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The Intersection between Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Bankruptcy La

The Small Business Reorganization Act (SBRA)

Prior to 2019, small business debtors were less likely to realize the benefits of Chapter 11 reorganization due to the expense complexity of bankruptcy. In August 2019, Congress amended the Bankruptcy Code by passing the Small Business Reorganization Act (SBRA), which made Chapter 11 benefits more accessible to small businesses. Taking effect February 19 2020, the SBRA decreased the financial and procedural burdens on small businesses seeking to reorganize in bankruptcy by among other things:

- Removing the disclosure statement filing requirement (a significant cost savings);
- Relaxing the requirements of a confirmable plan of reorganization, even over creditors' objections, by essentially requiri only that all disposable income is directed toward plan payments and loosening other legal plan requirements;
- Making it far easier for the existing owners of a debtor to retain their equity interest in the reorganized entity;
- Essentially eliminating the right of creditors to file their own plan and take control of the case; and
- Not requiring the appointment of an official committee of unsecured creditors (another major cost savings).

COVID-19 and CARES Act

In response to COVID-19 and the ensuing public health and economic crisis, on March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") to ease the financial burdens of the pandemic. The CARE Act provides economic relief in several ways for individuals and businesses. Small health care providers should be aware of t interactions between the SBRA's streamlined bankruptcy process and other relief measures provided by the CARES Act – in particular, the Public Health and Social Services Emergency Fund ("Relief Funds"). Many healthcare providers who billed Medicare in 2019 have received these emergency grants from the Department of Health and Human Services, providing a sm but important reprieve from the devastating economic impacts of the pandemic. Importantly, however, health care providers considering bankruptcy should take care to understand the potential interaction between the CARES Act and the Bankruptcy Code. We believe (as noted below) that in most cases a bankruptcy filing should not preclude access to the Relief Funds. (Fo more information regarding Relief Funds see our prior client alerts CARES Act "Provider Relief Fund" Makes Medicare Part A B Payments to Providers and CARES Act "Provider Relief Fund" – Round Two – Follow these Steps for a Second Payment).

CARES Act Temporarily Modifies SBRA

The CARES Act provides revisions to Chapter 11 reorganizations as well as changes to individual debtors under Chapter 7 a Chapter 13. These temporary changes deliver short-term relief set to expire on March 27, 2021.

The CARES Act facilitates easier access to Chapter 11 bankruptcy reorganization by raising the ceiling for a debtor's total del from $2,725,625 to $7,500,000. For Chapter 13, debtors may modify an already confirmed plan due to COVID-19-related "ma financial hardships" and may extend plan payments for seven years after the initial plan payment due date.

SBRA and Receipt of Relief Funds

During the COVID-19 crisis, we expect many health care providers to be forced into bankruptcy in order to continue operating our view, health care providers seeking bankruptcy protection should not be precluded from access to Relief Funds.

While the "means test" generally limits the availability of Chapter 7 to those with very little or no income, the CARES Act effec

exclude Relief Funds from the definition of “income.” Similarly, in Chapter 13, Relief Funds are excluded from the calculation o “disposable income.” Logistically, these provisions prevent Relief Funds from interfering with a debtor’s access to relief under either chapter.

With regard to Chapter 11, the receipt of funds is not explicitly prohibited by the CARES Act. While the matter has not yet bee specifically addressed by a court, we firmly believe access to Relief Funds should in no way be impacted by a Chapter 11 filin Relief Funds clearly target entities in financial crisis caused or worsened by COVID-19, as does access to Chapter 11. Indeed facilities operating in Chapter 11 arguably constitute the most appropriate recipients of the Relief Funds. We see the Relief Fu as analogous to business interruption insurance that should be considered ordinary course income, readily available to fund a debtor-in-possession’s ongoing business operations.

That said, we strongly encourage providers in receipt of Relief Funds to alert the court and other interested parties in the bankruptcy of their acceptance or rejection of Relief Funds.

NH attorneys are experts in health care and in bankruptcy and are here to help you navigate the complexities of how the CAR Act and bankruptcy laws intertwine.

For more COVID-19 related legal updates, please consider subscribing to our COVID-19 Task Force Newsletter.

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