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CMS must have its say before providers can go to court, even in bankruptcy cases—bankruptcy stay is ineffective to prevent the termination of Medicare and Medicaid provider agreements

By Christopher Desiderio and Christopher Fong

Outside of bankruptcy proceedings, a Medicare or Medicaid provider must exhaust the program's administrative process before a federal court may determine a dispute involving the provider's agreements. Whether this rule applies post-bankruptcy, however, has been hotly litigated in bankruptcy cases for over two decades. In a recent decision out of Florida, the United States District Court for the Middle District of Florida (the "District Court"), sitting as an appellate court, sided with what it said were a "majority" of similar cases and held that a provider may seek relief in court only after the Medicare or Medicaid administrative process is exhausted, even if the provider is in bankruptcy.

This is a departure from the general rule that the automatic stay that is effective upon the filing of a bankruptcy case provides a debtor some comfort that its contracts cannot be terminated by their counterparties absent relief from the court. By holding against the provider, however, the District Court limited the automatic stay's application when it held that a bankruptcy court lacked jurisdiction to enjoin the termination of a debtor's Medicaid and Medicare provider agreements.

In *Fla. Agency for Health Care Admin. v. Bayou Shores SNF, LLC (In re Bayou Shores SNF, LLC)*, 2015 U.S. Dist. LEXIS 83390 (M.D. Fla. June 26, 2015), Bayou Shores SNF, LLC ("Bayou") operated a nursing facility in Florida for patients with serious psychiatric conditions. Bayou provided Medicare and Medicaid services through provider agreements issued by the federal and state government under the Social Security Act's Medicare and Medicaid provisions.

In July 2014, Centers for Medicare and Medicaid Services ("CMS") notified Bayou that, after the Agency for Health Care Administration ("AHCA") conducted a survey, it determined that Bayou was not in compliance with requirements to receive payment under the Medicare and Medicaid programs. CMS subsequently terminated Bayou's provider agreement. Bayou sought injunctive relief in the District Court and obtained an *ex parte* temporary restraining order enjoining CMS from terminating the Medicare and Medicaid provider agreements.

Subsequently, the District Court dissolved the temporary restraining order and concluded that Medicare's jurisdictional bar under 42 U.S.C. § 405(h) precluded the court from exercising jurisdiction over the controversy before the debtor exhausted its administrative remedies.

Less than an hour after the District Court's ruling, Bayou filed for Chapter 11 protection in the United States Bankruptcy Court for the Middle District of Florida (the "Bankruptcy Court") and filed an emergency motion to enjoin CMS and AHCA from terminating the debtor's Medicare and Medicaid provider agreements.

The Bankruptcy Court enjoined CMS and AHCA from terminating the agreements on the basis that the provider agreements were property of the debtor's estate subject to the protections of the automatic stay and that the Bankruptcy Court had jurisdiction to issue such injunction pursuant to 28 U.S.C. § 1334.

AHCA and the United States of America appealed the Bankruptcy Court's decision, arguing that the Bankruptcy Court lacked jurisdiction to enjoin the termination of the provider agreements. The District Court determined that with respect to a Medicare dispute, the judicial review provision in 42 U.S.C. § 405(g) is the "exclusive source of federal court jurisdiction." [1] Thus, the Bankruptcy Court was barred from exercising jurisdiction over the dispute except for conducting judicial review of the final decision of the Secretary of the United States Department of Health and Human Services (the "Secretary").

The District Court further stated that Bayou failed to exhaust its administrative remedies with regard to the decision terminating the provider agreements. The District Court held that by enjoining the termination of the provider agreements, the Bankruptcy Court "thwarted" the administrative process and allowed the debtor to "circumvent its administrative obligations." The District Court held that the Bankruptcy Court was "without jurisdiction to interpose itself in the process, including entering an injunction to enjoin the provider agreements." The Bankruptcy Court had held that its jurisdiction was not barred under section 405(h) because that section does not expressly proscribe bankruptcy jurisdiction under 28 U.S.C. § 1334.[2] However, the District Court, following what it described as the majority view, held that the jurisdictional bar in section 405(h) applies to "all cases in which administrative remedies have not been exhausted." Notably, the Eleventh Circuit Court of Appeals, covering the region where both Bayou and the District Court are located, has not ruled on the issue.

Ramifications for Health Care Providers

The District Court held that the Bankruptcy Court exceeded its jurisdiction when it enjoined the termination of Bayou's Medicare and Medicaid provider agreements. As of the date of this alert, the decision of the District Court has not been appealed to the Eleventh Circuit but the time for the

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[1] Section 405(g) provides, in relevant part that "[a]ny individual, after any final decision of the [Secretary] made after a hearing to which he was a party . . . , may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or which such further time as the [Secretary] may allow."

[2] Section 405(h) provides, in relevant part, that "[n]o findings of fact or decision of the [Secretary] shall be reviewed by any person, tribunal, or governmental agency except herein provided."

parties to take such an appeal has not yet run. Accordingly, the *Bayou* decision is only binding on the parties to the case and only serves as persuasive precedent in other bankruptcy and district courts in the Middle District of Florida. Nonetheless, this decision is a reminder to health care providers not to look to the automatic stay to provide a reliable fail-safe shield against the termination of a provider agreement absent exhaustion of administrative remedies prior to filing for bankruptcy relief. Judicial review can only be sought upon the issuance of a final determination by Medicare or Medicaid administrative agency. Only after exhaustion of administrative remedies do bankruptcy courts have power to stay the termination of a provider agreement.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Victor Milione, 617-345-1215, **vmilione@nixonpeabody.com**
- Christopher Desiderio, 212-940-3085, **cdesiderio@nixonpeabody.com**
- Robert Christmas, 212-940-3103, **rchristmas@nixonpeabody.com**
- Lynn Gordon, 312-977-4134, **lgordon@nixonpeabody.com**
- Jill Gordon, 213-629-6175, **jgordon@nixonpeabody.com**
- Christopher Fong, 212-940-3724, **cfong@nixonpeabody.com**