

# Distressed Health Care

## Overview

As the health care industry continues to transition, health care entities are seeking a clean bill of health in the midst of high levels of distress among health care businesses. The interplay between health care regulations and structure and insolvency and financial distress presents unique and complex issues and opportunities.

Carlton Fields' highly specialized Distressed Health Care service team has more than 20 professionals with active health care and insolvency experience. Our attorneys have wide-ranging experience in all aspects of bankruptcy, insolvency, and restructuring, including acquisitions, loan workouts, restructurings, recapitalization, and financing of health care-related entities. Working with our nationally ranked health care group, we provide a full spectrum of services focused on clients in the health care industry, including hospitals and health systems, skilled nursing and senior living facilities, ambulatory surgery centers, and physician practices and medical groups.

We leverage our deep knowledge and understanding of the health care industry to identify and develop effective strategies for distressed health care clients to reach their legal and business goals, in and outside of bankruptcy. Our multidisciplinary team includes professionals in the bankruptcy, health care, litigation, and transactional arenas. Together, we represent health care entities in distressed health care mergers and acquisitions, real estate transactions, litigation and disputes work, regulatory and compliance matters, and other legal challenges.

We represent debtors, creditors, and creditors' committees in Chapter 11 bankruptcies of distressed providers or companies, and acquirers of distressed health care entities. We routinely litigate in bankruptcy, receivership, and state court insolvency proceedings actions across the country. Additionally, we represent hospitals slated for closing due to distress or other reasons for closure, and assist distressed providers or their successors in navigating operational changes and transitions. We also represent directors and officers, trustees, buyers, lenders, and health care creditors and vendors.

Our collaborative and comprehensive approach is the cornerstone of our practice. Understanding the highly regulated nature of the health care industry, we work closely with our regulatory attorneys and contacts with the Centers for Medicare and Medicaid and the Department of Health to advise on regulatory issues, including licensure, certification, compliance, and health care reimbursement. We also draw on the broad and deep knowledge of our attorneys with significant experience in the areas of intellectual property, receivership, and successor liability, as well as attorneys across the firm's practice areas, such as tax, real estate, litigation, and labor and employment.

### **Services:**

- Mergers, acquisitions, and dispositions
- Equity and debt financings
- Liquidations
- Receiverships
- Section 363 sales
- Compliance plans
- Regulatory issues and due diligence
- Assumption and assignment of provider agreements
- Resolution of government program overpayment issues, including Medicare and Medicaid
- Financing and sales of receivables
- Certificates of need, licensure and accreditation, and related issues
- Facility closures and operator transitions
- Patient care ombudsman
- Disposal of patient records for health care businesses

## Experience

- Represent a senior secured lender with respect to government-insured loans in the joint bankruptcy cases of 18 assisted living facilities and related operating and holding companies pending in the Western District of Washington. The cases have involved numerous contested cash collateral proceedings as well as debtor-in-possession and lease classification disputes.
- Represent a significant shareholder and creditor and related entities in the joint Delaware bankruptcy cases of more than 30 health care practices and related holding and operating companies. The debtors, headquartered in Miami, have been alleged to have defrauded both investors and physician practices through a variety of complicated schemes. The representation has led to the successful challenge of provisions of debtor-in-possession financing and the proposed curtailment of various rights to pursue claims and object to the alleged security interests of the debtor-in-possession lender.

