Updates
September 17, 2019
Delaware Bankruptcy Court Decision Strengthens Protections for Healthcare Providers in Bankruptcy

In an August 2019 case argued by Perkins Coie attorneys, the U.S. Bankruptcy Court for the District of Delaware ruled that the automatic stay under section 362(a) of the Bankruptcy Code bars the Centers for Medicare & Medicaid Services (CMS) from withholding Medicare payments to a healthcare provider in bankruptcy notwithstanding a pre-petition suspension due to credible allegations of fraud.

Medicare Suspensions Drive True Health into Bankruptcy

True Health Diagnostics, LLC is a diagnostic laboratory company that provides advanced blood testing for early detection and treatment of chronic disease, such as cardiovascular disease, diabetes and cancer. True Health participates in the federal Medicare program administered by CMS and receives approximately 30% of its total revenue from Medicare.

In May 2017, True Health received a notice from CMS that it was suspending all Medicare payments to True Health based on credible allegations of fraud. True Health disputed those allegations, and CMS later reduced its suspension to 35% of Medicare payments. More than two years later, in June 2019, CMS imposed a second 100% suspension of all Medicare payments to True Health, creating an immediate financial crisis for the company.

In response to the second suspension, True Health filed a complaint and emergency motion for a temporary restraining order in the U.S. District Court for the Eastern District of Texas claiming that CMS had violated True Health's constitutional due process rights by imposing duplicative suspensions of Medicare payments without making a determination of any overpayment that True Health could challenge through the administrative procedures provided under the Medicare Act. The district court granted True Health a temporary restraining order to prevent CMS from further suspending Medicare payments. In response, CMS issued a final overpayment determination, claiming overpayments of more than $21 million. As a result of this overpayment determination, the Texas court dismissed the case for lack of subject matter jurisdiction, holding that True Health must first exhaust its administrative remedies under the Medicare Act.

On July 30, 2019, True Health filed for Chapter 11 bankruptcy in the U.S. Bankruptcy Court for the District of Delaware. On the same day, the company filed an adversary complaint and motion for preliminary injunction to enforce the automatic stay under Section 362(a) of the Bankruptcy Code and prohibit CMS from suspending or withholding Medicare payments to True Health in bankruptcy. True Health relied upon a decision from the U.S. Court of Appeals for the Third Circuit, *University Medical Center v. Sullivan*, 973 F.2d 1065 (3d Cir. 1992), which held that the Bankruptcy Code provides an independent basis for bankruptcy courts to exercise jurisdiction to enforce the automatic stay and prevent CMS from suspending Medicare payments after a bankruptcy petition is filed even when the provider has not exhausted its administrative remedies under the Medicare Act.

After expedited briefing and argument, the Delaware bankruptcy court granted True Health's motion and entered an order enjoining CMS from suspending or withholding their Medicare payments on or after the bankruptcy petition date. The order also required CMS to deliver to True Health over $2 million of previously withheld Medicare payments within five business days. The court found that it had jurisdiction under the Bankruptcy Code to decide True Health's motion and that CMS' suspension of Medicare payments did not fit within the police and regulatory power exception to the automatic stay because the suspension was not designed to protect the public health, safety or welfare, but instead intended to protect CMS' pecuniary interest in its pre-bankruptcy overpayment determination at the expense of other creditors in the bankruptcy case.

Implications for Medicare Providers

CMS has broad authority to unilaterally suspend Medicare payments based on allegations of overpayment and fraud. Ordinarily, the only remedy available to a provider is through the administrative process under the Medicare Act, which is time consuming and may be significantly delayed, especially where CMS neglects to issue a final determination of overpayment. For most healthcare providers that participate in Medicare, such a suspension can be a death knell for the company.

The Delaware bankruptcy court's decision, relying on Third Circuit precedent, establishes strong protections for healthcare providers in bankruptcy that may otherwise have no choice but to shut down in response to an ongoing Medicare suspension. The popularity of Delaware as a venue for corporate reorganizations gives the Delaware decision national significance, providing a much-needed lifeline to healthcare providers that face financial difficulty following a Medicare suspension.

Perkins Coie LLP

Perkins Coie LLP attorneys Eric E. Walker, Brian A. Audette and David J. Gold represent True Health in the bankruptcy litigation and have experience in the highly regulated healthcare industry and in health care insolvencies.

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