of release: completed construction and long-term financing commitment.	CCRC must justify increases in maintenance fees above Consumer Price Index to residents.	Preferred claim for residents, subordinate to secured creditors.
IL	Escrowed funds: 50% of entrance fees OR letter of credit for equal amount of pre-sale units. Conditions of release: staggered release during construction, and, if necessary, long-term financing commitment.	None	None
NY	Escrowed funds: 25% of entrance fees from 60% (or 10% of 70%) of pre-sale units and equal amount of costs. Conditions of release: construction is complete on the individual unit or a maximum price contract is in place and mortgage or other long-term financing is committed.	CCRCs must develop a formula to adjust entrance and monthly fees to be approved by Superintendent of Insurance.	None
OH	None	None	None
PA	Escrowed funds: 50% of all fees and 35% of each fee for pre-sales, 50% of cost. Conditions of release: Financing is committed.	None	Lien for residents if necessary, subordinate to secured creditors.
TX	Escrowed funds: 100 percent of entrance fees Conditions of release: (1) 50% of the units have been reserved; and (2) entrance fees totaling 90% of various costs have been received, and (3) long-term financing for construction has been secured, but release is also contingent upon the establishment of a loan reserve fund.	None	Lien is attached on the date when a resident first occupies a facility, subordinate to certain secured creditors.
WI	Escrow is required but not specified.	None	Preferred claim for residents, subordinate to secured creditors.

Source: GAO analysis of ASHA and AAHSA State Regulatory Handbook, 2009, and statements of state regulators.

Some of the states we reviewed addressed increases in CCRCs' monthly fees or required CCRCs to justify increases to residents. As table 2 shows, Florida requires CCRC providers that raise monthly maintenance fees

above the consumer price index to provide an explanation for the increase to CCRC residents. In California, regulators address fee increases by requiring CCRCs to include in every continuing care contract a provision that states that changes in monthly care fees shall be based on projected costs, prior year per capita costs, and economic indicators. New York law provides that monthly fee increases beyond the previously approved rating methodology must again be approved by the Superintendent of Insurance.

According to the industry summary, 12 out of 38 states that license CCRCs have the authority to place a lien or another form of protection, such as a surety bond or preferred claim, to ensure that residents have some financial recourse if a CCRC enters bankruptcy. Of the eight states that GAO reviewed in more detail, the regulators of five indicated that they place a lien for the benefit of the residents, or that the residents have a preferred claim on the assets of the CCRC facility in the event of liquidation. In Texas, for example, a lien attaches to facilities and assets of the CCRC provider when a resident moves into a facility. In Pennsylvania, the regulating department has the option of filing a lien on property or assets of a provider or facility to secure the obligations under CCRC contracts. According to one expert and some regulators, preferred claims and liens offer limited protection; however, as such claims are generally subordinate to those of all other secured creditors, such as bondholders and commercial lenders.

Further, some of the states we reviewed required CCRCs to communicate with regulators and residents before a potential closure in order to reduce the financial and other impacts on residents. In California, CCRCs that are slated to close must submit plans to regulators that generally address refunds and include a time frame for transferring displaced residents to other facilities. [25] In Florida, if a CCRC ceases to operate due to liquidation

[25]State regulators in California said that CCRC closures in 2007 were behind recently enacted state legislation on CCRC closure procedures. Residents involved in one closure filed complaints expressing unhappiness with the procedures and, in some cases, complained that they had suffered trauma from it.

or pending liquidation, regulators use the unencumbered assets of the CCRC to provide relocation and other assistance to displaced residents.[26]

Disclosing CCRCs' Financial Condition to Consumers

States may also require that CCRCs disclose information pertaining to the financial condition of the CCRC. According to the regulatory history and literature we reviewed, requiring the disclosure of information about the past, present, and projected future financial conditions of CCRCs allows current and prospective residents to make informed decisions before entering a facility. Among states we reviewed that had such a requirement, we found that the format, extent, detail, and timing of these disclosures varied considerably. For example, Illinois state law simply requires that a CCRC provide residents with a statement that reflects the provider's financial condition and that, at a minimum, includes disclosure of short-term assets and liabilities. On the other hand, the Florida statute requires CCRCs to file an annual report in such form as the regulating entity prescribes, and such statement must include, at a minimum, an audited balance sheet, a statement of income and expenses, and a statement of changes in cash flow, as well as a list of reserve assets.

