

# HEALTH LAW

## *Update*

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

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## Warning for Health Care Providers as Creditors: New Form Requires Creditors to Limit Disclosures when Filing Claims in Bankruptcy Court

**November 11, 2008**

Given the current economic downturn, most healthcare industry observers expect a rise in personal bankruptcy filings and a corresponding rise in bankruptcy claims filed by healthcare providers. This Health Law Update will summarize some important privacy restrictions that impact healthcare providers as creditors and that have been evolving since the adoption of a new Federal Rule of Bankruptcy procedure last year. These restrictions have culminated in a new bankruptcy claim form that healthcare providers must use commencing December 1, 2008.

### **Background**

Last year, the Judicial Conference of the United States adopted a new Federal Rule of Bankruptcy Procedure, Rule 9037,<sup>1</sup> which implements the policies of the E-Government Act of 2002 (the "Act"). The Act required the Supreme Court to promulgate rules that would, in light of the public's access to electronic case files, protect personal information from being disclosed in documents filed with the federal courts.

Rule 9037 effectuates the purpose of the Act by limiting the information that may be disclosed in documents filed with the bankruptcy court. Significantly, and unless one of the exceptions applies, parties filing documents with the bankruptcy court may file only the last four digits of an individual's social security number, the year of the individual's birth, a minor's initials, and the last four digits of the individual's financial account number. Along with adoption of Rule 9037, the Judicial Conference also approved an official form for creditors to use when filing Proofs of Claim (Form B10), which was effective December 1, 2007, instructing claimants to redact the necessary information before filing a bankruptcy claim.

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<sup>1</sup> Fed. R. Bankr. P. 9037.

**New Form B10 – Effective December 1, 2008**

In September 2008, in keeping with the same concern for privacy, but without a change in the language of Rule 9037, the Judicial Conference approved a new official Form B10 for creditors to use when filing Proofs of Claims in bankruptcy cases. The new official form, which replaces the earlier Form B10 and becomes effective December 1, 2008, affects creditors who file claims based on debts owed for the "delivery of health care goods or services." As explained in the Committee Note that accompanied the new form, the changes are intended "to instruct the claimant that the information contained in or attached to a claim based on the delivery of health care goods or services should be limited so as to avoid embarrassment or the unnecessary disclosure of confidential information."<sup>2</sup> The Committee Note reminds the claimant, however, that "additional disclosure may be required if the trustee or another party in interest objects to the claim."<sup>3</sup>

The new form accomplishes the goal of protecting confidential health-related information from dissemination by limiting the scope of the written narrative description and supporting documentation that health care provider claimants may use to support their claims. Without specifically mentioning the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the form acts as a specific reminder to the providers of health care goods and services to guard against the unnecessary disclosure of patient health-related information.

**Conclusion**

Based on these changes, providers of health care goods or services should begin using the new form in December 2008 and should review their internal procedures and guidelines for filing bankruptcy creditor claims, as well as the information disclosed in documents attached to those claims, to ensure that they comply with the requirements of the new form. If you have any questions, please call one of the attorneys in our Healthcare Industry Practice Group or Bankruptcy Practice Group listed on the following page.

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<sup>2</sup> Official Form B 10 2008 Committee Note

<sup>3</sup> Id.

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