

Bringing CCRC Governance Up to Date

By James J. Gallagher, Ph.D.

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When a group of concerned citizens founded a lifecare residence for widows of Civil War veterans in the late 1800s, they could never have anticipated the industry they inspired. At recent count, there are nearly 2,000 continuing care retirement communities (CCRCs) in the United States, serving some 700,000 residents.

Back in 1900 there were only seven listed in the country. But as the older segment of population started growing in the 1960s, more CCRC developments sprouted. And as the Baby Boomer generation, born just after World War Two through 1964, caused a spurt in the senior population in the early years of the current century, the numbers of CCRC villages skyrocketed. CCRC residents now number about 2 per cent of the total senior population. (Trivia fact: The Philadelphia/Delaware Valley area is recognized as the “CCRC capital of the world” with 45 sites, the highest concentration anywhere.)

Since early days, a majority of CCRCs have been not-for-profit organizations, generally with religious affiliations. More recently there has been a slow entry by large corporations such as Marriott and Hyatt and smaller one like Erickson, Altria, Sunrise and Kendal. The majority are still governed by not-for-profits.

That dominance of not-for-profits accounts for why CCRCs are failing in their governance practices to recognize and respect the voices of residents in determining policies and practices under which they live. There are some exceptions to this, but in a very small number, residents are “represented” by one or two of their number not elected by other residents, but appointed by the governing board itself.

That practice can be understood in view of the fact that the nation’s not-for-profits, particularly religious-based ones, have had extensive experience with two types of not-for-profit organizations serving the public good: hospitals and colleges. Those institutions have self-perpetuating boards made up of a range of professionals, civic and business leaders, sometimes donors and celebrities.

Following the hospital and academic model, CCRCs, with few exceptions, have failed to honor one critical difference in the populations served: hospitals and colleges serve essentially transient populations. In fact, when they enter, people intend to leave those institutions after as short a stay as possible.

The current average age of seniors entering CCRCs is a bit above 85, their life expectancy in the community averages 10 to 12 years and they have expectations that they will live out their lives in the same location. On average residents will spend three-fourths of their time in independent living and then transition to assisted living and/or skilled nursing care. More recently, as CCRCs have set up what are euphemistically called “memory care” units, some of the time following independent living might be spent there. An ,extremely small percentage of

residents, significantly less than one per cent, might move out of their campus homes by their own choice.

CCRC marketing materials reinforce a new resident's "home for life" expectations. Financial contracts provide for lifetime care in one way or another. Expectations for long-term "worry free retirement living" have attracted recent cohorts of seniors and prompted them to expect participation in governance of their new communities because of the status and characteristics they bring with them. These include:

- Higher levels of education and social mobility than previous generations;
- Greater availability of wealth and retirement income;
- High levels of entitlement (ref: Baby Boomers);
- Life experiences that include professional and business leadership in a climate of transparency and accountability;
- Home and property ownership that led to participation in local and higher government, in elected or appointed boards in corporations, not-for-profit organizations, condominiums and cooperative boards as well as near universal service at all levels of the military, from flag officers down to platoon and squad leaders.

No less an expert than Michele Holleran, Ph.D., head of the firm that conducts resident satisfaction surveys at CCRCs across the nation, alerted industry leaders to the shifting grounds beneath them in a recent publication entitled "Prepare now for the coming shift in resident engagement."

Holleran cited two dimensions of resident engagement, “having a voice” and “inclusion and acceptance.” Her recent research with CEOs and Executive Directors nationwide finds that “when residents have issues that are not fully vetted early on or addressed to the satisfaction of residents, resident leaders will circulate petitions to ensure that they will be heard.”

Holleran reported that existing resident councils, mandated by law or allowed as advisory by management, have not adequately served the recognition nor inclusion residents feel they deserve and need. In her company’s resident satisfaction surveys nationwide only 79.9 per cent of respondents judged resident councils to be effective, one of the lowest satisfaction scores.

As a model for improvement, Holleran cites the experience of the Kendall at Oberlin CCRC on the campus of a highly respected college in Ohio., It currently has three residents on its governing board. One resident whose 40 years of professional experience included service as vice president of Case Western Reserve University, was selected by the Executive Director to lead the CCRC strategic planning initiative. It became a comprehensive task that enlisted residents, administrators and board members and spanned more than a year to determine the future course of the CCRC’s mission.

“Many residents have substantial histories in executive leadership in government, universities, leading Fortune 500 corporations or small businesses,” Holleran states, “They believe they are up to the task of co-managing their communities,

especially at high-end locations where the atmosphere is more akin to a country club than a retirement home.”