The extent of additional disclosure requirements also varied across the states we reviewed. As table 3 indicates, disclosures can include information with significant financial implications to residents, such as fee schedules, a history of fee increases, refund policies, and the status of residents' claim on the assets and facility of a CCRC in case of bankruptcy or insolvency. For example, California requires CCRCs to provide residents with a history of fee increases over the past 5 years. California, Florida, and New York require that residents receive advance notice of any increases or changes to monthly fees. California and Wisconsin require CCRCs to disclose to residents that any claims they have against the CCRC in the event of its liquidation may be subordinate to secured creditors, such as mortgage lenders.

[26]In addition, whenever an order of liquidation has been entered against a CCRC provider, the Florida Department of Children and Family Services and the Agency for Health Administration are required to (i) evaluate the eligibility of displaced residents for assistance or programs administered by those agencies, (ii) develop a plan of relocation with respect to residents requesting assistance, and (iii) counsel the residents regarding such eligibility and such relocation. See Fla. Stat. § 651.117.

Table 3: Examples of Required Financial Disclosures in Eight States

Selected financial disclosures	CA	FL	IL	NY	OH	PA	TX	WI
Financial conditions of facility	•	•	•	•	•	•	•	•
Fee schedules	•	•		•		•	•	•
Fee adjustment policy	•	•		•		•	•	
History of fee increases	•			•		•		•
Reserve funding provisions	•	•				•	•	
Expected source of funds for development of facility[a]	•			•		•	•	
Refund policies	•	•		•		•	•	•
Status of resident claim on CCRC assets in case of bankruptcy or insolvency	•							•

Source: GAO review of state CCRC law, and contacts with state regulatory officials.

[a]For facilities that have not yet been developed.

Statutory provisions regarding the delivery and timing of disclosures to prospective residents also varied among the states we reviewed. For example, while the states we reviewed required providers to disclose financial information to prospective residents prior to signing the CCRC contract, five states we reviewed also required that such information be subsequently disclosed periodically to residents.[27] Exactly where and how the information must be disclosed can vary as well. For example, some states require that financial information be posted in public areas of the CCRC, others require providers to convene periodic meetings with residents to discuss the financial condition of the facility, and still others that financial information is made available to residents upon request. A New York state official said the state posts the results of any CCRC examinations on a Web site so that consumers can access the information and compare results across CCRCs.

Some of the states we reviewed performed on-site audits and examinations of CCRCs on a periodic basis to help ensure consumer protections, including the disclosure of important financial information. The states we reviewed generally have discretionary authority to conduct on-site audits or examinations, but some are required to conducted periodic audit or examinations.[28] For example, the Florida regulatory

[27]In some states such financial disclosure is mandated by statute. In other states, providers are required only to make such disclosure if requested by the prospective resident.

[28]Ohio does not have a specific authority to do on site exams at CCRCs generally. The state may have discretionary authority to examine assisted living or skilled nursing portions of a CCRC, but this is beyond the scope of our review.

authority is required to conduct on-site examinations at least once every 3 years and may visit more frequently if regulators receive complaints from residents. Such on-site exams may include inspections of financial information, contracts, and disclosures and conversations with staff, management, and residents. Other states said that they had the authority to conduct on-site investigations but had not done so. For example, regulators in Texas said that they have not yet faced an issue with a CCRC that would compel them to conduct an examination or investigation, but historically have exercised other regulatory authority over CCRCs for financial oversight. Regulatory officials told us that the state had relied on documents submitted by CCRCs and has called CCRC management on an informal basis to obtain additional information or clarification when necessary.

Disclosing Nonfinancial Policies and Practices

Other requirements mandate disclosure of policies that may have important implications for the length and quality of residents' stay at their CCRC. Some states we reviewed required that CCRCs explicitly disclose policies regarding (1) the conditions under which a resident could remain in the event the resident experiences financial difficulties, and (2) conditions under which residents would be required to move to a higher level of care. For example, Pennsylvania requires that each CCRC contract describe the circumstances under which a resident may remain at the facility in the event the resident has financial difficulties. California specifically mandates that CCRCs offering life care contracts subsidize residents who are unable to pay their monthly or other fees, provided the financial need of the resident does not arise from the resident's own action to divest of his or her assets.

