RMA – Healthcare Lending Forum: Accounts Receivable as Collateral for Healthcare Financing

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Outline

• Brief Recap of Due Diligence Concerns
• Working Capital Financing
  – Dominion over cash
• Structuring Acquisition Financing
  – Smooth transition of operations
  – Continued operations of facility during liquidation
• Intercreditor Issues
• Insolvency Issues
Healthcare Due Diligence
Healthcare Due Diligence

Identify the Provider

• Who is the provider
  – Relevant for licensing and reimbursement purposes
  – Key to determining who the Borrower will be and who owns the collateral
Healthcare Due Diligence
Assessing Healthcare Compliance

- What Should Your Counsel Evaluate?
  - Licenses
  - Regulatory notices or actions
  - Regulatory surveys or inspection reports
  - Past internal audit/billing reviews
  - Compliance policies
  - Privacy policies
  - HIPAA
  - Governmental provider or principal commercial payor agreements
  - Stark Laws
  - Anti-Kickback Statute
  - False Claims Act
Working Capital Financing

Structure of Revolving Credit Facility

a. Borrowing Base Formula

b. Cash Control by Lender
Structure of Revolving Credit Facility Cont’d

- Borrowing is limited to availability under a borrowing base (i.e. a formula based on 85% of eligible accounts receivable, minus any applicable reserves)

**Example:**
- Gross Accounts Receivable: $2,000,000
- Minus Ineligible Receivables: $1,000,000
- Eligible Accounts Receivable: $1,000,000
- 85% of Eligible Accounts Receivables: $850,000
- Minus Reserves: $50,000 Recoupment
- Borrowing Availability: $800,000
Working Capital Financing

Structure of Revolving Credit Facility Cont’d

What is an Eligible Account?
An Account of Borrower which:
- arises in the ordinary course of business
- is the liability of identified commercial insurer/Medicare/Medicaid subject to certain concentration limits
- the obligor is organized in the United States
- the liability does not relate to cosmetic surgery or injuries arising out of a worker’s compensation claim or motor vehicle accident
- the obligor is not an individual
- account is not outstanding more than 120 days past the date of service
- is not the liability of an affiliate of the Borrower
- the obligor is not in bankruptcy

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Working Capital Financing

Creation and Perfection of Security Interest

- Grant of Security Interest in Collateral (all assets versus accounts only)
  a. §9-102(a)(2) – Definition of “Account” includes “Health-Care-Insurance Receivable”
  b. Deposit Accounts
  c. Books and Records
  d. Relevant licenses and provider agreements
Working Capital Financing

- Perfection of Security Interest in Collateral
  a. Accounts, general intangibles:
  FILE FINANCING STATEMENT

b. Deposit Accounts:
Need to obtain “control” under §9-104 of the UCC
“Control” of Deposit Accounts

Structure of Non-Healthcare Revolving Credit Facility Cont’d

- Lender has “control” over the Borrower’s cash

Obligors make payment to Lockbox or Designated Concentration Account

Checks

ACH/Wire transfers

COLLECTIONS ARE TRANSFERRED INTO LENDER’S COLLECTION ACCOUNT AND APPLIED TO THE OUTSTANDING BALANCE UNDER THE REVOLVING CREDIT
Anti-Assignment Regulations and Cash Management

- 42 U.S.C. 1395g(c):

No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed

(1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or

(2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.
• 42 U.S.C. 1396a (32):

A State plan for medical assistance must—

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made

(i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or

(ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed

(i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or

(ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer

(i) supplies doses of the vaccine to providers administering the vaccine,

(ii) periodically replaces the supply of the vaccine, and

(iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns)
Working Capital Financing - “Control” of Deposit Accounts

Anti-Assignment Regulations and Cash Management

- If payment can only be sent to the provider, how does Lender obtain cash control?
§3488.2 Payment to Bank.--Absent a court order, Medicare payments due a provider of services may be sent to a bank (or similar financial institution) for deposit in the provider's account only if the check is drawn in the name of the provider and the provider certifies that it will continue this payment arrangement only so long as the following requirements are met:

- The bank is neither providing financing to the provider nor acting on behalf of another party in connection with the provision of such financing; and

- The provider has sole control of the account, and the bank is subject only to the provider's instructions regarding the account. (Thus, if the bank is under a standing order from the provider to transfer funds from the provider's account to the account of the financing entity in the same or another bank and the provider rescinds that order, the bank honors this rescission notwithstanding the fact that the rescission breaches the provider's agreement with the financing entity.)

