



CARES Act Eviction Moratorium – Implications for Senior Living

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Section 4024 of the CARES Act, the comprehensive federal law responding to the COVID-19 pandemic, provides for a temporary moratorium on eviction filings for certain properties with a federally backed mortgage loan or federally backed multifamily mortgage loan.

For a 120-day period beginning on March 27, 2020, the "lessor" of a covered dwelling may not initiate a legal action to recover possession of the dwelling from the "tenant" for "nonpayment of rent or other fees or charges" or "charge fees, penalties, or other charges to the tenant related to such nonpayment of rent."

A "covered dwelling" is one that is occupied by a "tenant" pursuant to a "residential lease" or "without a lease."

If broadly applied to senior living properties, this law could have a significant impact on their revenues. While the law is likely to be interpreted broadly, the language used does not fit the terminology usually applied to senior living, especially licensed care properties.

Assisted living and continuing care residents are not referred to as "tenants" and their agreements are not referred to as "leases." Fees paid for care and other services are not typically characterized as "rent." Statutory and case law support the principle that service and care agreements are not "residential leases," and should not be subject to laws intended to apply to landlords and tenants, because the relationship between a care facility and its occupant is overwhelmingly one for services and that the shelter aspect is incidental.

Some parts of the CARES Act eviction moratorium could cast doubt on this argument – it refers to rent "or other fees or charges" and occupancies with or "without a lease." Nevertheless, the fact that the law covers tenancies at will with no documentation, does not change a care and services agreement into a "residential lease." Similarly, the "other fees or charges" language in the statute may be meant to cover supplemental charges typically found in a residential lease, but not be intended to cover charges for care, food service, housekeeping, and enrichment programs that are not "other" charges, but that reflect the primary purpose of the arrangement.

ASHA will monitor the implementation of this law and work with federal agencies, as needed.