Seven of the states we reviewed also have specific, nonfinancial provisions that must be contained in the residential contract or disclosure statement, but these provisions varied, as shown in table 4. For instance, some states not only require disclosure of certain policies, but specifically prescribe minimum procedures that CCRCs must follow while other states require that certain policies be disclosed to residents but do not prescribe the substance of those policies. For example, in addition to requiring that the resident contract describe the procedures and conditions under which a resident may be transferred from a designated living unit, the applicable California statute prescribes minimum transfer procedures. These policies must be disclosed at the time that the contract is signed in an effort to ensure that residents understand how they will move through the continuum of care. Florida and New York also require that residents be advised of policies for transferring residents among the levels of care but

do not specifically set those policies. According to an expert, such policies have been a point of friction between residents and CCRC management. As table 4 indicates, some of the states we reviewed did not have such certain disclosure requirements.

Table 4: Selected Nonfinancial Disclosure Requirements

Selected non-financial disclosures	CA	FL	IL	NY	OH	PA	TX	WI
Information about the provider	•			•		•	•	
Affiliation of CCRC with any religious/charitable group	•	•		•		•	•	
Summary of recent state inspection results		•		•				•
Available services	•	•	•	•		•	•	•
Description of physical property of the facility				•		•	•	
Copy of the contract	•	•		•		•	•	
Policy in the event that resident has financial difficulties	•	•		•		•	•	
Non-voluntary transfer to a higher level of care policy	•	•		•		•		
Policy regarding admission/discharge from levels of care	•	•		•		•		
Rules and regulations of the facility	•	•				•		
Policies regarding life changes such as marriage or death of a spouse		•		•		•	•	
Health and financial requirements for residence at facility	•	•				•	•	

Source: GAO review of state CCRC law and contacts with state regulatory officials.

Other Regulatory Protections

Some state regulations are aimed at ensuring that residents can communicate their concerns to management and receive ongoing financial and nonfinancial information concerning a CCRC by forming residents' councils and creating a residents' bill of rights. Six of the states that we reviewed required that residents of a CCRC be allowed and encouraged to form groups in order to communicate with management, including Ohio which has no other CCRC specific law. CCRC management coordinates with representatives from the resident groups to communicate information on the facility's financial condition, fee increases, policy changes, and other issues. In Florida and California, for example, the resident councils are the designated recipients of mandated disclosures such as reports on the CCRCs financial condition, and fee structure. Two states we reviewed prescribed a statutory residents' bill of rights and required CCRCs provide a copy of such rights to residents prior to their occupancy.

Finally, some of the state regulators we interviewed indicated that they require CCRCs to provide marketing and advertising materials for approval. One regulator we spoke with commented that claims or

incidents of false advertising were rare to nonexistent. Residents had not highlighted this issue as a major concern for consumers.

Opinions Differed on the Effectiveness and Adequacy of State Regulations

Based on our interviews with state officials, we found no assessments of the effectiveness of state regulations in protecting consumers at either the national level or the state level, and state officials, resident advocates, and experts expressed a wide range of opinions on the adequacy of state law to protect consumers. First, state officials and others noted the importance of certain CCRC law provisions. For example, regulatory officials in Florida said that requiring CCRCs to provide financial information publicly through a state was necessary, because without such information residents would be unable to compare in-state CCRCs in a uniform manner and regulators would be unable to ensure that residents had enough information to make an informed choice of facilities. Members of a national association of CCRC residents expressed concern that some state laws might not address the terms of the residency contract, including the refundable portion of the entrance fee and residents' rights within the contract, such as the ability to renegotiate fees in the event of a CCRC sale due to financial insolvency.[29] Additionally, members of this association expressed concern that CCRCs in financial difficulties might not notify residents if states did not require CCRCs to provide disclosures regarding CCRCs' financial condition. Seven of the eight states we contacted did have a CCRC law that required such disclosure, but one—Ohio—did not.

