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ANDREW
GARFIELD

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Concerns Rise About Continuing-Care Enclaves

By ELIZABETH OLSON

FOR middle- and upper-income retirees who had the money, it was almost a no-brainer in recent years to choose living in a continuing-care retirement community. They could move, as the need arose, from independent living to assisted care to skilled nursing care — all without leaving the community.

Well-off older people like Charles W. Prine Jr. of Pittsburgh, a former home building executive, plunked down six-figure entrance fees for a spot in a spacious, well-kept colony with amenities like organized outings, prepared meals and musical performances.

“We thought it would be a great place to be,” said Mr. Prine, 84, who, along with his wife, Elizabeth, moved into an independent living unit in nearby Mount Lebanon, in southwest Pennsylvania, in 2002. “It was a kind of insurance so you could be taken care of, at the same price, when you or your spouse needed more care eventually.”

The community, then called the Covenant at South Hills, was one of about 1,900 aging-in-place operations — many with waiting lists — that sprouted around the country, especially in California, Florida, the Midwest and the mid-Atlantic states, and provided homes for 900,000 people.

Few of the communities — about 80 percent of which are operated by nonprofit organizations — have closed or gone bankrupt. But concerns are rising about their financial stability, entrance fees and how the fees are used, and reduced services. Governmental inquiries at several levels have voiced concerns and called on the communities’ operators to disclose more information about their finances to residents and prospective customers.

Choosing to enter a continuing-care retirement community “can be a difficult decision and is not without significant financial and other risks,” said the [Government Accountability Office](#), the investigative arm of Congress, in a report released in July.

Buyers should consult a lawyer before committing their savings to a promise of lifetime health

care, said the G.A.O., which examined industry practices at the request of the Senate Special Committee on Aging. The committee produced a separate study of five communities.

Larry Minnix, president of the American Association of Homes and Services for the Aging, an industry group, said his group supported the G.A.O.'s recommendations because "putting up an entry fee is a risk, perhaps a little risk, but it is a risk."

According to the studies, the financial risk is that the operators could use the entrance fees, which this year averaged about \$250,000, to cover operating costs or to pay debts from construction. The entrance fee is generally refundable to residents who move out or to their heirs.

Only 875, or fewer than half, of all such communities require entrance fees, said Robert G. Kramer, president of the National Investment Center for Services, Housing and Care, which provides financial data on housing for older residents.

In addition to the entrance fee, most residents pay a monthly bill of \$2,000 or more that goes to pay for services and maintenance. Because the labor-intensive care for residents in poor health often costs more than the monthly fee, the money from new, healthier residents is sometimes used to help pay for the care of the less healthy.

But the flow of new customers has been endangered by the housing downturn, which has made it difficult for the elderly to sell homes or, at least, to sell them for the price they had anticipated. The communities are "particularly vulnerable during economic downturns, as stagnant real estate markets drive down occupancy levels in independent living units," the G.A.O. report found.

The communities' financial models have also come under scrutiny as some heirs and former residents have begun to ask legislators to look into lengthy delays in recouping entrance fees.

Recently, questions have also been raised over whether entrance fees are taxable. One operator, the Classic Residence by Hyatt, now renamed Vi, tangled with the [Internal Revenue Service](#) over whether entrance fees were prepaid rent, which is taxable income. Tax officials decided that in [Hyatt's](#) case, the refundable portion was a loan and not taxable. But the I.R.S. cautioned that in other situations such fees might be counted as income.

Shivers also went through the industry when Erickson Retirement Communities, one of the largest operators with 19 communities and more than 23,000 residents in a dozen states, filed for bankruptcy protection last year after it accumulated \$3 billion in debt in a major expansion effort. It emerged from bankruptcy in April after being sold to an investment firm.

State insurance regulators need to keep better tabs on the finances of such communities, Alicia P. Cackley, the G.A.O.'s director for financial marketing and community investment, told the Senate Aging Committee at a hearing in July.

The government's report noted that 12 states and the District of Columbia do not have specific rules governing the communities. The report looked specifically at the practices of eight states: California, Florida, Illinois, New York, Ohio, Pennsylvania, Texas and Wisconsin.

