

LeadingAge Washington Cautions Consumers Against Relying on the *Consumer Guide to Continuing Care Retirement Communities*¹

By way of background, WaCCRA has approximately 800 members within its association; it represents approximately ten percent (10%) of the 8,000 residents who live independently in Washington State's CCRCs. WaCCRA's members largely reside in six (6) CCRCs located in the Seattle area; these six CCRCs offer the same type of contract, known as Type A, which comprise approximately one-quarter of all CCRCs in our state.

In contrast, LeadingAge Washington represents all twenty-three (23) CCRCs in Washington State and provides advocacy and education to both management and staff as well as the residents that live within these communities. For example, LeadingAge Washington worked to pass a law that expanded the opportunity for residents living independently to receive short term health care support in their apartments without having to move to assisted living or skilled nursing or hire a home health agency. We passed a law to allow CCRC residents to receive priority admission to their community's skilled nursing facility when that level of care becomes necessary. We ensured that persons paying privately for their skilled care in a CCRC were not taxed for that care. And we created and implemented disclosure and transparency guidelines to keep CCRC residents regularly informed and engaged on matters important to them.

WaCCRA claims it is the "state CCRC association" and acknowledges that it is a partner of the National Continuing Care Residents Association. WaCCRA, therefore, implies it has special knowledge and experiences with Washington's Continuing Care Retirement Communities (CCRCs) which encourages consumers to place a level of trust in the information found in the Consumer Guide. This is troubling for a number of reasons. LeadingAge Washington is concerned consumers will rely on inaccurate, false and misleading information found in the Guide. Please see the attached for a non-exhaustive list of inaccurate, false and misleading statements found in the Guide.

WaCCRA claims that, to the best of its knowledge, the Guide is accurate as of the publication date. WaCCRA ignores the written response LeadingAge provided that stated the Guide contained a number of inaccurate, false and misleading statements and ignored our offer to work collaboratively to produce a more factually accurate Guide.

WaCCRA's knowledge and experiences are narrow and uninformed. This limited knowledge and experience could explain why there are a number of significant inaccurate, false and misleading statements found in the Consumer Guide which fails to accurately describe the variety of CCRCs in our state.

The Guide also uses pejorative language to unjustly describe the management of CCRCs in our state influencing the reader to adopt a negative mindset towards management.

¹WaCCRA Publication, Summer 2019, www.waccra.org

The Guide creates an atmosphere of “us and them” disparaging management presumably in an effort to grow WaCCRA membership to support a self-perpetuating quest for the enactment of laws to protect their interests. Again, the reader is cautioned to understand whose interests WaCCRA is seeking to protect. Recall, WaCCRA represents a minority of residents. Their interests are not the interests of all residents that live in Type A CCRCs and they certainly do not represent the interests of residents living in different types of communities. In fact, many WaCCRA residents and non-WaCCRA residents opposed the legislation pursued by WaCCRA in past years finding the legislation to be unnecessary and only serving to drive up CCRC operating costs and thus their monthly fees. WaCCRA represents a seemingly narrow viewpoint whereas LeadingAge Washington attempts to strike a balance between the competing interests of residents in all CCRC types.

LeadingAge Washington has offered to meet with WaCCRA and create a process by which we can work together to resolve conflicts, provide reasonably requested information, and ensure accountability for our respective actions. LeadingAge Washington does not believe legislation is necessary but we do understand that some residents have fears about the future and the unknown. We believe fear, worry and distrust underlie much of what has driven WaCCRA towards legislation in an effort to gain some sense of control over management decisions. However, management and the governing bodies will always have ownership and control over the future of the organization and management must

always be responsible for the day-to-day operations. Enacting laws will do little to build trust and eliminate or lessen the fears and worries of residents. LeadingAge Washington believes working directly with communities’ management and their boards to address the concerns of residents leads to the most meaningful and effective solutions and outcomes for all.

The Guide could have had a useful purpose to consumers had it been more thoroughly vetted and edited by experts in the CCRC business. However, as currently published, it will very likely create confusion, false consumer expectations, and cause consumers to shy away from CCRCs in favor of other housing and health care choices. It does little to facilitate the stated intent to help consumers define their needs and find the best CCRC for that individual. (See page 4) Worse, it may decrease consumer interest in CCRCs contrary to WaCCRA’s stated intent of supporting the marketing efforts of CCRCs.

