No End In Sight For Health Care Provider Bankruptcies

By Maria Chutchian

Law360, New York (May 15, 2014, 3:08 PM ET) -- Middle-market health care providers have been consolidating and seeking bankruptcy protection for some time now, but restructuring experts say the trend is gaining speed and won’t slow down as long as federal reimbursement rates stay steady and inpatient numbers continue to decline.

Although overall commercial bankruptcy filings have dropped steadily over the past year, bankruptcy professionals say they are seeing hospitals and private practices either seeking Chapter 11 relief or selling off assets at a greater pace all over the country.

Two weeks ago, Massachusetts’ Berkshire Medical Center offered to buy bankrupt Northern Berkshire Healthcare’s assets for $4 million. In February, Georgia-based Restora Healthcare, which operates hospitals in Arizona, announced its entrance into bankruptcy with a plan to infuse new capital into its operations and reorganize within 90 days. In March, five Connecticut HealthBridge Management LLC-run health care centers received court approval to exit bankruptcy after filing only a month earlier.

Those examples are only the tip of the iceberg. Unless there is a shift in Medicaid and Medicare reimbursement policies or hospitals are able to downsize their operations to a manageable point, experts say, the restructuring community can expect the trend to stay strong for years.

“We certainly expect from a volume perspective that there will continue to be a number of cases,” said Adam Rogoff of Kramer Levin Naftalis & Frankel LLP.

The main issue struggling providers are facing is low revenue rates, experts say. As the cost of health care increases, reimbursements from Medicare and Medicaid are making up less of the expense. Furthermore, when the government decides to cut back on reimbursements, private insurers generally don’t take long to follow suit, Mark Benedict of Husch Blackwell LLP said.
Additionally, some providers are being hurt by their lower reimbursements in credit ratings, which is making it more difficult for them to access capital, according to Joseph DeVito of Getzler Henrich & Associates LLC.

Private practices take a much bigger hit than hospitals when it comes to reimbursements, with some practices seeing rates between 20 and 50 percent of those hospitals receive, MorrisAnderson CEO Daniel Dooley said.

“Medicare reimbursement is basically favoring hospitals from a pricing point of view at a time it should be favoring private practices,” he said. As a result, physicians are taking their private practices to larger hospitals, he added.

Though reimbursement rates from Medicare and Medicaid tend to get more of the blame for the industry’s struggles, the problems don’t all come from lawmakers in Washington. Nonprofit care centers, for example tend to receive a good portion of their revenue from states, which have been tightening belts for years.

And at the same time the government and insurers are offering less in reimbursements, hospitals and other care centers are seeing fewer beds filled, Rogoff said, especially as advancements in medical technology allow for more patients to be treated on an outpatient basis.

The decline in inpatient admissions doesn’t help a hospital save costs, though, since it still has to maintain operations and staff at a high level.

“It’s difficult to reduce [those costs] — that’s where the problem comes from,” DeVito said.

The issue of overcapacity has been prominent in New York where the insolvent Long Island College Hospital is preparing to close its doors as Interfaith Medical Center sits in Chapter 11 with the hope that it will exit soon. When the federal government signed off on an $8 billion Medicaid waiver for the state last month, it stipulated the money needed to be used to overhaul
its struggling hospitals and focus more on outpatient care.

Some hospitals are looking to fix that problem by integrating urgent care clinics or partnering with nearby urgent care centers, which of course comes with more costs, experts say. While some of this activity occurs outside the courtroom, others lining up sales are more comfortable with the protections afforded in a Chapter 11 proceeding.

However, smaller hospitals are getting left out of a lot of the consolidating activity, which forces them to seek bankruptcy, DeVito noted.

Midmarket health care centers in rural parts of the country are getting hit especially hard. A string of critical access hospitals in Texas have recently found themselves in forced sale situations, including auctions with no stalking horse bidders lined up — a frightening prospect for rural health care centers, Benedict said.

Several providers are bogged down in administrative costs on top of their other troubles. The Affordable Care Act’s increased regulation on the maintenance of medical records and amped-up audit efforts are straining providers that don’t have the manpower necessary to comply, experts say.

Finally, smaller providers have found themselves at a disadvantage in accessing contracts with private insurance companies, DeVito said. A competitive market makes it difficult for them to negotiate rates, which makes insurance companies less inclined to give them a contract, which leads to fewer patients, he said.

The combined effect of low reimbursement rates, declining inpatient admissions, hefty operating costs and everything in between will continue to send providers to the bankruptcy courts for the foreseeable future, experts say.
“Most of these bankruptcy waves come in five- or six-year cycles,” Benedict said. “An industry will have substantial consolidation ... wind its way through the bankruptcy process, and the strong survive at the end of the cycle.”

--Editing by Jeremy Barker and Philip Shea.