Florida, which has 73 licensed continuing-care retirement communities with 30,000 residents, is stricter than most states and closely oversees the \$1.4 billion industry there, the state insurance commissioner, Kevin M. McCarty, testified at the hearing.

After several prominent bankruptcies in Florida and nationally years ago, the regulatory climate for continuing-care retirement communities evolved, Mr. McCarty said. Florida's Legislature this year increased the amount of financial data that must be disclosed to prospective and current residents.

If that had been the case in Pennsylvania, Mr. Prine said, his community might have avoided bankruptcy last year. "That cost the residents the \$26 million we paid in refundable deposits," he said. "We didn't get a penny back."

Concordia Lutheran Ministries, of Pittsburgh, bought the community, renamed it Concordia of the South Hills, and honored the residency agreements and the life-care contracts. But about 100 residents are suing the previous owner, B'nai B'rith Housing, a nonprofit affiliate of B'nai B'rith International, as well as the parent organization, to recoup their entrance fees.

Michael Plummer, a lawyer for Mr. Prine and other residents, said: "B'nai B'rith International set up an affiliate called Covenant at South Hills, and had its own directors and officers serving as the affiliate's directors and officers.

"B'nai B'rith International contracted with the affiliate to receive a \$1 million licensing fee and half of the facility's net operating income in exchange for use of its name and logo in marketing. Seniors relied on B'nai B'rith's reputation when they decided to move into the facility and pay their entrance fees."

In effect, Mr. Plummer said, B'nai B'rith Housing and the Covenant at South Hills, "were shell organizations run by B'nai B'rith International."

B'nai B'rith Housing submitted written testimony to the Senate aging committee after its July hearing, explaining that "for a variety of reasons, including unfavorable economic conditions, the Covenant failed to meet all of its pro forma projections."

The project was weighed down by debt, the statement said, but the testimony — which did not list any names — insisted that B'nai B'rith executives had participated “in many personal visits, town-hall style meetings and teleconferences, all of which gave the residents a forum to share concerns.”

Sharon Bender, spokeswoman for B'nai B'rith International and the housing affiliate, said the two groups were “affiliated nonprofit companies, neither of which has ownership interest in the other.” The written statement to Congress, she said, “stands as what we have,” adding, “We’re not going beyond that testimony.”

Mr. Minnix of the industry group said that a clear majority of such communities were nonprofits, adding: “This concept extends back 150 years or more. Masons, Catholics and others sponsored them to take care of the aging. Later they were called ‘life care’; then about 40 years ago, the modern version, with comprehensive-care campuses, started. It was a form of insurance for prepaid care.”

The Senate Aging Committee study, which did not identify the communities it had examined, found that “all five of the entities are either experiencing cash flow problems, struggling with debt or both.”

Despite investing their life savings, residents and their concerns have often been ignored, and they have been excluded from their community’s governing council, said Katherine C. Pearson, a [Pennsylvania State University](#) law professor who specializes in legal issues and aging.

“My sense is that facilities are moving in the direction of complexity” in their finances, she said, “sometimes driven by the need for more cash or resources to stay solvent.”

Few residents complain, she said, because “they fear they will be shunned, encouraged to leave their homes or subjected to other negative response if they talk about what they perceive as problems.”

Even so, residents’ groups call her weekly, she said, to ask for advice.

“We have to see whether we’re past the worst, or if we’re at the start of a more difficult period for these facilities financially,” said Professor Pearson. “They’re not out the woods yet.”

This article has been revised to reflect the following correction:

Correction: September 20, 2010

A picture caption in the special Retirement section on Thursday, with an article about some financial risks in continuing-care communities, misstated the target of a lawsuit by residents of one such

community, Concordia of the South Hills, in Mount Lebanon, Pa. A suit seeking to recover entrance fees was filed against the community's previous owner, B'nai B'rith Housing, and its parent, B'nai B'rith International; it does not name the community itself, which is now owned by Concordia Lutheran Ministries of Pittsburgh.