Other experts and resident advocates we interviewed pointed out possible further improvements to state laws. For example, a law professor with expertise on the Pennsylvania law told us that states should take a greater role in facilitating the ability of prospective residents to access information about CCRCs for purposes of making meaningful comparisons.[30] For example, states could publish information about the financial and operating conditions of CCRCs in a statewide database so that CCRC residents could make comparisons across the statewide

[29]Residents in CCRCs that are in bankruptcy or are sold may need to negotiate their contracts with the new owner in order to maintain a percentage of their entrance fees.

[30]Pearson, Katherine C., "Continuing Care Retirement Communities, State Regulation, and the Growing Importance of Counsel for Residents and Their Families," *The ABC's of Continuing Care Retirement Communities*, Pennsylvania Bar Association Quarterly, October 2006.

industry. The law professor advocates that states could publish information about (1) the numbers and types of complaints about CCRCs, (2) comparative information on entrance fees and monthly fees, and (3) instances of the state requiring a CCRC provider to give revised financial projections. Similarly, representatives of two statewide resident's groups said that residents would like to see states require that CCRCs provide disclosures on their financial condition along with an extensive, understandable explanation of the disclosure.

Finally, although state laws differ significantly in breadth and detail, it is not clear that CCRC residents in states with less stringent requirements are necessarily at greater risk than residents in heavily regulated states. In one state, regulators told us that despite extensive CCRC regulation, a CCRC bankruptcy cost residents the refundable portion of their entrance fees. In another state, regulators said that, while the CCRC law is not as extensive as in other states, they are not aware of any CCRCs that have faced bankruptcies or failures. In part, protection may come from the CCRCs themselves. In our contacts with CCRCs, we found that some took steps that went well beyond what the state law required. The Illinois statute, for instance, requires comparatively fewer disclosures than other states, such as California and Florida, and, according to an Illinois regulatory official, does not mandate that CCRCs provide financial information on an ongoing basis. Nonetheless, officials from CCRCs in Wisconsin and Illinois told us that they provided additional disclosures, beyond what is required by state law. Representatives from one CCRC told us that they offered prospective residents a lengthy "discovery phase" so that residents were not unpleasantly surprised after signing the contract or moving in. In this discovery phase, prospective residents discussed their expectations with staff, had a meal at the CCRC, and visited with current residents and staff. The CCRC had also established a residents' finance committee that received ongoing budget and other financial information and gave residents a vehicle for communicating with management. Finally, the CCRC provided a quarterly operating budget to each resident and made other financial information available upon request. CCRC officials in several other states, including California and Pennsylvania, told us they exceed statutory requirements. Nonetheless, because we visited only seven CCRCs in the course of our work, we do not know how widespread such actions are.

Concluding Observations

CCRCs can help ensure that older Americans have access to housing and health care in a single community as they age. However, entering a CCRC often means committing a large portion of one's assets, and while CCRC bankruptcies have been rare, and few residents have lost their housing or their entrance fees, a CCRC failure could put residents in a difficult financial situation. As a result, residents have a strong interest in fully understanding the long–term viability of their CCRC and their contract with it. However, resident contracts and CCRC finances are often complex, and prospective residents may find it challenging to evaluate the risks they face or the likelihood that a particular CCRC has done sufficient long-range financial and operational planning. Such difficulties, coupled with the stress that recent economic events have placed on CCRC finances, underscore the importance of regulators being vigilant in their efforts to monitor CCRCs' long-term viability and protect consumers.

CCRCs as entities are not regulated by the federal government, and, according to an industry study, 12 states do not appear to have CCRC-specific regulations. As a result, an entity that might be licensed and regulated as a CCRC in some states may not be in others, and resident contracts that might receive regulatory scrutiny in some states may not in others. In other work looking at the regulation of financial contracts across states, we have pointed out the importance of ensuring that citizens entering similar contracts receive similar regulatory protections across states. Because there is no federal regulator for CCRCs, we are not making a recommendation for specific action. However, the potential risks to residents that result from committing a considerable amount of money to a CCRC highlight the importance of states being vigilant in their efforts to help ensure that CCRC residents' long-term interests are adequately protected. Such efforts will only become more important as the number of older Americans requiring assisted living and nursing home care increases.

