

Essential Services Guidance for CCRCs and Independent Living

In the case of a CCRC, would construction work to prepare an IL apartment for future resident move-in (e.g., painting, replacing flooring) be considered an essential service?

On April 9th, Empire State Development updated its guidance on Executive Order 202.6, which spells out the types of essential businesses and entities that are not subject to workforce reductions otherwise required under the Governor's Executive Orders. According to this guidance (<https://esd.ny.gov/guidance-executive-order-2026>):

- Under #1, senior/elder care, nursing homes, residential health care facilities, or congregate care facilities are considered essential business;
- Under #2, hotels and other places of accommodation;
- Under #5, building cleaning and maintenance and maintenance for the infrastructure of the facility or to maintain or safeguard materials or products therein; and
- Under #9, essential construction may proceed, to the extent that: the construction is for, or your business supports, roads, bridges, transit facilities, utilities, hospitals or healthcare facilities, homeless shelters, or public or private schools; the construction is for existing (i.e. currently underway) projects of an essential business; or the construction work is being completed by a single worker who is the sole employee/worker on the job site.

Per LeadingAge NY's general counsel, Hinman Straub, the building cleaning and maintenance exemption from the workforce reductions is being interpreted to allow landlords/building managers to clean and update a vacant apartment unit to be prepared for a new tenant. Within the CCRC context, this position is further supported by the exemption including senior/elder care, nursing homes, residential health care facilities, or congregate care facilities as essential business; thus, the construction is for an essential business. For construction work, it is recommended that CCRCs follow the single worker on the jobsite rule – this is currently being interpreted as one tradesperson on site at a time – so if a contractor were having different people paint and install flooring, they would want to stagger the time that they are working.

Would this interpretation apply equally to a standalone retirement housing community (i.e., independent living) seeking to ready its units (with painting and other renovations) for re-sale as it would a CCRC?

The only difference between the CCRC analysis and the independent living analysis would be that the construction limitation of the single worker (or tradesperson) must be followed. The guidance was updated again on April 19th to remove the “and/or” related to the single worker rule; it now reads as “or.” Thus, the interpretation for the CCRC is that they would be permitted to have construction done without the limitation of the single worker rule, as they already meet the requirement for allowed construction as they are an essential business. For independent living outside of the CCRC, construction is permitted if they follow the single worker rule.