In summary, the Consumer Guide falls far short of its intended goals and raises concerns among CCRC management that consumers will actually turn away from the CCRC model of housing and health care because of its inaccuracies and because it disparages those who have dedicated their professional lives to serve an aging population. It shamelessly promotes itself as the association that represents resident interests. WaCCRA ignores the long history of LeadingAge Washington and its work to protect and promote healthy aging options for seniors.

ATTACHMENT

Inaccurate, False and Misleading Statements

Consumer Guide to Continuing Care Retirement Communities

A non-exhaustive list of the inaccurate, false and misleading statements, identified by LeadingAge Washington, are as follows.

1. Some of the descriptive and qualitative language found throughout the Guide is disparaging of CCRC management, unnecessarily and unfairly characterizing its leadership as untrustworthy, secretive and lacking in integrity.
2. The Guide suggests that each CCRC offers independent living, assisted living, memory care and skilled nursing under one roof and that as care needs increase the spouse will be only a short walk away from their partner. (See pages 5 & 10) This is inaccurate and misleading. The law governing CCRCs defines a CCRC as an entity that agrees to provide continuing care to a resident under a residency agreement. Continuing care includes that which is provided directly or indirectly makes available assisted living and skilled nursing care. See RCW 18.390.010. This means that the skilled nursing care may or may not be provided on the same campus or even under the same ownership as the independent living or assisted living settings. The definition does not include or require access to memory care.
3. The Guide indicates that CCRCs are changing their name to "Life Care Community". (See pages 3 & 7). This is inaccurate. CCRCs are becoming known as "Life Plan Communities".
4. The Guide suggests that certain formulas are used to assess adequacy of income and assets to cover present and future costs. The formula provided on page 7 of the Guide is not used by most, if any, WA state CCRCs and should not

serve as representative sample.

5. The ranges provided for entrance fees and monthly fees are also inaccurate and misleading as many CCRCs offer entrance fees lower than the low end of the range cited under Tips on pages 7 & 8 and the monthly fees and rate of increase of those fees are also inaccurate and may vary more widely than suggested. These examples could cause consumers to wrongly believe that a CCRC is unaffordable and go no further in the exploration process, or create inaccurate and unrealistic expectations relied upon for planning purposes.
6. The Guide makes assumptions about the income and financing preferences of individuals that are not necessarily accurate. Individuals with high net income aren't necessarily attracted to Type C contracts because they pay for increasing care levels at the then market rate and personally assume the risk of future health care costs. (See page 8) Individuals with high net worth may still prefer a Type A or a Type B contract with different financing terms to avoid higher, up front, out of pocket fees. These assumptions of consumer preference can confuse and mislead consumers.
7. The Guide states that "[s]ome CCRCs have provisions for receiving full care even if the resident's personal assets become exhausted through no fault of their own." (See page 8) It should be noted that all not-for-profit CCRCs are prevented, through IRS ruling, from discharging anyone who runs out of money through no fault of their own.

¹WaCCRA Publication, Summer 2019, www.waccra.org

8. The Guide states that there's a disadvantage to a Type C contract in that the medical tax deduction is not available. This is inaccurate, a medical tax deduction may be available to individuals depending on the specific contract terms. (See page 8)
9. The Guide describes Type D contracts in very negative terms and is silent on the more positive aspects of these contract types. It also fails to disclose that either party may terminate the agreement and the authors are unaware of whether modifications to contracts may be mutually agreed upon and revised. (See page 9)
10. The Guide uses inflammatory language to describe the different licensed care settings that may be provided under the common ownership of the CCRC or under one roof. This language unnecessarily creates an air of mistrust by suggesting residents are isolated and that staff is secretive and do not welcome visitors. This perception of skilled nursing care is wholly without merit and could easily cause the reader to harbor fear of ever finding themselves in skilled care and withdraw from further exploring a move to a CCRC. (See page 11)
11. The list of amenities expected to be provided in assisted living is inaccurate and misleading. There is no regulation that requires a television in each apartment. Furthermore, not every CCRC assisted living residence is required to have a private or single room occupancy. This will vary based on the CCRC and its contractual obligations. (See page 12)
12. It is stated that memory care units must be secure. (See page 12) This is inaccurate, memory care units are not required to be secured, however, access to a secure outdoor area must be provided.
13. Individuals with severe Parkinson's disease may or may not reside in the memory care unit, assuming such a unit even exists in the first place. This Guide reaches an unnecessary conclusion about location of care and services for one particular type of chronic disease that has little to do with the disease itself but more to do with particular programmatic and functional space design. (See page 12)
14. The Guide inaccurately suggests that the long term care ombudsman program exists to address quality of care concerns in assisted living, skilled nursing, or memory care. (See page 14) This too narrowly defines the scope of the ombudsman program as it, more often than not, provides education to residents and family members and helps resolve conflicts that can arise for a variety of reasons, frequently unrelated to the care provided by the facility.
15. The section on financial strength, beginning on page 15 creates an expectation that the resident is an investor in the CCRC and makes other claims that are simply untrue. Specifically, the Guide suggests that every CCRC should have vacant units in skilled and assisted living and states that it is not scaled properly otherwise. There is conclusion that CCRCs with waiting lists are a better indicator of fiscal good health and should be more desirable for the consumer and suggests waiting for a unit to come available is preferred. This statement can cause CCRCs, particularly start-ups, to struggle to fill up if consumers heed this warning and cause certain failure of the CCRC. The Guide cautions against moving into a CCRC that is less than 90% occupied. This is not helpful advice to existing CCRCs and their residents nor is it accurate to suggest that there financial weaknesses. It is stated that dis-