Subject to the above restrictions on the bank and to the bank's meeting the conditions specified in §3488.1, a bank which is the billing agent for the provider and receives and deposits in the provider's bank account the provider's Medicare payments may draw on those funds to pay for its billing services.

Subject to the above restrictions on the bank, a billing agent, other than the bank, that meets the conditions specified in §3488.1 and receives and deposits in the provider's bank account the provider's Medicare payments may draw on those funds to pay for its billing services.
Working Capital Financing - “Control” of Deposit Accounts

Medicaid/Medicare

Provider/Borrower Account at Non-Lender Depository Bank
Revocable Standing Medicare/Medicaid Deposit Account Service Agreement (Structure often referred to a “Double Lockbox”)

A Tri-Party Agreement is entered into among Borrower, Depository Bank and Lender, pursuant to which the Borrower gives Depository Bank revocable instructions to transfer funds received in Borrower’s account to Lender on a daily basis.
Does this satisfy §9-104 of the UCC to perfect Lender’s security interest in Borrower’s deposit account?

NO, but it is the best you can get without violating the anti-assignment regulations.

REMEMBER, the Lender’s lien on the A/R is still perfected by the UCC filing, but the practical issue of how you can collect that A/R is the concern.
How do you alleviate risk that Borrower’s will revoke instruction and divert funds?

• Sweeps typically are set up on a daily basis so diligent monitoring should alert the Lender that no funds are being swept.

• Most people believe it violates the anti-assignment regulations to require the Depository Bank to give Lender notice prior to honoring a revocation. Some Lenders try to get the Depository Bank to agree that any new instruction given by the Borrower may not be honored for 2-3 business days. Depository Banks often push back on this request as they are not structured to delay requests.
Working Capital Financing - “Control” of Deposit Accounts

Remember this is only required for Medicaid/Medicare Receivables.

Medicaid/Medicare

Commercial Insurers

Deposit Account of Borrower subject to Revocable Control Agreement (i.e. NO CONTROL/UNPERFECTED)

Deposit Account of Borrower subject to a Control Agreement (i.e. PERFECTED)

Lender

Recoverable Instruction is for funds to be transferred on a daily basis to the Deposit Account which receives the Commercial Accounts, which is subject to a control agreement.
Working Capital Financing - “Control” of Deposit Accounts

If Multiple Borrowers, need a deposit account for each Borrower.

Medicaid/Medicare

Commercial Insurers

Borrower Account No. 1  Borrower Account No. 2  Deposit Account of Borrower subject to a Control Agreement (i.e. PERFECTED)  Lender

🌟 Revocable Instruction is for funds to be transferred on a daily basis to the Deposit Account which receives the Commercial Accounts, which is subject to a control agreement.
Consider using a Concentration Account to Avoid Significant Wire Fees if Multiple Borrowers are Involved in Transaction

Transfers from the Governmental Accounts and the Commercial Accounts to the Concentration Account are internal transfers. This structure allows Lender to receive one daily wire rather than 5.
Can you commingle Government and Commercial funds in one deposit account?

YES, but if $1 of Government funds are received in a deposit account, the anti-assignment regulations apply and the Lender cannot establish “control” over that deposit account. Therefore, if there are significant funds from Commercial insurers those funds should be segregated so Lender can properly perfect its interest.
What if the Lender is the depository institution?

