

Does the Federal Eviction Moratorium Apply to Long-Term Care Facilities?

Summary: On March 28, 2021, the Centers for Disease Control and Prevention (CDC) extended [its eviction moratorium](#) to June 30, 2021. The order has protected certain individuals experiencing income loss from being evicted from their homes during the pandemic. Although the order's language is broad, it will likely have little effect on residents of nursing homes. However, it could be a valuable tool for residents of assisted living facilities to prevent discharge. Its applicability will depend on why a resident is being discharged and how local laws and regulations define facilities.

The Moratorium

Although the moratorium is titled broadly, it only applies in certain situations. It is designed to protect individuals living in residential properties who have suffered a loss of income, resulting in a failure to pay their rent. The moratorium's goal is to avoid the spread of COVID-19, which could be brought about by homelessness and/or an increase in crowded or congregate living settings.

The moratorium does contain income guidelines, but they are high, and if residents received a stimulus payment, they automatically qualify. Critical to the moratorium's applicability to residents of long-term care facilities are the definitions of "covered persons" and "residential property." These terms are defined as:

Covered Person: means any tenant, lessee, or **resident of a residential property** who provides to their landlord, the owner of the residential property, or other person with a legal right to pursue eviction or a possessory action, a declaration under penalty of perjury indicating that:

- 1) The individual has used best efforts to obtain all available government assistance for rent or housing;
- 2) The individual either (i) earned no more than \$99,000 (or \$198,000 if filing jointly) in Calendar Year 2020, or expects to earn no more than \$99,000 in annual income for Calendar Year 2021 (or no more than \$198,000 if filing a joint tax return, (ii) was not required to report any income in 2020 to the IRS, or (iii) received an Economic Impact Payment (stimulus check).
- 3) The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours or work or wages, a lay-off, or extraordinary out-of-pocket medical expenses.
- 4) The individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other non-discretionary expenses; and
- 5) Eviction would likely render the individual homeless-or force the individual to move into and live in close quarters in a new congregate or shared living setting-because the individual has no other available housing options.

Residential Property: means any property leased for residential purposes, including any house, building, mobile home, or land in a mobile home park, or similar dwelling leased for residential purposes, but shall not include a hotel, motel, or other guest house rented to temporary guest or seasonal tenant as defined under the laws of the state, territorial, tribal, or local jurisdiction.

Applicability to Residents of Long-Term Care Facilities

Nursing Home Residents

It is unlikely that the moratorium will affect many nursing home residents. Whether a nursing home is a residential facility defined by the moratorium will likely turn on how nursing homes are defined in state or local laws. However, even if nursing homes fall under the moratorium's definition of residential property, it will likely still not apply to most residents. First, most nursing home residents do not have income that would be affected by COVID-19, for instance, employment income. Second, even if there were a loss of income, the loss would be considered when calculating what payment is due from the resident to the facility. Most residents residing long-term in nursing homes will be relying on Medicaid for payment for their stay, and Medicaid considers available income when calculating the payment due from the resident.

Assisted Living Facilities

The moratorium is more likely to protect residents of assisted living facilities. Again, whether an ALF is a residential property as defined in the moratorium will likely turn on how they are defined in state and local law. However, if those laws are not helpful, an argument can be made that the resident qualifies. The resident pays rent to a property owner so that he or she may reside in the facility. Incorporating the terms used by the moratorium definition into your argument will make its success more likely.

Second, residents of ALFs are more likely to lose an income source during the pandemic. Because in most cases Medicaid does not pay for ALF care, it is more common for residents of ALFs to rely on third parties for assistance with paying the facility, either a family member or a friend who is assisting with the monthly payment. Should this assistance become unavailable, it could result in a facility attempting to discharge the resident. Importantly, the loss of income need not be related to a loss of employment. It could be attributed to various issues, including the death of the contributing individual or some other factor making the income unavailable.

Important Factors and Resources:

To determine whether the moratorium applies to a resident, you should:

- **Look to state and local laws for definitions of long-term care facilities.** Do these laws define nursing homes or ALFs as residential facilities? Absent conclusive evidence that the facility is not a residential property argue that the facility qualifies under the moratorium.
- **Explore the reasons for the alleged failure to pay.** Is it because of a loss of income, either for the resident or someone contributing? Documenting why the income was lost will be essential to getting the resident to qualify under the moratorium.
- **Investigate state/jurisdictional moratoriums.** In some locations there are eviction moratoria that apply specifically to nursing homes, for instance Michigan and Washington D.C. It will be important to investigate whether your state or locality has such a moratorium in place.

If a resident believes the moratorium applies, he or she can complete this [declaration form](#). Notably, the form warns landlords that failure to comply with the moratorium could result in fines and imprisonment. Additional assistance from the U.S. Department of Housing and Urban Development can be obtained by contacting 1-800-569-4287. Residents may also [contact](#) their LTCO or legal services program for more information.

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