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Client Alert: So a Health Care Customer Who Owes You Money Files Bankruptcy

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What does this mean for you? Should you stop providing goods and services? Should you call and ask for the money?

If the customer owes you a substantial amount for your services and has told you that they have no assets, what do you do?

The first step is critical. Do not attempt to collect any debts the customer owes prior to their bankruptcy being filed. Doing so may expose you to liability for a violation of bankruptcy law commonly known as the automatic stay. If you have already done this, you should immediately contact experienced bankruptcy counsel to review the situation for your potential exposure.

The second step is assessing what type of claim you have against the customer. Many vendors and health care providers have learned that certain health care companies, such as nursing homes and assisted living facilities, have orchestrated very complicated ownership and control structures to minimize the ability of vendors, health care providers, and personal injury attorneys to collect on substantial liabilities. When asked, these structured providers will inform you that there are no assets, limited assets, or no viable entity with any obligation to pay liabilities. This is typical of a situation where a creditor has what is called an unsecured claim against the customer due to providing only services, such as therapy, laboratory services, etc. Vendors who sell goods to the customer may be more fortunate. In most bankruptcy cases, persons or entities with unsecured claims receive a small fraction of what they are owed. However, it is possible to create leverage for your unsecured claim through a careful analysis of the customer's corporate structure and interactions with related entities or persons.

Through the coordination of experienced bankruptcy counsel and similar health care counsel, some firms have uncovered flaws in these complex houses of cards. These investigative methods include searching little utilized records to find inappropriate exertion of control by landlords and others. In some cases, these "outsiders" seek to control the health care provider to his/her benefit while avoiding any overt "ownership." These flawed tactics can include exertion of control in violation of certifications to licensing agencies and payors, and these approaches can even appear to be fraudulent transfers. Exposing these "outsiders" opens the potential for claims against them by the customer. Uncovering these gaps can provide a creditor with an

avenue to obtain a better resolution of its claim. If you have a claim against a customer in bankruptcy, make sure that you have both an experienced bankruptcy and health care lawyer on your team.

The remainder of the questions posed are fact dependent on issues, but it comes down to a simple consideration: do you want to continue providing services to the customer? It is highly advisable to seek assistance from specialized counsel for these types of matters.