Update for Healthcare Providers on Riverstone Capital LLC Liquidation Proceeding

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A number of our clients have provided medical care to patients covered by the now-defunct Riverstone Capital LLC multiple employer welfare arrangement (the "Riverstone MEWA") and have still not been paid. This Alert offers an update on the liquidation proceedings in California federal court, and identifies steps that providers should take in order to protect their rights to payment in the coming months.

As background, Bakersfield, CA-based Riverstone Capital LLC was held after an investigation by the U.S. Department of Labor (DOL) to have mismanaged the Riverstone MEWA. Among other things, Riverstone failed to set adequate premiums, commingled funds, and charged excessive fees to over a hundred employers who hired Riverstone to provide healthcare benefits to their employees and dependents. Because there were insufficient assets to pay claims, Riverstone began to delay the payment of approved claims and "cherry-picked" which claims to pay. DOL found these actions to be serious violations of the Employer Retirement Income Security Act (ERISA), which governs the vast majority of the affected employers' participating plans.

On February 1, 2019, DOL filed a lawsuit against Riverstone and its principals. On February 9, 2019, Judge Michael W. Fitzgerald of the United States District Court for the Central District of California issued an order freezing the assets of the Riverstone MEWA and appointing an Independent Fiduciary (IF). After conducting an investigation, the IF determined that there were $36 million in processed, unpaid claims, but only $3.5 million in potentially available assets. Thus, the IF determined that the only path forward to was to terminate the Riverstone MEWA and Participating Plans and proceed to liquidation.

Following notice to all affected parties, the IF caused the Riverstone MEWA and all participating employer plans to be terminated at 11:59 p.m. on March 8, 2019 as part of a consent judgment against Riverstone and its principals (the "Consent Judgment"). The Consent Judgment specifically enjoined "all hospitals, physicians, pharmacists, and other health care providers" pursuant to the All Writs Act, 28 U.S.C. § 1651, from seeking to collect or enforce legal rights against any patient covered by the Riverstone MEWA or any participating plan "related to any debt or to any claim for payment for medical or health care services."

The IF has now proposed an orderly plan of liquidation, to be approved by the Court, by which healthcare providers may present all outstanding medical reimbursement claims for payment. On Monday, April 29, 2019, Judge Fitzgerald held a hearing on the IF's proposal, as well as input from the affected employers. The Court then issued a lengthy minute order on Wednesday, May 1, 2019 that required the IF to make a number of changes to the liquidation plan before the Court will approve it.

Crucially, the Court recognized that, while the MEWA itself had insufficient funds in trust to pay the outstanding claims, each of the participating employer plans had established a "self-funded" plan with respect to its participation in the MEWA. Under ERISA, employers who establish self-funded plans are directly liable for medical costs incurred under those plans. Thus, it is the employers who will ultimately pay the outstanding claims. (A number of employers claimed that they had "side deals" whereby Riverstone, not the employer, agreed to be financially responsible for all claims; both the Court and DOL have found those objections unavailing.) In the meantime, the All Writs prohibition ensures that providers do not also seek payment outside the process that is ultimately approved by the Court.

While no Final Liquidation Plan has yet issued, providers should consider taking the following steps:

- Ensure that all reimbursement claims for patients covered by plans affiliated with Riverstone are timely submitted to the appropriate Third Party Administrator (TPA). We understand that Hawaii Mainland Administrators and S&S Healthcare Strategies, Ltd. were the primary TPAs for Riverstone-affiliated claims. We have heard that Cigna may also have been involved in some capacity. (Of note, the IF originally proposed that providers be required to submit all claims no later than May 7, 2019, an imminent deadline. While the Court recited this part of the IF's proposal, it did not explicitly endorse it.)
- Prepare and maintain a list of all unpaid or underpaid patient claims that they believe relate to the Riverstone MEWA or participating employer plans thereunder.
- Ensure that all enforcement and collection activities against affected patients and employer plans are put on hold. Again, Judge Fitzgerald's most recent order makes clear that he intends to enjoin providers via the All Writs Act from seeking payment outside of the orderly liquidation process.
- After the Court approves the liquidation plan, the IF will send notices out to affected medical providers via both mail and e-mail. The IF will then make available a form on its website that will enable providers to submit a claim for payment against the Riverstone MEWA assets. Providers should be on the lookout for notice from the IF, and should consider whether to submit a form once it becomes available. (It is unclear at this time whether a provider must both submit their claims to the TPAs and submit a Proof of Claim form.)
- Be prepared to negotiate with individual employers regarding outstanding claims. The Court has indicated that employers may reach out to providers directly to negotiate payment amounts that are less than the full billed charges. For any claim paid at less than charges (setting aside patient responsibility), employers will also likely be required to obtain releases from the rendering providers.

We will keep you updated on further developments. If you have further questions, please contact Eric D. Chan at (310) 551-8158 or echan@hooperlundy.com.

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