

PUBLICATION

Bankruptcy Courts Lack Subject Matter Jurisdiction Over Medicare Issues, Eleventh Circuit Rules [Ober|Kaler]

2016

In a detailed opinion that likely constitutes the last word on the matter, the Eleventh Circuit recently held in *Fla. Agency for Health Care Administration v. Bayou Shores SNF, LLC* [PDF] that bankruptcy courts lack jurisdiction over Medicare disputes.

Thus, providers facing bankruptcy reorganization may not rely on the intervention of the bankruptcy court to resolve outstanding Medicare issues. The Eleventh Circuit joins the Seventh, Third, and Eighth Circuits in rejecting the plenary authority of bankruptcy courts over matters affecting bankruptcy proceedings but arising under Medicare. The Ninth Circuit has also considered the question with more ambiguous results, but its cases, too, have trended toward the conclusion reached by the Eleventh Circuit in this case.

The case before the court concerned a skilled nursing facility, Bayou Shores, that received three survey citations finding immediate jeopardy conditions in three sequential surveys (one survey found immediate jeopardy, and new immediate jeopardy citations were issued at two subsequent resurveys). Following these surveys, Florida's Agency for Health Care Administration (AHCA) terminated Bayou Shores' provider agreements for both Medicare and Medicaid. The facility attempted unsuccessfully to enjoin enforcement of the termination in the district court before filing for bankruptcy two days before the termination would have gone into effect. The bankruptcy court determined that the plain language of 42 U.S.C. § 405(h) did not bar its jurisdiction over the Medicare issue. That court overruled AHCA's termination of the provider agreements, which it determined to be assignable as part of bankruptcy proceedings. AHCA and HHS appealed to the district court for the Middle District of Florida, which overruled the bankruptcy court. Bayou Shores appealed the determination of the Middle District to the Eleventh Circuit.

The issue of whether bankruptcy courts may exercise jurisdiction over matters related to the Social Security Act results from a conflict in statutory language. On the one hand, 42 U.S.C. § 405(h) establishes that courts do not have jurisdiction over claims arising under the Social Security Act except as noted in the Act. On the other hand, 28 U.S.C. § 1334 establishes the exclusive authority of federal courts over bankruptcy matters. In 1939, when section 405 was first codified, it clearly established an exclusive appeals process whereby matters are channeled first through the Social Security Administration (and later CMS) and then to federal courts. But a subsequent recodification of the jurisdictional provisions led to a "technical correction" to section 405(h). The correction created ambiguity because it omitted bankruptcy courts under section 1334 from a list of courts lacking jurisdiction over Medicare matters.

In addressing this ambiguity, the Eleventh Circuit concluded that Congress did not intend to alter the exclusive jurisdiction of the federal courts over Medicare claims. The court reviewed the legislative history of the provisions and determined that Congress had specifically noted that it did not intend to make substantive changes with the technical corrections. It also reviewed Supreme Court cases addressing the provision both before and after the change, noting that in 2000, long after the technical updates to the statute, the Court stated that section 405(h) "demands the channeling of virtually all legal attacks through the agency" despite the omission. *Shalala v. Ill. Council on Long Term Care*, 529 U.S. § 1, 13 (2000). The court also noted limits to the grant of jurisdiction to the bankruptcy court for the exercise of "police or regulatory power" by a governmental body. *Bd. of Governors of Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32 (1991).

The court observed that the bankruptcy court had articulated a reasonable policy basis for excluding bankruptcy courts from the jurisdictional bar — specifically, that matters pending before HHS could remain pending long after the provider at issue had functionally ceased to exist. But, the court held, the bankruptcy court's determination regarding the provider agreements was “functionally a decision on the merits of the underlying HHS decision” to terminate the agreements that “stymied the direct statutory mandate of Congress” requiring HHS to exercise oversight over providers. Because Medicare constitutes such a complex regulatory regime, the court reasoned, strong policy considerations favored ensuring the agency's sole jurisdiction over related issues.

Ober|Kaler's Comments

While the provider in this case was attempting to use the bankruptcy courts to circumvent an unfavorable termination, the principle that bankruptcy courts lack jurisdiction over matters arising out of Medicare also bears on cases involving claims appeals and other disputes that may be brought before the agency for review. Simply put, providers who face the prospect of bankruptcy should not count on the ability of the bankruptcy court to intervene in matters before the agency.