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## 2021 Health Care Program

# As the Health Care Industry Emerges from COVID-19, What Will the Challenges Be?

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## Restructuring in Healthcare

### *As Health Care Rebounds from COVID-19, What Will the Challenges Be?*

Presented by American Bankruptcy Institute

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## Panelists



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**Kim Gordon**  
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**Suzanne Koenig**  
Panelist  
*SAK Management Services, LLC*



**Sharon Whittle**  
Panelist  
*Grant Thornton*



**Marty Smith**  
Panelist  
*Quorum Health Corp. (Former COO)*

## Post-COVID Labor Issues

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3

### Staffing and Labor Issues

- Short Term/Long Term/Permanent
- Pre-Covid issues now more pronounced and sped up the inevitable
  - Lack of automation and low use of technology/AI
  - Very labor dependent delivery model
  - Many low skilled positions
  - Costly and inefficient delivery model
  - Talent shortages for various reasons
  - Competition for some positions is not in industry

4

## Staffing and Labor Issues

- Health care providers are being forced to limit capacity and cancel elective procedures because of issues with respect to availability and capacity of hospital staff, including:
  - Nurses and other clinical positions – waiting to take a shift for more money, leaving for contract labor or higher paying positions
  - In some markets, lower paid clinical and back office are leaving to join restaurant or manufacturing industry for higher total rewards and less risk
  - No per diem talent available
  - Drawing unemployment benefits \$\$\$
  - Child care issues
  - Burnout and earlier retirements/exits
  - Fear/Risks from COVID
  - Employer vaccination requirements

5

## Staffing and Labor Issues

- Hospitals pushing COVID volume to nursing homes, that are also short on staff
- Home Health Industry impacted by shortage of caregivers. Adult daycares closed. Seniors are left unattended. Transportation is not adequate. Backlog for needed appointments (3 – 6 months)
- Care is moving upstream instead of down stream as Physicians are frequently doing the work of hospital staff and nurses who are not at work.
- Mental Health Issues of caregivers. Less community rallying/support with second wave.
- Routine care and covid care needed at the same time

6

## Staffing and Labor Issues

- Pipeline of talent coming into the Health care industry is down
  - CNA candidate pool behaviorally unstable and poor quality
  - CNA credentialing/testing failure rate very high
  - Concern about risks from COVID and vaccine adverse
  - Field is too demanding
  - Skilled workers make 2X plus in bio pharma
- Vaccine requirements
  - Not all health systems mandating – united front?
  - When presented with deadlines, most employees have complied or moved to another system/industry
  - Unions fighting requirement

7

## Solutions

- Complete rehaul of care delivery model – people, process, technology
- Elevation of labor positions and responsibilities/agility
- Pay and Rewards will have to be addressed
- New value proposition on Mission
- Government intervention/progression towards Socialized medicine
- Government funding for financial shortage and/or transitioned to individual payors?
- Advocacy
- More mergers/economies
- National Guard involvement
- Foreign providers

8

# Healthcare Restructuring Considerations

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9

## Drug Costs

- Supply cost and utilization of drugs have increased throughout the COVID-19 pandemic, creating an impossibly tight margin that health care providers will need to overcome
- Stimulus funds received through the CARES Act can be utilized to cover COVID-19 related losses and expenses like these

10

## Lender Perspective

- Lender evaluation of performance
- Lender issues due to COVID impact
- Forbearances & refinancing considerations

11

## Debtor Perspective

- Healthcare sector bankruptcies or restructurings are more complicated than a typical restructuring in retail or restaurant, as the company's services impact patient and/or resident lives.
- COVID-19 severely impacted financial health of healthcare companies, hospitals, nursing homes, skilled nursing facilities ("SNFs"), and other healthcare providers caring for patients
  - Revenue hit
    - Lack of/reduced elective surgeries – earnings from loss of non-essential procedures and increased LOS for COVID patients more costly
    - Decline in emergency department visits – people are delaying major medical procedures which could increase their health risks (while government relief is helping, still falling short on occasion)
    - Reduced Medicare and Medicaid spending + increased costs
    - Shift to more outpatient services
    - Increasing demands for charity care
  - Urban vs. rural areas
    - Physician and nursing staff shortages
  - Mergers & acquisitions
    - Strategic parties now are focused internally on building morale and employee assistance programs, thus deal flow materially choked off. Mergers and sales have been cancelled.
    - Despite healthcare slowdown in revenue and growth, private equity and venture capital are looking to invest.

