

***BANKRUPTCY FILINGS BY CARE FACILITIES:
WHEN RESIDENTS & PATIENTS
BECOME CREDITORS***

2026 NATIONAL CONFERENCE ON
SPECIAL NEEDS PLANNING
AND SPECIAL NEEDS TRUSTS

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JUST ONE EXAMPLE OF THE CONCERNS WITH FACILITY FILINGS

Widow paid \$1M to join senior facility that went bankrupt - wiping her out - Manhattan Daily

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FACILITY FILINGS BY THE NUMBERS

- Becker's Hospital Review tracks chapter 11 "healthcare bankruptcy" filings of facilities with liabilities exceeding \$10m
 - Average of about 4 chapter 11 filings every month
 - About ¼ of those tracked are "senior care", and about ¼ are in pharmaceutical industry. The remainder includes primarily hospitals, clinics, medical suppliers.

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FACILITIES FILING FOR BANKRUPTCY

- Why facilities file
 - Reimbursement from insurance (including Medicare/Medicaid) does not adequately cover costs
 - Funding cuts to Medicaid in progress (the “big beautiful bill”)
 - Becker report noted increase in denials of claims from 2024 to 2025
 - Significant expenditures (new technology, update premises, etc.)
 - Increased costs for supplies and labor
 - Becker report noted more than 4% increase in 2025 in median pay for healthcare workers
- Difference between chapter 7 and chapter 11 (and chapter 9)

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IMPACTS OF FACILITY FILINGS

- Impact on employees
 - Leaving due to uncertainty regarding future employment, delayed wages, reduction of benefits
 - Cuts required to facilitate plan confirmation mean job losses
- Impact on patients
 - Reduction in staff to care for patients
 - Changes in providers
 - Increased cost to patients
 - Potential of closing altogether or of consolidations (esp. hospital systems)—note that Becker report indicated largest quarterly number of M&A transactions since 2020 in first quarter of 2026
 - Impact on the existing claims of patients and former patients
- Impact on third-party contracts

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OPERATING FACILITY IN BANKRUPTCY

- CMS.gov: requires notification of Medicare Administrative Contractor if facility files for bankruptcy to “resolve Medicare financial obligations”. Medicare will sue estate to clawback “overpayments” and can use its setoff powers to get paid “in full”.
- Patient Care Ombudsman
 - 11 U.S.C. section 333(a)(1): “the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.”
 - In re Unique Third Ave. LLC, 675 B.R. 680 (Bankr. S.D.N.Y. 2026): consider existence of satisfactory “internal safeguards” in determining whether to include ombudsman
 - In re Valley Health Sys., 381 B.R. 756 (Bankr. C.D. Cal. 2008): other factors include reasons for bankruptcy filing, whether subject to supervision from other sources, level of care facility provides for patients, significance of injuries resulting from reduction in case, how cost of ombudsman will affect payout to creditors or success of reorganization (cost-benefit analysis), past record of patient care, whether conflict between patients and facility is likely
 - What is a health care business? “primarily engaged in offering to the general public facilities and services for ...diagnosis or treatment ...” (hospitals, long-term care facilities)

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SPECIAL CONCERN: PREPAID SERVICES, CCRCs

- The executory contract issue: residents enter into an agreement with the facility to provide services
 - Loss of their money if contract is rejected
 - Might have a claim for return of deposit if services are terminated (or reduced), but....
- Priority claim for unused deposits capped at less than \$10K, with remainder being unsecured
 - A Wall Street Journal article indicated that hundreds of millions in refunds have gone unpaid in bankruptcy cases
- Issue of whether state-law protections are preempted by federal bankruptcy provisions
 - Ex: does the state require that the CCRC continue certain services or have certain cash reserves
