

Spotlight On Medicare Jurisdiction Issues In Bankruptcy

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Law360, New York (July 17, 2015, 11:24 AM ET) -- On June 26, 2015, the U.S. District Court for the Middle District of Florida issued an opinion on consolidated appeals arising from the Bayou Shores SNF LLC bankruptcy case with potentially broad implications for health care bankruptcy cases. At the heart of the dispute before the district court was whether the bankruptcy court had jurisdiction to enjoin the termination of, and subsequently authorize the assumption of, certain Medicare and Medicaid provider agreements. As discussed below, the district court held the Medicare jurisdictional bar set forth in 42 U.S.C. §405(h) precluded the bankruptcy court from taking any action with respect to the provider agreements. This case highlights some of the challenges a health care facility or provider may face in using bankruptcy as a tool to prevent the termination of its provider agreements.

Background

Bayou Shores SNF LLC operated a Florida skilled nursing facility, known as the Rehabilitation Center of St. Petersburg. Bayou was a party to a provider agreement with the U.S. Department of Health and Human Services and with the Florida Agency for Healthcare Administration (ACHA). Between February and July 2014, the nursing home facility was cited for being noncompliant with the Medicare and Medicaid program requirements three separate times. On July 22, 2014, HHS, through the Centers for Medicare and Medicaid Services (CMS), sent Bayou a letter stating its Medicare provider agreement would be terminated on Aug. 3, 2014, which would also result in the termination of the Medicaid provider agreement.

On Aug. 1, 2014, two days before the provider agreements were to be terminated, Bayou filed a lawsuit in the U.S. District Court for the Middle District of Florida seeking an injunction to prohibit the termination of the provider agreements. On Aug. 1, 2014, the district court entered a temporary restraining order (TRO) prohibiting the termination of the agreements until Aug. 15, 2014. On Aug. 15, 2014, the district court denied an extension of the TRO and dissolved it, holding that it lacked subject matter jurisdiction because Bayou had not exhausted its administrative remedies pursuant to 42 U.S.C. § 405(h) before bringing a claim under the Medicare statute in the district court.[1] Within hours of the district court dissolving the TRO, Bayou filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Middle District of Florida.[2]

Bankruptcy Court's Injunction

After the bankruptcy petition was filed, Bayou, now operating as a debtor in possession, filed an emergency motion in the bankruptcy court seeking to prohibit any action by the CMS or the ACHA to terminate the debtor's Medicaid and Medicare provider agreements. The bankruptcy court entered an order granting the motion (the "injunction order"). The United States of America, on behalf of the secretary of HHS and the ACHA, appealed, arguing that the bankruptcy court lacked jurisdiction to enjoin the termination of the provider agreements.

The Chapter 11 Plan/Assumption of the Provider Agreements

While the appeal was pending, and given the breathing spell provided to the debtor by the injunction order, the debtor sought confirmation of its plan of reorganization and approval to assume the provider agreements under § 365 of the Bankruptcy Code.[3] The secretary objected arguing, among other things, that the

bankruptcy court was barred by 42 U.S.C. § 405(h)[4] from taking any action related to the provider arguments. The bankruptcy court overruled the objection, confirmed the plan of reorganization and authorized the assumption of the provider agreements.

In its opinion confirming the plan and the assumption of the provider agreements, the bankruptcy court held that it had grounds for exercising jurisdiction over the Medicare dispute under 28 U.S.C. § 1334.[5] Section 1334 provides that the “Court has jurisdiction over all civil proceeding arising under title 11 [of the Bankruptcy Code], arising in a case under title 11, or related to a proceeding under title 11.” The bankruptcy court held that its jurisdiction was not barred by § 405(h) because § 405(h) by its terms refers only to 28 U.S.C. § 1331 and § 1346, and the bankruptcy court’s jurisdiction was based instead on § 1334.[6]

The secretary and the ACHA, appealed the confirmation opinion. The appeal of the confirmation opinion was consolidated with the appeal of the injunction order. The appeals raised the same jurisdictional issues — namely, whether 42 U.S.C. § 405(h) precluded the bankruptcy court from taking any action related to the provider agreements.

The District Court’s Ruling on Appeal: The Medicare Jurisdictional Bar

In the consolidated appeals, the district court held that “the Bankruptcy Court erred as a matter of law because the jurisdictional bar in § 405(h) precluded the Bankruptcy Court from delaying or preventing the effect of CMS’ determination that the provider agreements should be terminated.”[7] The district court also held that the bankruptcy court’s conclusion of law that it had jurisdiction under § 1334 was in error because it ignored the jurisdictional bar provided for in the Medicare Act, and that “[t]he Bankruptcy Court exceeded its subject matter jurisdiction when it interfered with CMS’ termination of the provider agreements.”[8] The district court further held “[t]here is no jurisdiction for a court to interpose itself in a provider’s termination from the Medicare and Medicaid programs except to provide judicial review under § 405(g) after administrative remedies have been exhausted and the Secretary has issued a final agency decision.”[9] Accordingly, the district court held the bankruptcy court lacked jurisdiction to issue the injunction order and to authorize assumption of the provider agreements, and thus reversed the injunction order, and the confirmation opinion with respect to assumption of the provider agreements, and remanded to the bankruptcy court.

On July 10, 2015, the Bayou debtor filed a motion for a stay pending appeal to the U.S. Court of Appeals for the Eleventh Circuit of the district court’s opinion reversing the confirmation opinion with respect to assumption of the provider agreements.[10]

Conclusion

The Bayou Shores bankruptcy case and related litigation — which is not over yet — highlights some of the unique Medicare and Medicaid issues that arise when a health care facility or provider files bankruptcy. Depending on the outcome of any appeal of the district court’s opinion to the Eleventh Circuit, the case could ultimately shape, at least in some jurisdictions, whether and how health care providers facing termination from Medicare and Medicaid programs can use bankruptcy as a tool to preserve their Medicare and Medicaid provider agreements.

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[1] See Order, Case No. 14-cv-1849, 2014 WL 4059900, at *6 (M.D. Fla. Aug. 15, 2014) (“federal jurisdiction over any claim ‘arising under’ the Medicare statute is limited to the instance in which the complainant has first presented its challenge to the secretary, has exhausted its administrative remedies, and then seeks judicial review of the agency’s final decision”).

[2] Additional background information about the nursing home facility, the reasons for the bankruptcy filing, and the bankruptcy case, is available on the bankruptcy case docket, Case No. 14-bk-09521. See pacer.gov or www.flmb.uscourts.gov.

[3] Section 365 of the Bankruptcy Code allows, subject to the satisfaction of certain conditions, a debtor to elect to assume, assume and assign, or reject executory contracts.

[4] Section 405(h) provides that, in relevant part, “[n]o findings of fact or decisions of the [secretary] shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of Title 28 to recover on any claim arising under this subchapter.”

[5] See Memorandum Opinion and Order on Confirmation. In re Bayou Shores SNF LLC, 525 B.R. 160 (Bankr. M.D. Fla. 2014).

[6] Id. at *167-68.

[7] In re Bayou Shores SNF LLC, 14-cv-02816, 2015 WL 3935491, at *3 (M.D. Fla. June 26, 2015).

[8] Id.

[9] Id. at *4.

[10] See Motion for Stay Pending Appeal of the Order Reversing the Confirmation Order with Respect to the Assumption of the Debtor’s Medicare and Medicaid Provider Agreements, 14-cv-02816, Docket No. 77 (M.D. Fla. July 10, 2015).