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Insights

A Hospital's Bankruptcy Filing Dramatically Changes the Equation for Medical Providers

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“My hospital filed bankruptcy - now what do I do?” This question frequently confronts affected medical providers when faced with the strange and often bewildering new world ushered-in by a hospital bankruptcy. A recent *Washington Post* article noted that due to the COVID-19 pandemic, “the health-care industry is suffering a historic collapse in business that is emerging as one of the most powerful forces hurting the U.S. economy and a threat to a potential recovery.”[1] Unfortunately, some hospitals – especially rural hospitals – are among those suffering the most in this regard.

When forced by financial circumstances, hospitals usually seek relief in bankruptcy by filing under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq*. (“Bankruptcy Code”), which governs reorganizations (but also can cover liquidations). In states so authorizing, hospitals which constitute municipalities also may seek relief under chapter 9 of the Bankruptcy Code; however, most states – including Indiana and Illinois - currently do not allow municipalities to file bankruptcy.

No longer “business as usual”

The bankruptcy petition filing immediately invokes the so-called “automatic stay,” which is a statutory injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the hospital. The bankruptcy court may punish an intentional violation of the automatic stay as a contempt of court. The filing also creates an estate comprising all legal or equitable interests of the hospital in property existing at the time of the bankruptcy filing. This includes any so-called “executory contracts,” or ongoing contracts, between a medical provider and the hospital. Regardless of whether the hospital has fulfilled its obligations under any such executory contracts, medical providers must continue to fulfill their responsibilities until the hospital either elects to assume or reject the executory contract; in a chapter 11 case, the hospital may make this assumption/rejection decision at any time before the confirmation of its chapter 11 plan, unless the bankruptcy court forces the hospital to make the decision earlier.

New issues and deadlines

If a hospital files for bankruptcy, the medical provider should note that the Bankruptcy Code contains many tight deadlines that can trap the unwary – thus, timeliness is key to protecting a medical provider’s rights. Important deadlines include:

- Monitoring so-called “first day” motions which, among other things, seek relief designed to smooth the transition of the hospital into chapter 11; this relief may include setting conditions for eligibility to be a “critical vendor” – whose pre-petition claims can be immediately paid in full – for certain medical providers.

Attending a first meeting of creditors.

Deciding whether to serve on an official creditors' committee.

Timely filing a proof of claim.

Objecting to confirmation of the debtor's proposed chapter 11 plan of reorganization or liquidation

Additional steps that a medical provider may need to address in a hospital bankruptcy include seeking relief from the automatic stay to ask the bankruptcy court to allow the medical provider to terminate an executory contract with the hospital, and/or asking the bankruptcy court to accelerate the deadline by which the hospital must make its assumption/rejection deadline regarding an executory contract. Note that granting any such relief largely is discretionary with the bankruptcy court.

Takeaway: A hospital's bankruptcy filing dramatically changes the equation for medical providers.

If you would like to learn more about our Creditors' Rights & Bankruptcy Professionals and our Health Care Professionals, please click here.

[1] "Historic financial decline hits doctors, dentists and hospitals — despite covid-19 — threatening overall economy," *The Washington Post*, May 4, 2020.