A new chapter in bankruptcy: How the pandemic is influencing consumer and commercial bankruptcy filings

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Most would agree that the COVID-19 Pandemic has affected all aspects of life and business this year. The impact of the pandemic on consumer bankruptcy case filings has been surprising to say the least. After the initial spread of the virus triggered a rash of stay-at-home orders, consumer filings in April dropped suddenly and sharply. In April, new consumer case filings dropped 39% from the prior month.[1] May and June continued to see fewer consumer case filings as well, both months new consumer case filings were down more than 30% from comparable 2019 rates.[2]

What does this mean for healthcare organizations and why is it important to pay attention to this issue? To start, high medical bills are the number one cause for filing bankruptcy. Proactive identification of these bankruptcy filings enhances compliance and patient experience simultaneously.

Bankruptcy itself is specifically excluded from 501r as it is the required path for collections once filed, falling on the Provider to identify cases and present claims as a requirement under 42 CFR 413.89 and the provider reimbursement manual.

To put it in perspective, let's take a look at the underlying conditions that have contributed to this situation.

The perfect storm

This surprising drop in bankruptcy filings comes amidst unemployment numbers that have soared to heights unseen since the 1930s. As executive orders mandating social distancing were implemented and businesses ranging from call centers and retail outlets to restaurants and movie theaters closed, the nation's unemployment rate skyrocketed in April. While the Department of Labor has reported slightly better numbers in May and June, initial unemployment filings are still near historic highs, tallying a staggering *one million* new filings per week.[3]

Given the high unemployment rate and culture shock to everyday life that have occurred within the past several months, what is slowing down consumer filings at this time? While there is not one particular factor that can account for the decrease, there are several components that, when combined, may help explain the temporary decrease over the past several months.

First, even though many attorneys freely offer telephone consultations and courts are amenable to electronic filings, stay-at-home orders, and the general psychological impact brought about by the pandemic have led many consumers to stay home and simply wait things out.

Second, federal funds, such as the $2.2 trillion CARES Act stimulus package that has provided consumers with a one-time payment and generous unemployment benefits, have helped many consumers weather the initial economic brunt of the pandemic.

Third, state court action that typically drive many consumers to file bankruptcy, such as evictions, foreclosures, and garnishments, were temporarily suspended in many states or, in states where courts remained open, filing parties were simply unable to find process servers.

Finally, temporary rules that stopped collection of student loans and some state-owed debts provided additional breathing room for many consumers.

Together, these extraordinary measures undertaken by Congress and individual states to safeguard individuals throughout the severe economic shocks caused by the pandemic have delayed consumer bankruptcy filings to date.

A new chapter for small businesses

In contrast to the early impacts to consumer filings, commercial Chapter 11 filings have started to rise once again after a year of modest declines. Given the scope of the stay home orders, it is not surprising that the travel, restaurant, and retail industries have been hit the hardest. Hertz, Advantage Rent-A-Car, J.C. Penny, J. Crew are but a few in the ever-growing list of affected companies that have made news headlines for bankruptcy filings recently.

In addition to the marquee Chapter 11 filings, there has been a sizable number of small businesses who have been able to take advantage of the new Chapter 11 Subchapter V case option. Introduced in February of 2020 by the Small Business Reorganization Act, it allows small businesses the ability to reorganize under Chapter 11 without some of the cost and time prohibitive provisions that have historically disadvantaged smaller businesses. Over 500 Subchapter V cases have been filed since its introduction and **June alone saw 133 new cases filed.** [4]

While Subchapter V provided much needed relief, many commentators note that further reform to help protect the viability of struggling small businesses is still warranted and necessary. In a May letter to Congress, a group of prominent academics noted that unless additional reforms beyond those already included in the CARES Act are not swiftly implemented, that many otherwise viable small businesses may be forced to liquidate.[5] This would surely result in a large number of job losses negatively impacting employment and damaging the economy with irreversible business closures. If businesses liquidate rather than restructure, the ripple effect from those jobs which may no longer be available can certainly lead to an increase in consumer filings.

However, it is not only job losses due to business closures that may impact workers in the near future. Many companies have laid off or furloughed a significant number of employees over the previous months and they may find that they are able to continue operations once they reopen with a much smaller workforce.

Writing the next chapter

Significant financial challenges continue to mount for both businesses and consumers amid this crisis and bankruptcy remains an effective way to offer a financial respite from the economic turmoil. As unemployment benefits and eviction suspensions expire, it is expected that filings will once again begin to increase in the future and there is a good chance that we may not see COVID’s true impact to bankruptcy filings until late 2020 or into 2021.

Whether it turns out to be a tsunami of bankruptcy filings as some predict or a more gradual increase, having a robust bankruptcy solution in place to identify, segment, and properly code accounts should be a top priority for every organization. Are you prepared for pandemic-related bankruptcy filings? Fill out the form below to learn how partnering with DCM Services drives higher performance at every stage in the bankruptcy process.

[1] American Bankruptcy Institute News Release dated May 5, 2020 available at: https://www.abi.org/newsroom/press-releases/total-april-bankruptcy-filings-fall-46-percent-over-last-year-commercial#:~:text=%E2%80%94%20Total%20U.S.%20bankruptcy%20filings%20in,April%202019%20total%20of%2071%2C303.

[2] Based on reviews of data complied by Epiq Systems available at: https://www.epiqglobal.com/en-us/experience/restructuring-bankruptcy/aacer-court-data-and-process-automation/services/bankruptcy-statistics-trends

[3] Department of Labor New Release, released July 9, 2020 available at: https://oui.doleta.gov/press/2020/070920.pdf

[4] Epiq News Release dated July 3, 2020, available at: https://www.globenewswire.com/news-release/2020/07/03/2057391/0/en/Chapter-11-U-S-Commercial-Bankruptcies-up-43-in-June.html

[5] Letter from Brook Gotberg, Chair, Small Business Committee of the Bankruptcy & COVID-19 Working Group to Sens. McConnell and Schumer and Reps. Pelosi and McCarthy (May 26, 2020).