Holleran’s counsel is gaining traction within the CCRC industry. The National Association of Continuing Care Residents Association (NACCRA) currently circulates its Resident Bill of Rights which recommends that three residents be selected and appointed by residents to voting seats on governing boards.

The statements made by Holleran also echo testimony given a decade ago by Katherine C. Pearson, who served as professor of law at Penn State University’s Elder Law and Consumer Protection Clinic, before the US Senate Special Committee on Aging.

Professor Pearson said “CCRC residents are active, engaged adults. Many value the right to organize and participate actively in the governance of their village-like communities... frequent(ly) seeking to exercise their rights in connection with financial decisions and business practices that affect their daily lives and investments in the community.

“But I also know from years of listening to residents, that some are fearful of speaking out unless they feel someone will listen seriously to their concerns. They fear that they will be shunned, encouraged to leave their homes, or subjected to other negative response if they talk about what they perceive as problems when outside of their campus walls. While some states recognize specific rights for residents, this is the least developed area of regulation, in my opinion.”

CCRCs are regulated by individual states rather than the federal government, except for functions like skilled nursing facilities. Legislation in eight states and the District of Columbia now require that residents be selected to serve on governing boards. The states are: New Jersey, Maryland, California, Connecticut, Michigan, Missouri, Ohio and Oregon (the last two require only non-voting membership).

Ten years of major effort by residents serving on the legislative committee of ORANJ, the state-wide association of CCRC residents in New Jersey, succeeded in 2007 when Governor John Corzine signed the bill hammered out with both house of the legislature. The Governor's statement included his personal approval: "The idea that one ought to be consulted and have a vote in the world that you've made a commitment to seems like ...simple common sense. People ought to have a voice."

When the existing California law was amended more recently in 2015, that state now requires that one voting membership on a CCRC board be nominated by resident votes and be added to the existing one non-voting resident member. That legislation includes the statement: "...residents of a CCRC have a unique and valuable perspective on the operation of, and service provided in, the community in which they live, and should have input into decisions made by the provider." This law now also requires that one additional voting resident be added if the board exceeds 20 or more members.

Some observers still urge caution when legislating participation by residents on governing boards. Jack Cumming stated during a NACCRA presentation in 2012, “Some states have found that residents have a conflict of interest and, therefore, ought not to be allowed to serve on CCRC boards since it is thought that residents will seek to keep residency charges low and will thereby impair the financial stability and prudent management of the community

“On the other hand, once a resident takes a seat on a board, the resident assumes legal liability unless the resident puts the interests of the enterprise before the interests of the resident group he or she may feel called to represent.

“Of course, executives and managing firms, too, have a conflict of interest in the representations and recommendations that they make to a board.”

Professor Pearson the same year wrote in an Oregon newspaper: “The CCRC relationship between operators and residents is like a great marriage, with Type A personalities on all sides. Residents, boards and parent corporations can work through deadlocks, but it is not easy when essential trust is missing.”

The issue is important even though a sizeable portion of residents may readily accept the “passive resident/custodial provider” model. It is particularly necessary in financial matters. Bankruptcies and transfer of ownerships of CCRCs during the financial melt-down of 2008 and its aftermath are frequently cited as reminders of the need for tighter regulation of governance and transparency in reporting to residents.

One particularly egregious violation of the trust that Professor Pearson calls for happened in an incident reported by a CCRC resident. Millions of dollars for capital expenses were authorized by a not-for-profit's governing board for projects

that had a normal useful life of up to 30 or 40 years. The capital costs were to be charged to current operating expenses, which meant significant increase in residents' monthly charges.

Normally when a corporation incurs capital costs, they are amortized by mortgage or bond issues over a period that covers the useful life of the improvements. In that case, residents, in effect, would pay in the current year for improvements that would serve the community for many more years than any of them would hope to be alive to enjoy them.

When this was pointed out to the resident representative on the board, the response was "The board approved the budget. It's a done deal. If you don't like it, you can always move out."

Smarting from that disdainful response, the resident confronted the board chair with the request that the capital costs be covered by long-term loans or bonds.

Then current residents would be charged each month for significantly smaller interest and repayment costs. The response from the board chair was abrupt: "We don't want to incur any more borrowing." Case closed.

Just one such example of such cavalier treatment of residents and resident interests that would circulate, as most juicy gossip does, through a CCRC

community and beyond, would be enough to spark the fires of indignation and discontent.

As Holleran advised, changes are coming. It is time to let the games begin.

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