

## News & Alerts

**October 3, 2018**

### **Hospital Bankruptcies and Closures in 2018 Continue Last Year's Trend**

Curae Health, a Southern hospital system, filed for bankruptcy in August, contributing to the alarming trend of hospital bankruptcies. According to Bloomberg, bankruptcies in the health care sector more than tripled in 2017, and at least 18 hospitals/hospital systems filed for bankruptcy protection.

That trend has not subsided in 2018. Becker's Hospital Review revealed that at least eight more hospitals/hospital systems filed for bankruptcy protection and nine more hospitals closed during the first three quarters of 2018. There are a number of factors behind the rise in hospital filings, including reimbursement issues, decreasing patient volumes, and the increasing pool of uninsured patients. Rural hospitals, such as the ones owned by Curae Health, are often hit the hardest. Creditors and other shareholders should be aware of the growing number of hospital bankruptcies and their unique issues in order to best protect their interests.

#### **Unique Issues in Hospital Bankruptcies**

- **Vendor Issues**

Vendors are forced to deal with several issues in a hospital bankruptcy. First, vendors may want to demand reclamation of goods sent within 45 days of the filing of the bankruptcy petition. Second, certain key vendors may want to be deemed a "critical vendor" thus entitling them to immediate payment during the bankruptcy case. Third, vendors may need to file a claim under 11 U.S.C. § 503(b)(9), a 2005 amendment to the Bankruptcy Code that allows for the allowance of a higher-priority claim for goods sent to the debtor hospital in the ordinary course of business within 20 days of the filing of the bankruptcy case. Fourth, vendors also need to explore the various postpetition credit terms that they may offer to the debtor hospital. Lastly, vendors wanting to gain valuable insight on the bankruptcy case may want to serve on the creditors' committee if they have a large enough claim. Members of the creditors' committee gain in-depth knowledge of the debtor hospital's credit problems and current restructuring efforts.

- **Regulatory Constraints**

The health care industry is one of the most highly-regulated industries in the United States. This serves to be problematic in the bankruptcy context because federal and state insurance programs often provide vital funding to many hospitals through complex reimbursements schemes. The timing of government funding for a debtor's restructuring efforts can be delayed at times, which impacts the dynamics of the bankruptcy case.

- **Patient Needs**

There is an impetus to restructure or sell a hospital debtor as a going concern because human lives may be jeopardized. No party (including the Bankruptcy Judge) wants to see a hospital close permanently, especially in rural areas where access to medical care is extremely limited. Therefore, it is important for all participants in a hospital bankruptcy to work together to achieve this overarching goal.

- **Patient Care Ombudsman**

The Bankruptcy Code includes hospitals in the definition of “health care business” found in 11 U.S.C. § 101(27A). Accordingly, pursuant to 11 U.S.C. § 333, a Bankruptcy Court may grant the “appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.” While an ombudsman may be a costly administrative expense of the bankruptcy estate, s/he serves to protect the interests of vulnerable patients who may be adversely affected when a hospital files for bankruptcy and especially when a closure is planned.

Experienced legal counsel can help you understand the issues affecting stakeholders faced with a hospital or other health care sector bankruptcy and implement measures to protect the stakeholder’s financial position. Please contact the Hirschler Fleischer Bankruptcy and Creditors’ Rights Group for more information.

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