

Congress Pushes Bankruptcy Aid for Those Suffering Financially from COVID-19

Amundsen Davis Financial Services and Bankruptcy Alert
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Democratic senators have revived a bill aimed at providing an easier path into bankruptcy for Americans suffering financial hardship stemming from COVID-19. The Medical Bankruptcy Fairness Act (the "Proposed Act") has been unsuccessfully introduced several times previously but with the recent change of control in the Senate and the election of President Biden, many observers feel confident that the bill now has its first legitimate chance to become law. If enacted, the Proposed Act will not only make it less administratively burdensome to file bankruptcy for certain filers but will also provide additional benefits not currently available to other filers.

First, the Proposed Act creates a new designation of debtor, the so-called "Medically Distressed Debtor" as well as a new class of liability defined as "Medical Debt." As might be expected, a "Medically Distressed Debtor" includes a potential filer who has expended specified amounts for medical expenses (currently the lesser of 10% of the filer's Adjusted Gross Income or \$10,000.00). Any debtor claiming the designation will be forced to file an attestation that the Medical Debt was not incurred for the purpose of bringing the debtor within the meaning of a "Medically Distressed Debtor." But in an apparent acknowledgement of the tie between loss of employment and loss of health insurance, the Proposed Act also seems to define a "Medically Distressed Debtor" as any debtor who had reduced income or who lost their job "due to" COVID-19.

The Proposed Act would also relieve a Medically Distressed Debtor from the credit counseling requirement that almost every debtor since 2005 has had to meet. The credit counseling requirement has been a staple of individual bankruptcy filings for over 15 years and was intended to provide some financial education to debtors that may otherwise never have had any such credit education. The thinking behind the elimination of the credit counseling requirement seems to be that a Medically Distressed Debtor ended up in bankruptcy through no fault of her or his own and thus should not need additional financial education.

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However, the Proposed Act does not just make it procedurally easier to file for bankruptcy, the Proposed Act seeks to provide several extraordinary benefits to a Medically Distressed Debtor that are unavailable to other filers. As currently drafted, the Proposed Act would provide Medically Distressed Debtors an exemption up to \$250,000 in their residences (if state exemption law provides less than this amount). In other words, creditors of the Medically Distressed Debtor could only recover against the Medically Distressed Debtor's residence to the extent the value of that residence exceeded \$250,000. The average home price in the United States hovers around this amount. So in reality it seems like the Proposed Act is attempting to ensure that most Medically Distressed Debtors will not lose their homes after filing for bankruptcy. That is clearly a much different result than that faced by other bankruptcy filers.

Finally, the Proposed Act also impacts the treatment of Medically Distressed Debtors' student loans. Notoriously one of the most difficult obligations to avoid through bankruptcy, the Proposed Act changes the game for student loans of Medically Distressed Debtors. Currently, to have any chance at discharging most student loan debt a debtor must file an adversary proceeding in her or his own bankruptcy case (basically a lawsuit within the confines of the main bankruptcy case) and convince a Bankruptcy Judge that some "undue hardship" exists to excuse repayment of those student loans. Without getting into too many details on how that might be accomplished, suffice it to say that historically it is an extremely challenging argument on which to be successful. But the Proposed Act seems to eliminate that entire process and procedure and simply make student loans outright dischargeable for those filers deemed Medically Distressed Debtors.

It is still too early to guess the chances of the Proposed Act becoming law, but if it does, it has the potential of drastically altering the way the bankruptcy process works in a world still dealing with financial fallout from the COVID-19 pandemic. Given the remarkable additional benefits provided to debtors by the Proposed Act combined with the relatively broad definition of Medically Distressed Debtor, debtors and their lawyers may be going above and beyond to fit within the Proposed Act. I only hope that legislation designed to assist those truly suffering from the financial repercussions of the pandemic does not devolve into continual litigation over who is or is not a "Medically Distressed Debtor."

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