

Part B Insider (Multispecialty) Coding Alert

BANKRUPTCY: Beware--Medicare Can Still Freeze Your Payments

New law requires you to protect patient privacy in bankruptcy

The law governing bankruptcies changed drastically last month, and at least some physicians were alarmed by the new rules.

In anticipation of the new law's Oct. 17 effective date, a number of physician offices and medical centers rushed to declare bankruptcy beforehand, according to the Dallas Business Journal. These businesses included **Leland Medical Centers** in McKinney, TX; **Complete Women's Healthcare** in Dallas; and Plano, TX-based physician **Bruce Ramsey**.

Why? There are a few reasons physicians might have been in a hurry to declare bankruptcy before the new regime, according to **Gary Marsh**, a partner with **McKenna Long & Aldridge** in Atlanta, GA. In general, the revised law places new burdens on businesses declaring bankruptcy. You'll find it "harder to file bankruptcy and come out of bankruptcy," says Marsh. The changes include provisions to address corporate misconduct, fraud and mismanagement.

For health care providers in particular, there are also a few provisions aimed at protecting patients:

- The bankruptcy court must appoint a patient care ombudsman within 30 days after the commencement of bankruptcy, to monitor patient care. Congress was concerned that patients would suffer or be exposed to unsafe situations while a health care provider was going through bankruptcy, Marsh explains.
- If the bankrupt entity is sold to someone else and tries to transfer patient records or private information to the buyer, the court will name a consumer ombudsman to ensure patient privacy, Marsh says. This change will make sure the bankruptcy law dovetails with the Health Insurance Portability and Accountability Act (HIPAA).
- If a provider shuts down, you can't simply throw patient records in the trash. You have to make a reasonable effort to give patients their own records, or else destroy them in a secure fashion, says **Keith Shapiro**, a managing partner with **Greenberg Traurig** in Chicago.
- For facilities, the trustee will have access to funds to move patients to another facility.

Perspective: "It's important that Congress respected the privacy of the patients," says Shapiro, who helped to draft the health care provisions of the new bankruptcy law. In general, bankruptcy law is only concerned with financial issues, and patients' welfare can get lost in the shuffle, he explains.

Caution: Another new provision will make it harder for you to restructure in bankruptcy, according to Shapiro. The law now allows Medicare to recoup an overpayment by taking the money out of current reimbursements, which is something bankruptcy courts have prevented Medicare from doing in the past. Shapiro says he's surprised the health care industry didn't fight this provision, which will put a lot of providers out of business.