

Insights

Are You A "Health Care Business" for Bankruptcy Purposes?

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The day any enterprise starts contemplating a bankruptcy filing never is a happy one. If the enterprise is in the health care industry, added anxiety can arise over whether it qualifies as a "health care business" under the United States Bankruptcy Code. Among other provisions applicable to a "health care business" in bankruptcy, the Bankruptcy Code requires the appointment of a patient care ombudsman ("PCO") when a health care business becomes a debtor in a bankruptcy case. Because the potential administrative costs attendant the appointment of a PCO can be a significant financial drag on an enterprise's ability to reorganize in bankruptcy, battles relating to the appointment of a PCO often preliminarily involve fights over whether a debtor qualifies as a "health care business" within the meaning of the Bankruptcy Code, 11 U.S.C. §101(27A).

The arguments over this issue generally fall into two camps, a "narrow" and "broad" approach. Under the "narrow" approach, some courts read the Bankruptcy Code's definition as providing for two categories of "health care businesses", namely a large category of entities which may qualify as "health care businesses," and specific types of entities that also may so qualify, but only if each statutory element applicable to such latter entities is met. Under the "broad" approach, other courts read the Bankruptcy Code's definitions as applying generally to any entities that offer health care-related services to the general public, essentially applying the old adage the "if it looks like a duck and quacks like a duck, then it is a duck". Unfortunately, there appears to be sufficient "wiggle room" in how Congress couched its §101(27A) definition of what qualifies as a "health care business" to make it difficult for most health care-oriented enterprises to escape it.

If you have questions regarding health care enterprises in bankruptcy or need help in this regard, please contact C. Daniel Motsinger at cmotsinger@kdlegal.com or Kay Dee Baird at kbaird@kdlegal.com, Thomas N. Hutchinson at thutchinson@kdlegal.com, or your regular Krieg Devault attorney.

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