OK, so long as Lender includes waiver of set-off language in Loan Agreement.
CMS Publication 100-04 Chapter 1, Section 30.2.5 – Payment to Bank

Medicare payments due a provider or supplier of services may be sent to a bank (or similar financial institution) for deposit in the provider/supplier’s account so long as the following requirements are met:

• The bank may provide financing to the provider/supplier, as long as the bank states in writing, in the loan agreement, that it waives its right of offset. Therefore, the bank may have a lending relationship with the provider/supplier and may also be the depository for Medicare receivables; and

• The account is in the provider/supplier’s name only and only the provider/supplier may issue any instructions on that account. The bank shall be bound by only the provider/supplier’s instructions. No other agreement that the provider/supplier has with a third party shall have any influence on the account. In other words, if a bank is under a standing order from the provider/supplier to transfer funds from the provider/supplier’s account to the account of a financing entity in the same or another bank and the provider/supplier rescinds that order, the bank honors this rescission notwithstanding the fact that it is a breach of the provider/supplier’s agreement with the financing entity.

Irrespective of the language in any agreement a provider/supplier has with a third party that is providing financing, that third party cannot purchase the provider/supplier’s Medicare receivables.

Subject to the above restrictions on the bank and to the bank’s meeting the conditions specified in §30.2.4, a bank which is the provider/supplier’s billing agent pursuant to an agreement with the provider/supplier and receives and deposits in the provider/supplier’s bank account the provider/supplier’s Medicare payments may, subject to instructions from the provider/supplier, draw on those funds to pay for its billing services.

Subject to the above restrictions on the bank, the provider/supplier’s billing agent, other than the bank, that meets the conditions specified in §30.2.4 and receives and deposits in the provider/supplier’s bank account the provider/supplier’s Medicare payments may, subject to instructions from the provider/supplier, draw on these funds to pay for its billing services.

Notwithstanding the above restrictions, if a court of competent jurisdiction orders the assignment or reassignment of Medicare payments, Medicare will follow that order if, as stated in 42 C.F.R. §424.73(b)(2) and listed in 42 C.F.R. §424.90, a certified copy of the court order and of the executed assignment or reassignment (if it was necessary to execute one) is filed with the contractor responsible for processing the claim and the assignment or reassignment (1) applies to all Medicare benefits payable to a particular person or entity during a specified or indefinite time period; or, (2) specifies a particular amount of money, payable to a particular person or entity by the particular contractor. In all other instances, the Medicare program will make payments subject to the restrictions listed above. For example, even if a court order directed to a provider/supplier limits the provider/supplier’s ability to breach its financial agreement with a third party, the bank is bound by instructions from the provider/supplier.
Does the transaction being financed constitute a change of ownership ("CHOW") for regulatory and/or reimbursement purposes?

- **Stock Sale** – if EIN does not change it is not a CHOW. Still need to file 855A (assignment form) within 90 days by the existing provider/buyer.

- **Asset Sale** – Buyer and Seller need to complete 855A within 30 days from CHOW.
  - CMS processes form and approves the CHOW retroactively back to the date of the transaction (sometimes referred to as Tie-in-Notice) (reason you need to address remittance of funds in OTA).
  - Typically processed within 60 days.
Acquisition Related Issues

Ascertain whether the Medicare/Medicaid provider agreement is being assigned/assumed

1. Principal Advantage of Assuming: uninterrupted payment

2. Principal Disadvantage of Assuming: Agency may seek recoupment for pre-closing obligations of the seller
Operation Transfer Agreement:

• Agreement between Seller and Purchaser (may also include old and new management companies as parties)

• Parties agree to cooperate and provide requested documentation necessary for Purchaser to obtain any licenses or approvals
Transition of Operations

Operation Transfer Agreement Cont’d:

• Purchaser (or Purchaser’s Lender) may require Seller to grant a security interest to Purchaser (for the benefit of Purchaser’s Lender) in the post-closing accounts receivable

• Seller agrees to remit any proceeds of post-closing accounts receivable to Purchaser
  – Purchaser’s Lender may even require document to say Seller is holding in trust for Purchaser’s Lender and will remit directly to Purchaser’s Lender
  – If Seller’s Lender has a lockbox in place, Purchaser may require a letter from Seller’s Lender acknowledging post-closing accounts receivable are owned by Purchaser and should be remitted to Purchaser if received by Seller’s Lender in the lockbox
Operation Transfer Agreement Cont’d:

