Controversy in Florida

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By Jack Cumming

Recent developments in Florida have led to heightened tensions in that state among (1) the Office of Insurance Regulation, which oversees Continuing Care Retirement Communities (CCRCs – sometimes called Life Plan Communities or Lifecare Communities); (2) providers, represented in LeadingAge Florida; and (3) residents, organized as the Florida Lifecare Residents Association (FLiCRA).

Events began with the publicized financial failures of two CCRCs, Glenmoor in Jacksonville, (http://seniorhousingnews.com/2014/04/17/florida-ccrc-survives-bankruptcy-scare-restructures-debt/) and University Village in Tampa (http://www.floir.com/siteDocuments/WestportHoldingsTampa188018-16IOOS.pdf). This led Governor Rick Scott to direct the state regulators to prevent further such instances. The Office of Insurance Regulation (OIR) responded on December 12, 2016 with a series of proposed legislative changes to Chapter 651 of the Florida statutes regulating CCRCs.

The industry responded that it had not been adequately consulted and that "If passed in its present form the re-write could cause irreparable harm to thousands of residents, destroy this distinguished industry and eliminate thousands of jobs. The re-write would do this by adding such things as unneeded expensive studies, unnecessary and duplicative reserves (sometimes for services not even offered by the community), and restrictions on troubled communities that would not help the community recover but actually push the community into deeper trouble." (Roger A. Stevens, Chief Executive Officer, Westminster Communities of Florida, to Governor Rick Scott, December 16, 2016).

Since then, the OIR has changed and softened its proposed legislative revision, but the controversy continues with the providers objecting and the OIR under pressure to do something. These developments have the potential to affect providers nationwide since Florida is often looked to as a bellwether state for matters affecting older people.

At the heart of the controversy lie questions of capital adequacy. Many CCRCs do not hold contract reserves for the contractual liabilities funded by residents' entrance fees. Instead, those entrance fees are often treated as though they were at risk investment capital. When people deposit money in a bank, they expect that it will be held for their benefit. The same is true of CCRC residents who pay entrance fees. But the industry supposition that entrance fees can be used to support a financially shaky balance sheet allows some tax-exempt CCRCs to be able to meet their bond covenant requirements and to continue to operate unchallenged even though they have liabilities greater than their assets. Some in the industry dismiss such balance sheet impairment as of no importance, although impairment is cause for financial reorganization in other industries.

It would come as a shock to the industry if CCRCs were no longer permitted to continue operating when their balance sheets are impaired. Still, impairment is not a normal business condition. Some tax-exempt CCRCs specifically use residents' entrance fees to repay startup financing loans, which means that they start their existence with impaired balance sheets. Thus, it’s not surprising that many in the industry fear heightened financial regulation. In contrast, insurance companies, banks, and other trust-dependent businesses are already required to maintain adequate positive capital. That reflects the trust inherent in their taking funds upfront – deposits for banks, premiums for insurers – in return for deferred contractual benefits. CCRCs, when they require entrance fees, are no different and can be held to analogous standards.

Residents are largely in the dark about these developments, and most residents lack the financial sophistication to question the mollifying representations of their providers. As we have seen with the recent heated discussions concerning Dodd-Frank, establishing minimum standards for capital adequacy requires a cadre of people with technical expertise. It is not a topic that fares well in the halls of political maneuverings.

For insurance, this need for technical expertise has long been recognized with the insurance regulators looking to the National Association of Insurance Commissioners (NAIC, an association of state insurance regulators) to set standards. The NAIC allows the various states to pool their resources to afford the technical experts needed to achieve regulation on the merits rather than on the basis of conflicting political interests.

Entrance fees are little different from insured annuity contracts; both promise a lifetime stream of benefit payments in return for an upfront contractual payment. Hence, it seems likely that the kind of heated controversy, like that which has now arisen in Florida, will continue until an objective agency like the NAIC is tasked to develop an appropriate framework for resolving these contentious matters.

Jack Cumming, CASP, CLU, ChFC, FSA, is a thoughtful resident who believes that the senior housing industry will only meet America’s needs when the integrity of some is the integrity of all. He was active in advocacy for the Equitable Life Assurance Society of the United States and for Home Life Insurance Company. He was a member and Chair of the Individual Committee of the Health Insurance Association of America, which is now known as America’s Health Insurance Plans. He also chaired the Actuarial Committee of the New York Life Insurance Guaranty Corporation, which was the entity that salvaged financially failing insurance companies in New York State, and he served on the New York State Agents’ Licensing Board. Both of these former activities had significant legislative and regulatory involvement. As a member of Aging Services of California’s Public Policy committee, he has met with legislators on aging issues.