

State Comments

Thomas Hestwood
Splendido, Oro Valley, Arizona

From: thomas hestwood [mailto:thestwood@gmail.com]
Sent: Thursday, March 15, 2018 11:00 PM
To: Basil H. Pflumm
Subject: Meeting of NaCCRA Members

Basil, earlier this week residents of Splendido who are NaCCRA members met to discuss developments at NaCCRA and to make recommendations regarding how the organization might better support our residents. Here is a summary of suggestions from that meeting:

1) The residents felt that in order to deal knowledgeably with management we need more information on the issues confronting other CCRCs around the country. Therefore, we recommend that NaCCRA periodically conduct and publish surveys of NaCCRA members and/or CCRC management on topics of interest to members. This would help facilitate achieving the goal mentioned in the 3rd Quarter 2017 Lifeline of disseminating CCRC best practices.

2) Most of the literature and articles on CCRCs don't distinguish between the issues affecting for-profit versus those affecting not-for-profit CCRCs. We recommend that NaCCRA encourage journalists and others studying the CCRC industry to determine where issues and problems differ or are the same in these two types of organizations.

3) As you know, NaCCRA membership includes only a small number of CCRC residents in the U.S. We believe that membership could be increased by the development and dissemination of publicity materials that better define the benefits of membership. We also think that creative membership campaigns, such as a "one for one" effort that encourages each member to bring in one additional member, would be productive.

4) CCRC residents in states like Arizona with little or no CCRC regulation, and a tradition of minimal government action on social issues, find it difficult to muster the political will and expertise that CCRC members need to obtain greater legal protections. We would like to see what, if any, assistance NaCCRA could provide in dealing with situations like those we confront.

I realize we may be preaching to the choir in regard to these matters. but I thought you would be interest in what our members had to say.

Best regards, Tom

MARCH 18 STATE LEADERS FORUM
CONSOLIDATED CONSIDERING INPUTS FROM STATE LEADERS
TWO INPUTS FOR CONSIDERATION

GERARD HYLAND, OREGON

Rev. March 14, 2018

I. FORUM ISSUE: Leadership: State organizations are finding the same difficulty in securing sufficient numbers of volunteers.

Summary:

The physical vitality and mental acuity of CCRC residents have declined since 2007. CCRC residents are increasingly preoccupied with caring for themselves and their spouses. Volunteering is not a consideration. Not-for-profit CCRCs having failed to meet the needs of prospective residents, e.g. defined by NaCCRA, or to take the advice of LeadingAge. These CCRCs are failing to appeal to prospective residents who can truly live independently.

Discussion:

Prior to 2008, CCRCs would require prospective residents to physically and cognitively qualify for acceptance into independent living.

Following The Great Recession of 2007, CCRCs were not as strict in their qualifying evaluations in an effort to maintain occupancy. Prospective residents who had the option of remaining in their homes did so in the hope that their homes and savings would recover from the steep drop in home values and stock prices. The prospective residents moving to CCRCs were those who were unable to remain living in their own home.

Subsequent to The Great Recession, federal and state fair housing laws were applied to CCRCs. A CCRC was required to accept residents who could live independently with “reasonable accommodation,” as broadly defined by the courts. [CCRCs offering Lifecare, Type A contracts can still qualify residents because of the insurance aspect of the contract.]

Finally, the Baby Boomers are coming and they are different than the Silent Generation and World War II Generation [See Figure 1]. The World War II Generation attitudes and preferences were formed by the Great Depression and World War II. They want security and stability. The Silent Generation, born between 1930 and 1946, was born during a period of huge opportunities and growth. They are better educated and more affluent than the prior generation. The Baby Boomers were born after 1946.

As loudly and elegantly proclaimed at the 2010 American Association of Homes and Services for the Aging (AAHSA) Annual Meetings in Los Angeles, AAHSA changed its name to LeadingAge to reposition itself to lead the coming Baby Boomer Generation.