- Employees:
  - Purchaser will agree to offer employment to a percentage of employees to avoid notices required by Worker Adjustment and Retraining Notification Act (“WARN Act”)
  - Purchaser indemnifies Seller to the extent there is any liability under the WARN Act or any comparable state law

- Computer Systems:
  - May or may not be transferred
  - If not being transferred, parties probably need to agree to a time period for which Purchaser will be permitted to use existing computer systems until new computer system is installed and operational
Operation Transfer Agreement Cont’d:

• **Indemnity:**
  
  – Seller indemnifies Purchaser for any offset or holdbacks for services provided by Seller prior to the closing date or any civil monetary penalties issued for the operations of the facilities prior to the closing date.
  
  – Purchaser indemnifies the Seller for any offset or holdbacks for services provided by Purchaser after the closing date or any civil monetary penalties issued for the operations of the facilities after to the closing date.
Transition of Operations

Operation Transfer Agreement Cont’d:

• Collateral Assignment of OTA:
  – Purchaser collaterally assigns all rights (but not obligations) of Purchaser under the OTA to its Lender
  – Seller’s acknowledge assignment and often agree to send copies of any notices sent by Seller to Purchaser to Lender other than those sent in the ordinary course
Continuation of Operations

Management Arrangements

• Lender needs ability to maintain, replace or terminate the manager
Continuation of Operations

Agreements with Manager (may be collateral assignment, subordination or just a side letter)

- Lender wants right to terminate Management Agreement with minimal notice to Manager following an event of default
- Manager agrees to turn over all books and records to new manager to effectuate a smooth transition to the new manager
Continuation of Operations

Agreements with Manager Cont’d:

• Manager agrees to send notice of default under the management agreement to Lender and provide Lender with an opportunity to cure for a period of time

• Manager must continue to act as manager during this cure period - Lender needs time to find a new manager

• Lender may require Manager to continue to manage the operations during foreclosure period and assist Lender in collection efforts

• Manager will agree to manage for the “new operator” in connection with a foreclosure by Lender
Agreements with Manager Cont’d:

- If Manager maintaining deposit accounts
  - Deposit accounts should be in name of operator
  - Manager agrees to only send funds to deposit account subject to a control agreement
  - Manager agrees not to commingle funds from operator with any other funds
  - Following notice from Lender, Manager may be required to only send funds to the controlled accounts
Continuation of Operations

Agreements with Manager Cont’d:
• Manager subordinates any liens rights it may have
• Manager agrees not to amend management agreement without Lender’s consent
• Manager will permit access to its premises in order for Lender to access books and records, etc.
Continuation of Operations

Other Issues to Consider:

• Does the Operator have an agreement with a software company?
  – May need to obtain an agreement from such company permitting Lender access to books/records for a period of time

• If the Operator’s performance is poor, Lender may require Operator to obtain a full download of its system and provide a live feed to its system to Lender
Intercreditor Issues

Typical Parties:
• AR Lender / Real Estate Lender
• Equipment Lender / Real Estate Lender
• AR Lender / Equipment Lender
Intercreditor Issues

AR Lender / Real Estate Lender is most common

- AR Borrower will be the Operator ("OpCo")
- RE Borrower will be the Landlord ("RealCo")
- OpCo will also grant a lien in favor of the RE Lender (either directly or through the Lease)
Intercreditor Issues

Typical RE Lenders

- Department of Housing and Urban Development ("HUD") is dominant player
- Documents developed by HUD “set the market” for many transactions
Intercreditor Issues

Concerns of the Parties:

AR Lender

• Providing Working Capital like any other AR Lender
• Priority on Collateral
• Standstill by RE Lender
Intercreditor Issues

Concerns of the Parties:

RE Lender

• Value in loan is with the Lease and its service of the loan
• Want direct payments to RE Lender from Lessee (OpCo)
• Subordination of Lease (and Attornment) are important (typically an SNDA)
Benefits for Each Party:

• RE Lender likes to have the AR Lender to continue to monitor the operations on a recurring basis