- Represent a full-service hospital in the District of Columbia in bet-the-company litigation. The litigation was triggered by the fact that while the hospital was in extreme financial distress under a prior ownership, certain sale and leasing transactions were being contemplated between the plaintiff and the prior owners. These preliminary discussions, which were memorialized in a memorandum of understanding and in an exchange of emails, are then turned into the basis for a specific performance action against the client. Succeeded in obtaining summary judgment on all claims against the client. The summary judgment was affirmed on appeal.
- Represented a hospital entity in arbitration proceedings before a retired federal district judge. The issue in the arbitration was whether, due to financial distress and the resulting ability to obtain certification of funds from the entity's chief financial officer, a legal impossibility existed to suspend the immediate obligation of the client to perform under a preexisting settlement agreement.
- Counsel for distressed hospital entity in six separate actions in federal and state court in which the plaintiffs sued for breach of contract or quantum meruit for liabilities incurred by a pre-foreclosure owner of the hospital. Each action was based on successor liability theories. Five of the actions were dismissed on motion, and one settled on a deeply discounted basis.
- Represented multiple physician independent practice associations (IPAs) in a large hospital system Chapter 11 bankruptcy in California. Representation included protection of IPAs' rights under risk sharing agreements between IPAs and hospitals with capitated health plans during course of bankruptcy, including adjudication of risk pool and compensation issues, including issues related to the calculation of IBNR (incurred but not reported) claim disputes caused by the bankruptcy filing. Representation also pertained to the assumption and assignment of risk-sharing agreements in relation to the sale of hospitals to a third-party purchaser.
- Represented Level I trauma center hospital regarding restructuring advice and recapitalization options for an underperforming limited liability company surgery center, partially owned by the hospital, including the impact on the hospital of Chapter 11 bankruptcy, Chapter 7 bankruptcy, and assignment for the benefit of creditors by the surgery center, as well as other recapitalization options.
- Represented Central Florida Hospital that was divested by large hospital holding company based in Nashville, Tennessee, that is struggling with its debt obligations. Advised Central Florida Hospital of its rights and assisted Central Florida Hospital with reviewing and consenting to lease assignment from the holding company to Florida Hospital. Also advised Central Florida Hospital as to potential impact upon the hospital if the holding company filed a Chapter 11 bankruptcy, including impact upon capital improvement obligations from the holding company, and impact upon UF Health Shands Hospital's prior option to acquire the hospital, and recapitalization options.

- Represented stalking horse bidder of an assisted living facility in New Hampshire Chapter 11 bankruptcy.
- Represented medical practice assignor in an assignment for the benefit of creditors proceeding under Florida law.
- Represented largest secured creditor and debtor-in-possession lender in Chapter 11 proceeding involving large central Florida cardiovascular medical practice.
- Represented largest creditor in Chapter 11 proceeding involving significant neurological rehabilitation operation.
- Represented former officers and directors of several insolvent health care providers in connection with allegations of breaches of fiduciary duty.
- Represented Oklahoma Hospital and currently advising hospital on its rights associated with existing lease and potential defaults on Nashville-based holding company on long-term loan and upcoming balloon payment.
- Represented Florida state-court-appointed receiver of the operator of several assisted living facilities in Florida, Virginia, and Maryland.
- Represented not-for-profit hospital in Chapter 11 reorganization.
- Representation of a full-service hospital as an executory contract creditor in the protracted bankruptcy of two hospitals in the U.S. Bankruptcy Court for the District of Columbia.
- Representation of District of Columbia full-service hospital in the Superior Court of the District of Columbia receivership case of a corporation serving as the private sector contract administrator of the District of Columbia government's entire Medicaid program.
- Served on an ad hoc committee comprising attorneys from the Office of the Attorney General for the District of Columbia, a District of Columbia instrumentality that operates a full-service public hospital in the District of Columbia, and other district officials in connection with a failed attempt to sell and lease hospital assets to a private sector operator. The nature of this work was to devise strategies and specific solutions to remove certain clouds on the title to the assets to be sold or leased to the prospective operator.
- Representation of ground lessor who was an executory contract creditor in a national nursing home Chapter 11 bankruptcy in the U.S. District Court for the District of Delaware; succeeded in having the client's ground lease assumed pursuant to the plan of reorganization of the joint debtors following intensive negotiations involving the terms and conditions of the assumption.

- Represented a San Diego hospital in providing a detailed and fully reasoned legal opinion requested by a New York City factoring company. The hospital had decided to factor its accounts receivable and needed an extensive legal opinion to the effect that in the event of bankruptcy proceedings by the hospital the factoring arrangement would qualify as a present and absolute assignment of the accounts receivable.

## Insights

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Reducing Hospital Regulatory Burdens Through Bankruptcy Sales

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## Our Team

## Key Contacts



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## Related Practices

- [Crypto Insolvency and Fiduciary Practice](#)
- [Distressed Asset and Workout](#)
- [Insolvency-Related Directors and Officers \(D&O\) Litigation](#)
- [Health Care](#)
- [Creditors' Rights and Bankruptcy](#)

## Related Industries

- Health Care