“These older people will be well educated, technologically savvy and eager to work hard for social change. Most important, they will want to take charge of their own aging experience. Future consumers will not trust providers to make decisions for them. Already accustomed to having abundant choices in many aspects of their lives, they will demand the same range of choices from us.”

“Because future consumers will be different, providers of long-term services and supports must also be different. Instead of “serving” and “caring for” residents and clients, we must enable and empower them. This dramatic shift will surely disrupt our current ways of doing business.” However, inaction is not an option. If we don’t offer abundant and meaningful choices to consumers – and work hard to foster consumer independence and autonomy – older people will find other providers who will.” [See AAHSA Cabinet on Future Needs of Consumers, Who Decides,” June 2009, page 4.]

Conclusions:

CCRCs have not followed LeadingAge’s lead, and they have not followed NaCCRA’s recommendations. Baby Boomers are not coming to CCRCs as the World War II Generation once did. The Silent Generation is increasingly delaying moving to CCRC until they cannot live independently without in-home care. CCRC independent living is the new assisted living. To accommodate these new residents, CCRCs are increasingly offering in-home care to these new residents. The new CCRC residents do not have the “vim and vigor” of earlier residents to protect their interest, never mind actively participate in NaCCRA activities.

There are more homes and services for the elderly offered by for-profit organizations than not-for-profit. While some of these facilities offer continuum of care, they are not CCRCs as defined in Oregon Administrative Rules. These residents are lost to NaCCRA.

II. FORUM ISSUE: Protection of Resident Investments via federal rules or codes for protecting resident entrance fees for all states.

Summary:

Would obtaining agreement with CCRC management or a *declaratory judgement* holding that a CCRC’s Board and management have a *fiduciary duty*, i.e., the highest standard of care to residents, be a preferred approach to achieving protection for residents? Should a resident trust their assets and care through end of life, if a CCRC does not recognize a fiduciary duty to residents?

Discussion:

David Markowitz, a lawyer’s lawyer and the attorney who represented the Rogue Valley Manor Residents in their complaint, negotiated the following language in their settlement, “Each RVM director must, prior to assuming office, agree that as a director he or she has a fiduciary duty to RVM. PRS agrees that it has a fiduciary duty to RVM.” In his 1-hour, 37-minute-long explanation of the proposed settlement to the residents, he stated that the fiduciary duty of RVM directors to RVM is settled law. The duty of PRS, the sole member of RVM, that is, the sole

stockholder of RVM, is not settled law. According to Markowitz, that sentence “PRS agrees that it has a fiduciary duty to RVM” was the most important sentence in the entire agreement.

A **fiduciary duty** is the highest standard of care. A legal obligation of one party to act in the best interest of another.

Fiduciary duty was frequently discussed in newspapers during the past two years in the context that the Obama administration had proposed federal Dep’t of Labor rules that those advisors offering financial advice for your retirement planning and assets have a fiduciary relationship with their clients. Subsequently, the Trump administration proposed otherwise.

Alternatively, if a CCRC Board of Directors refuses to acknowledge a *fiduciary duty* to residents, a court could be requested to issue a *declaratory judgement* that a *fiduciary duty* exists based on a factual finding of the nature of the relationship.