• AR Lender wants a stable RE Lender to keep the property with the same owner for its OpCo Borrower
Intercreditor Issues

Typical HUD Intercreditor Provisions (Overview):

• Priority of Collateral
• RE Lender “Flip” on Priority
• Standstill on Remedies
• Access Rights by AR Lender
• Other Rights - Notices, Turnover, Cures
Intercreditor Issues

Priority of Collateral:
AR Lender has priority on:

- Accounts
- Goods (Inventory, Equipment and Fixtures)
- Books and records
- Documents
- General Intangibles
Priority of Collateral:
RE Lender has priority on:
• Real Estate (no competing lien)
• Licenses for the Facility
• Certificates of Need
• Medicare / Medicaid Provider Agreements
• Equipment (but only if required for licensing and certification of Facility)
Intercreditor Issues

FLIP on Collateral Priority:

• Upon a “Triggering Event”, RE Lender can take action on RE Priority Collateral, as long as RE Lender does not exercise remedies on AR Priority Collateral
  – terminate the Lease
  – foreclose on the Mortgage, or take Deed-in-Lieu
  – action for possession of Premises
  – seek appointment of a receiver
Intercreditor Issues

FLIP on Collateral Priority Cont’d:

- RE Lender gives 30 days notice of enforcement to AR Lender
- RE Lender has Priority on post-Possession Date AR
- Possession Date – RE Lender takes physical possession and control
Intercreditor Issues

Standstill / Access:

• Typical prohibition on RE Lender pursuing AR Priority Collateral
  - For pre-Possession Date collateral, standstill is perpetual
• AR Lender usually has no standstill on remedies
• AR Lender has a right of access to inspect collateral
Intercreditor Issues

Miscellaneous Provisions:

- Notices – typically just reasonable efforts
- Turnover – mutual as to each party’s collateral
- Cures – mutual, both parties benefit
Intercreditor Issues

Other Provisions / Issues (not in typical HUD form):

• Multiple Borrower issues
  - cross collateralization
  - one property sales or “take out”

• Purchase Option – RE Lender often wants

• Obligation of AR Lender to negotiate with replacement Operator
Other Structures:

• AR Lender v. Equipment Lender
  - Equipment Lender’s “proceeds” should not include Accounts resulting from operation of equipment

• Equipment Lender v. RE Lender
  - Equipment Lender wants access to Premises
  - Equipment Lender wants to work with the RE Lender because of value
Insolvency Issues

Some Perspectives on Distress Relating to Healthcare Finance
Insolvency Issues

- Recoupment/Setoff – No Stay Of Setoff Rights For Medicare Receivables

Currently, there exists a specific exception from the automatic stay relating to Medicare and other federal health care programs in order to allow the Department of Health and Human Services expanded debt collection powers against a health care debtor. Section 362(b)(28) of the Bankruptcy Code provides, in pertinent part, that the automatic stay does not apply to the Department’s ability to seek setoff during a chapter 11 case for pre-petition overpayments. Prior to the 2005 amendments to the Bankruptcy Code, setoff rights were subject to the automatic stay whereas recoupment rights were not stayed. Currently, as to the federal government, neither are stayed. Consequently, a debtor must make arrangements to address any reimbursement of prepetition overpayments.
Insolvency Issues

• **Unitary Creditor Theory**

  The unitary creditor theory provides that the government constitutes a single creditor in a bankruptcy case for setoff purposes. The unitary creditor theory is the majority rule and can be traced to U.S. Supreme Court precedent that holds that that there is only one United States and that all of its agencies act on its behalf as part of a unified government. The rule has been applied to state governments as well. The issue becomes relevant to healthcare business debtor who may be entitled to income from certain governmental agencies but who also may owe funds to certain other agencies controlled by the same government.*

ENFORCEABILITY OF GOVERNMENT PRIORITIES OVER OTHER ASSIGNMENTS AND SECURED CLAIMS IN UNITARY CONTEXT:

• GOVERNMENT MAY HAVE A PRIORITY UNDER APPLICABLE FEDERAL AND STATE LAW. UCC SECTION 9-109(D)(10).

