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Testimony of David Erickson, Vice President for Legal Affairs, Covenant Retirement Communities

On behalf of the American Association of Homes and Services for the Aging (AAHSA)

Submitted to the
U.S. Senate Special Committee on Aging

Hearing on *Continuing Care Retirement Communities (CCRCs): Secure Retirement or Risky Investment?*

July 21, 2010

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Testimony for David Erickson

Thank You Chairman Kohl, Ranking Member Senator Corker and members of the committee.

My name is David Erickson; I am Vice President for Legal Affairs for Covenant Retirement Communities.

I am here testifying on behalf of the American Association of Homes and Services for the Aging and Covenant Retirement Communities.

Covenant Retirement Communities has 12 CCRCs in 8 states serving over 5,000 residents. Our primary contract has an entry fee and provides for modified life care. Most of our residents chose a 2% per month declining refund option. We also offer 90% refunds, but less than 10% of our residents chose this. We also offer full life care contracts in two communities.

Let me begin by stating that my company, Covenant Retirement Communities, is not connected in any way to Covenant at South Hills. We happen to share the word "covenant" in our name, but beyond that, there is absolutely no connection.

We are, of course, very aware of the significant loss that residents of Covenant at South Hills suffered from failure of that community. That bankruptcy, indeed any bankruptcy in our industry, is something we take very seriously. CCRCs exist for one reason ---- to serve the needs of our residents. Anytime we fail to do that, it is a failure we collectively bear. We deeply regret that it happened.

There are nearly 1,900 CCRCs across the country---the vast majority of which remain strong and financially viable. Notwithstanding the situation at Covenant at South Hills, there are relatively few CCRCs which have faced payment defaults or filed for bankruptcy. And even in those rare cases, the CCRCs have done so without adverse impact to the financial security of their residents—the Covenant at South Hills was clearly an exception. Fortunately, the residents did retain their right to remain at the CCRC under the new ownership and did not have to move.

Without question, the weak economy has impacted CCRCs' occupancies, particularly CCRCs located in regions of the country hardest hit by the decline in housing values. That said, occupancy rates of CCRCs overall continue to exceed those of free-standing assisted living communities, nursing homes, and even free-standing independent living communities. The ability of CCRCs to actually weather the economic storm as well as they have speaks volumes for the strong preference seniors have for a continuum of care lifestyle. Not coincidentally, the typical CCRC reports that resident referrals are the strongest source of leads.

I would like to briefly comment on two reports recently produced by a CCRC task force which I had the honor of chairing. It was formed earlier this year and was comprised of leading experts in CCRC operations, tax-exempt bond financing, and legal and regulatory requirements.

The first report is entitled "**Continuing Care Retirement Communities: Suggested Best Practices for CCRC Disclosure and Transparency."** The second report is entitled "**Today's**

Continuing Care Retirement Community (CCRC): The strengths of this Popular Senior Living Model, its Stress Points and Challenges…and Its Outlook for Tomorrow". Both of these reports have been supplied to the Committee.

The "Suggested Best Practices for CCRC Disclosure" was developed to help CCRCs in reviewing their individual practices for disclosure; to assist prospective residents in making as informed a decision as possible about moving into a CCRC; and to keep current residents informed. Most CCRCs strongly support disclosure and transparency and routinely disclose a significant amount of information to residents prior to move-in. The "Suggested Best Practices" publication was simply an effort to provide guidance and document these practices.

The other report prepared by the task force is entitled "Today's Continuing Care Retirement Communities." It presents a historical overview of CCRCs, describes the variety of services offered, and discusses the current financial outlook for CCRCs. This report was thoroughly researched and we believe is an accurate and fair analysis of CCRCs' financial performance and outlook for the future, which we believe is very strong. As shown in this report, CCRCs have evolved over the last decades, diversifying the types of services and amenities they offer in response to growing consumer preferences for choices.

CCRCs are an important option in living arrangements for seniors. Over the decades, CCRCs have successfully offered a continuum of care lifestyle highly desired by seniors. The vast majority are financially stable and provide a style of living which emphasizes healthy aging; have numerous options of living and financial arrangements to meet a variety of consumer preferences; and promote an active and engaged lifestyle. Unlike the housing market or equities market, where large numbers of seniors have had their portfolios affected, the vast majority of CCRCs have provided security and care for seniors who will know where they will live and receive care usually for the rest of their lives. CCRC residents have moved into communities where they have chosen a lifestyle that provides comfort for their families who will not have to worry about what will happen to Mom or Dad as they age. As the "CCRC Story" reports, a common sentiment of CCRCs residents is that they wished they would have moved into the CCRC sooner.

CCRC providers recognize the importance and need for effective state regulatory oversight of CCRCs. But we also believe this regulatory framework has to maintain a balance that provides for adequate consumer protections without unreasonably restricting growth and development of CCRCs. There is certainly a place for reasonable requirements including disclosure requirements, capital reserves and protections of refundable entry fees. However, if these requirements become too prescriptive, expansion of existing CCRCs and development of new ones will be slowed or halted and seniors will lose the opportunity to move into a living environment many clearly prefer. Excessive regulatory restrictions also could prevent CCRCs from offering the varieties of living arrangements that consumers seek.

Similarly, requirements related to the operating and governance structure should be reasonable. For example, many CCRC sponsoring organizations, often not-for-profit religious or fraternal organizations, recognize a need in their local community for the types of services a CCRC provides, but lack the expertise to develop and operate the CCRC. Third party developers and operators fill this need, but that doesn’t mean the not-for-profit sponsor isn’t an active partner in the operations of the CCRC. In fact, if you look at most of these types of operational structures, you will find an active and involved Board of Trustees.

Thank you for this opportunity to testify on behalf of CCRC providers across this country. We are proud of our long-standing history in serving seniors across this country and stand ready to assist the efforts of this Committee in any way we can. We will continue to work collaboratively with state regulators to support strong and effective state regulations and oversight.