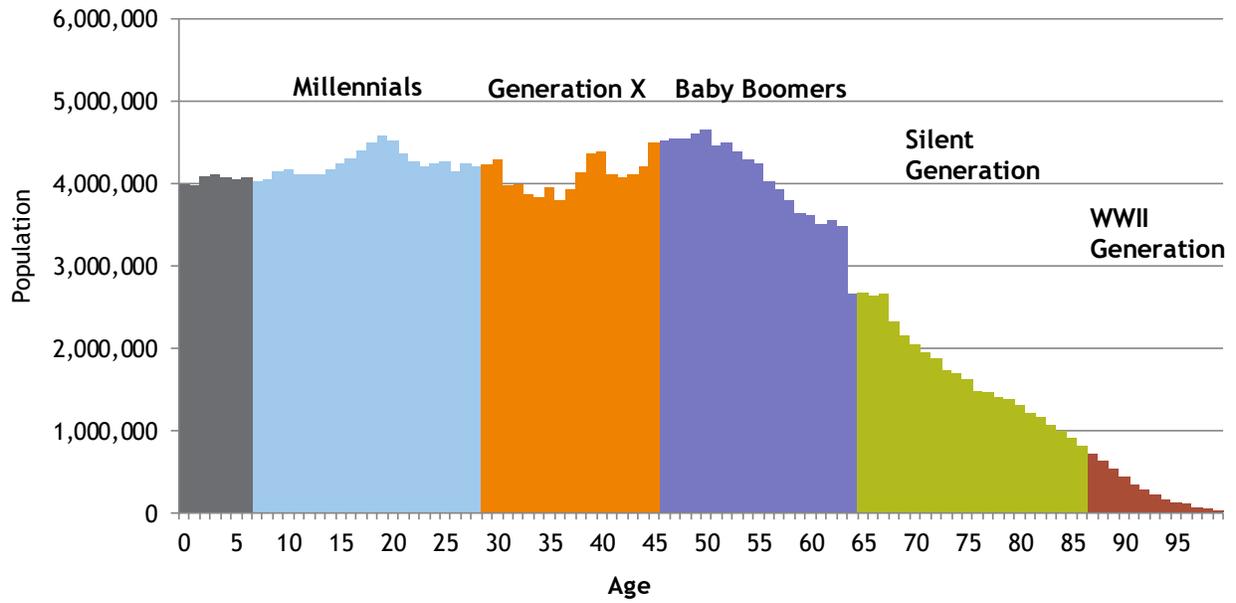
“A **declaratory judgment**, also called a declaration, is the legal determination of a court that resolves legal uncertainty for the litigants. It is a form of legally binding preventive adjudication^[1] by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute (subject to any appeal).^[2] “

Source: https://en.wikipedia.org/wiki/Declaratory_judgment

Conclusions:

As residents look to a CCRC for care of their assets and lives through end of life, a CCRC Board of Directors should/must acknowledge that the CCRC Board and management have a *fiduciary duty* to protect the assets and lives of residents through end of life?

Figure 1
2010 US Population



Source: Steve Maag, Director of Residential Communities, LeadingAge; "Strategic Trends in Senior Services," presented at Mary's Woods, Lake Oswego, OR; 9/17/2016

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WACCRA RESPONSE TO NaCCRA January 26, 2018 Letter

- 1) NaCCRA is important to residents of CCRCs nationally.
- 2) NaCCRA is important to WACCRA. The credibility of our Washington State advocacy efforts is enhanced by our being affiliated with a National Organization.
- 3) We would rather that NaCCRA continue in a caretaker form, for even 2-3 years if that is necessary, than “cease to exist during 2018”. Too much work has been done and too much goodwill built up in the NaCCRA name, to abandon the organization.
- 4) Tightening the belt and building up NaCCRA’s financial strength was the right step in 2017. We appreciate this meant Board Members covered their own expenses. Because of this, NaCCRA is stronger today than it was a year ago and, in our opinion, does not need to consider folding.
- 5) We agree that more volunteers are needed for NaCCRA to be effective. While we have no short-term answer to this difficulty, we are hopeful that new NaCCRA leadership will, at some point in the future, be able to recruit more volunteers. It is worth waiting for this hope to emerge.
- 6) NaCCRA’s goal to “collaborate with state resident organizations” is incompatible with the action the NaCCRA Board took to close Board Meetings to these very state organizations. Speaking as a State President who regularly joined NaCCRA Board Meetings by teleconference, that decision communicated a total lack of interest from the Board in having input from state organizations or in having us be aware of the issues facing NaCCRA. The NaCCRA Board should feel free to go into Executive Session on appropriate issues, but the general Board discussions need to be open if state organizations are to feel a part of NaCCRA.