• THIS IS SO EVEN IF SECURED LENDER HAS A SECURITY INTEREST PERFECTED PRIOR TO ASSERTED UNITARY SETOFF IN RESPECT OF ACCOUNT DEBTOR RECEIVABLE. LAW MAY PRESERVE SECURITY INTEREST IF THE SECURED CREDITOR PROVIDES RELEVANT FEDERAL AND OTHER GOVERNMENT UNITS WITH ACTUAL NOTICE OF SECURITY INTEREST. IN RE NUCLEAR IMAGING SYSTEMS, INC., 260 B.R. 724, 742-45 (BANKR. E.D. PA. 2000); COMPARE, IN RE ALLIANCE HEALTH OF FORT WORTH, INC., 240 B.R. 699, 704 (N.D. TEX. 1999) (CREDITOR SECURITY INTEREST DOES NOT ENHANCE ACCOUNT DEBTOR RIGHTS IN RESPECT OF GOVERNMENT AND THUS ACTUAL NOTICE UNAVAILING).
Insolvency Issues

THE UNITARY PAYMENT DOCTRINE CONT’D:

FEDERAL PAYMENT LEVY PROGRAM

• CENTER FOR MEDICARE AND MEDICAID SERVICES (“CMS”) CAN DEDUCT UP TO 15% OF MEDICARE PART A AND B PAYMENTS TO HEALTH CARE PROVIDERS AND SUPPLIERS TO OFFSET ANY FEDERAL TAX DELINQUENCY.

• THIS PROGRAM HAS ENHANCED THE FREQUENCY WITH WHICH UNITARY SETOFFS ARE TAKEN.
THE UNITARY PAYMENT DOCTRINE CONT’D:

DIP LENDERS OR SECURED LENDERS SEEKING ADEQUATE PROTECTION CAN CONSIDER PROTECTIONS IN BANKRUPTCY COURT DIP/CASH COLLATERAL ORDERS, WHICH PRIME SETOFF CLAIMS.
**Insolvency Issues**

**DISPOSAL OF PATIENT RECORDS (BANKRUPTCY CODE SECTION 351):**

- GOVERNS PATIENT RECORD DISPOSITIONS FOR HEALTHCARE BUSINESS SUBJECT TO A CHAPTER 7, 9 OR 11 PROCEEDING WHERE THE TRUSTEE DOES NOT HAVE SUFFICIENT FUNDS TO PAY FOR THE STORAGE OF HEALTHCARE RECORDS
- 365 DAY PROCESS THAT BEGINS WITH PUBLICATION OF NOTICE TO PATIENT AND INSURANCE PROVIDER
- DURING FIRST 180 DAYS, MUST ATTEMPT TO NOTIFY EACH PATIENT AND ITS INSURANCE CARRIER BY MAIL
- IF RECORDS ARE NOT CLAIMED AFTER A 365 DAY PERIOD, TRUSTEE MUST REQUEST EACH APPROPRIATE FEDERAL AGENCY TO ACCEPT PATIENT RECORDS
- TRUSTEE MAY THEN DESTROY RECORDS
- POTENTIAL FOR SURCHARGE TO FUND COSTS OF DISPOSITION COSTS
- COSTS OF RECORDS DISPOSITION HAVE ADMINISTRATIVE PRIORITY UNDER BANKRUPTCY CODE SECTION 507(A)(2) PURSUANT TO BANKRUPTCY CODE SECTION 503(B)(8)(A)
Insolvency Issues

TRANSFER OF PATIENTS TO NEW FACILITIES (BANKRUPTCY CODE SECTION 704(A)(12)):

• Trustee in cases involving healthcare businesses must reasonable and best efforts to transfer patients from a closing healthcare business to another healthcare business that is in the vicinity of the closing healthcare business, that provides the patient with services substantially similar to those provided by the closing healthcare business and that maintains a reasonable quality of patient care

• Costs of patient transfers have administrative priority under Bankruptcy Code Section 507(a)(2) pursuant to Bankruptcy Code Section 503(b)(8)(B)