closure of financial information and reports was lacking prior to the legislation enacting in 2016. This is patently false, CCRC routinely and voluntarily disclosed a number of documents, analyses and reports to residents on a regular basis and ad hoc, upon request. The Guide suggests that actuarial reports are necessary to assure that financial reserves or entrance screening and other practices are sound to determine ability to meet future commitments. This also is untrue and many CCRCs do not perform actuarial analyses particularly those CCRC with strong balance sheets, and for Type B, C or D contracts where the future health care costs are either exclusively or largely paid for at the time care is needed and not dependent on CCRC reserves. (See pages 17 & 18)

16. Use of the term “consortia” to describe multi-site owners is misleading. (See page 18) “Consortia” describes two or more companies that pool their resources to achieve a common purpose. Multi-site CCRC owners create separately incorporated entities to operate as CCRCs independent of each other. They do not pool resources. A loan of some modest amount between a parent and one or more CCRC entities may be created to provide capital funding to develop a new CCRC in a needed market to expand mission and serve seniors. As not-for-profit entities, financing terms are not as favorable from lenders without some investment by the parent organization which decreases development costs and increases consumer affordability.

17. The Guide states that there are a small number of CCRCs that are owned and governed by residents. Such CCRCs do not exist in WA State. The Guide also suggests that depending on the governance structure of the CCRC, resi-

dent quality of life is impacted. This conclusion is unsupported by fact. It also assumes that participation on the governing board is the only way in which residents can engage in the CCRC community and then labels residents/consumers as either passive or active. (See page 20) This is disrespectful of those residents who choose not to engage in CCRC activities at the board level, diminishes their role in participating on various committees and volunteer activities in the larger community and ascribes some negative judgment about other choices consumers make.

18. The Guide inaccurately states that “[a]bout 85 percent of CCRCs are not-for-profit organizations, while the other 15 percent are profit-making corporations.” (see page 20) The correct figures are 79% are not-for-profit and 21% are for-profit organizations.

19. The Guide claims that residents are stakeholders in the CCRC because they paid an entrance fee which should confer upon them some rights of disclosure. The Guide further claims that today’s CCRC management does not value residents nor treat them as important customers. (See page 21) These claims have no factual basis. CCRC management does willingly and routinely share information with residents and solicits ideas and feedback from them during planning stages of projects and other matters that may impact resident life within the community. This is not a right that is conferred upon them as an investor consumer having paid an entrance fee. Entrance fees are a method of payment for the contractual commitment to provide housing, health care, and other services, as defined in the contract.

20. The Guide states that residents selected to serve on the board should be those that are appointed by residents to serve in that capacity. It further states that this process is essential to ensure that the residents on the board are accountable to other residents. (See page 21) This statement may express the desire of WaCCRA, but it is inconsistent with the fact that all board members, whether a resident or not, serve on the board under a legal duty of care to the organization and must disclose and decline voting on matters where a conflict of interest exists. All board members' accountability is to the organization, not to other residents. Residents that serve on a board do so because the residents possess a needed skill or experience that is important to

the organization, and provides some value to the organization's mission

21. The Guide acknowledges that CCRC management is responsible for managing and sustaining a complex business activity to provide a high level of present services to residents and to plan for the future to sustain services for the rest of the residents' lives. (See page 26) This is true but fails to also acknowledge that management also has a responsibility to plan for subsequent generations of residents. Organizations cannot sit idle but must constantly look ahead and adapt to changing consumer preferences, economic conditions and market demands.