NAIC and HHS Comments and Our Evaluation

We provided a draft of the report to the Department of Health and Human Services and the National Association of Insurance Commissioners, but neither commented on the draft.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies of this report to interested congressional committees, the Chief Executive Officer of the National Association of Insurance Commissioners, the Secretary of the U.S. Department of Health and Human Services, and others. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff has any questions regarding this report, please contact us at (202) 512-7022 or cackleya@gao.gov or (202) 512-5491 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix II.

Sincerely,

Alicia Puente Cackley
Director, Financial Markets and
Community Investment

Barbara D. Bovbjerg
Managing Director, Education, Workforce, and
Income Security

Appendix I: Objectives, Scope, and Methodology

To address concerns about the risks and regulation of CCRCs, we have been asked to (1) describe how CCRCs operate and what financial risks are associated with their operation and establishment, (2) describe how state laws address these risks and identifies what is known about how adequately they protect CCRCs' financial condition, (3) describe risks that CCRC residents face; and (4) describe how state laws address these risks and identifies what is known about their adequacy.

To describe how CCRCs are established and operated, methods CCRCs use for initial financing and on-going operations, and what initial and on-going risks CCRCs may experience, we interviewed CCRC providers, CCRC industry associations—including the American Association for Homes and Services for the Aging (AAHSA), American Seniors Housing Association (ASHA), National Association of Insurance Commissioners (NAIC), and National Center for Assisted Living (NCAL)—and two attorneys who specialize in housing and health care for older Americans.[1] In addition, we met with officials from eight CCRC facilities. We selected these providers based on the providers' geographic diversity, facility size, non-profit or for-profit status, type of contracts offered, and income or market segment served. We also met with state CCRC regulators from eight states—California, Florida, Illinois, New York, Ohio, Pennsylvania, Texas, and Wisconsin. We selected these states due to the states' geographic diversity, CCRC population size, and type of state regulatory department with CCRC oversight responsibility. Because we judgmentally selected the states and CCRCs we reviewed, we cannot generalize information we obtained to other states or CCRCs. In addition, we reviewed literature and academic articles by experts in the senior living industry.

To describe what state laws exist to ensure CCRCs' financial stability, and what is known about how adequately they protect CCRCs financial condition, in the eight states we selected we reviewed and analyzed state CCRC laws that govern the financial aspects of CCRC licensing and periodic state oversight, and met with selected state regulatory officials. In addition, we met with industry associations, CCRC providers, and two attorneys who specialized in housing and health care for older Americans. We also met with two actuaries, two actuarial industry associations, and

[1]We consulted with Mr. Paul M. Gordon, Partner, Hanson Bridgett, LLP and author; and Ms. Katherine C. Pearson, Professor of Law and Director, Elder Law and Consumer Protection Clinic, Pennsylvania State University.

members of CCRC residents' associations that work with CCRC management on behalf of older Americans who reside in CCRCs.[2]

To describe what risks CCRC consumers face, as well as what state laws exist to protect consumers from financial and other risks, and what is known about how adequately they protect consumers, in the states we selected we reviewed and analyzed state laws pertaining to specifically to CCRCs that are designed to inform and protect consumers, and met with selected state regulatory officials. We also reviewed summary information on laws and regulations across all states that was compiled by an industry association. We also reviewed examples of CCRC disclosures and other information provided by CCRCs in states we reviewed. In addition, we met with industry associations, CCRC providers, and two attorneys who specialize in housing and health care for older Americans. In addition, we met with members of CCRC residents' associations that work with CCRC management on behalf of older Americans who reside in CCRCs.

We conducted this performance audit from June 2009 to June 2010 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

[2]The two actuaries we consulted were Mr. A.V. Powell, Chief Executive Officer, A.V. Powell and Associates, and Ms. Faye Albert, an independent actuarial practitioner.

Appendix II: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to the contacts named above, Patrick Ward (Assistant Director), Clarita Mrena (Assistant Director), Joe Applebaum, Emily Chalmers, Erin Cohen, Andrew Curry, Mike Hartnett, Marc Molino, Walter Ochinko, Angela Pun, and Steve Ruszczyk made key contributions to this report.

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