12

## Debtor Perspective

- **SNFs & Assisted-Living Facilities**
  - **Current Status**
    - Although serving the most vulnerable population in the COVID outbreak, skilled nursing and assisted-living facilities have been the forgotten stepchildren.
    - Industry census has fallen roughly 10% from late 2019 to early May 2020.
  - **Census & Revenue**
    - Fair stimulus packages have helped temporarily
    - Cessation of hospital elective procedures have hurt census in downstream referrals
    - Virus has devastated facilities in reputational, financial, and human terms
    - COVID residents convert to Medicare eligible
  - **Expenses**
    - The race for Personal Protective Equipment – expensive, hard-to-find, consumption grows
    - Employee hazard pay for those having direct COVID exposure
  - **Financial and Operational Challenges**
    - Budget compliance
    - REITs and lenders under stress having to accommodate borrowers
    - SNFs will not open with the rest of the company
  - **Regulatory and Quality Issues**
    - Medicare waivers – 3-day stay
    - Testing – employee and resident
    - Disease containment
    - No immunity for resident or staff litigation; whistle-blower cases; wrongful death lawsuits
    - High cost of liability insurance – COVID disclosures

13

## Debtor Perspective

- **Stimulus Funds**
  - **CARES Act**
    - The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) is a \$2.2 trillion economic stimulus bill passed in response to the economic fallout of the COVID-19 pandemic in the United States.
    - Stimulus funds received through the CARES Act could be used to cover a health care provider’s COVID-related losses and expenses; any excess amounts must be returned to the Centers for Medicare and Medicaid Services (“CMS”) or will be recouped by CMS following an audit.
  - **MAAP Program**
    - The Medicare Accelerated and Advance Payment Program (the “MAAP Program”) was funded through the Hospital Insurance (Part A) and Supplementary Medical Insurance (Part B) trust funds, and CMS characterized MAAP Payments as “a loan that providers must pay back.”
    - Initially, CMS recovery of MAAP payments was to begin 210 days after disbursement; however in October 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act extended the repayment terms for the MAAP payments to one year starting from the date of issuance. As a result, CMS began recovering MAAP funds from many recipients in April 2021.

14



## Debtor Perspective

- Stimulus Funds
  - Paycheck Protection Program
    - The Paycheck Protection Program was signed into law on April 24, 2020. A PPP loan provided small businesses with the resources they need to maintain their payroll, hire back employees who may have been laid off, and cover applicable overhead. Borrowers may be eligible for PPP loan forgiveness.
  - Health Care Enhancement Act
    - The Health Care Enhancement Act was signed into law on April 24, 2020 and provides funding for health care providers and national COVID-19 testing
- Impact on Healthcare Companies and Providers
  - Liquidity issues
  - Stave off restructuring
  - Outlook for foreseeable future (many may not make another six months)

15

## Post-COVID Stressors

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16

## Post-COVID Stressors

- Labor
  - Labor costs, employee bonuses, etc. are going to be go-forward built-in costs
- Insurance
  - Plaintiffs are beginning to commence insurance lawsuits related to claims that arose during the COVID-19 pandemic, leading to insurance rate increases

17

## Questions?

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18

# Faculty

**Bradley T. Giordano** is a partner in the Chicago office of McDermott Will & Emery, where he represents debtors, equity sponsors, lender groups, creditors and strategic investors in all aspects of in-court and out-of-court restructurings. He advises senior managers and boards of directors on operating in chapter 11, fiduciary duty considerations and strategic restructuring alternatives. In addition, he advises credit and private-equity-fund clients in connection with strategic acquisitions or dispositions of distressed assets. Mr. Giordano's restructuring experience includes complex multi-jurisdictional and cross-border matters spanning multiple industries, including health care, retail, energy, technology, hospitality, media, airlines, aircraft manufacturing, telecom and heavy machinery. He received his B.A. magna cum laude from DePauw University in 2006 and his J.D. in 2009 from the University of Virginia School of Law.

**Kim Gordon** is a managing director with MONTICELLOAM, LLC in Deerfield, Ill., where she works in its asset-based-lending line of business, bringing more than 30 years of experience in this space, with a focus on health care lending. She works to streamline the firm's working-capital lending processes, team-engagement enhancement, client relationship development, and collaborative client-based solutions development and execution. Ms. Gordon has enhanced the firm's asset-based lending platform, adopting industry-leading technology and improving efficiencies, to expedite borrowing base and collateral reviews and accessibility to the clients. Prior to joining MONTICELLOAM, she was a senior vice president and senior credit administrator at Opus Bank, where she was responsible for all facets of credit oversight for its health care lending, structured asset-based lending, and lender finance within its commercial banking group. She also worked as a senior vice president and director of Credit at Monroe Capital, LLC, where she helped develop a middle-market health care lending company specializing in revolving lines of credit and term loans. Before joining Monroe Capital, LLC, Ms. Gordon acted as deputy chief credit officer for Ridgestone Bank, chief credit officer for Bridge Finance Group Inc. and vice president of Credit/Portfolio at FINOVA Capital Corp. She is a member of the Commercial Finance Association and the Turnaround Management Association. Ms. Gordon received her B.S. in finance from the University of Illinois College of Commerce and Business Administration.

**Suzanne A. Koenig** is president and founder of SAK Management Services, LLC in Northfield, Ill., a long-term care management and health care consulting services company. With more than 30 years of experience as an owner and operator, she provides specialized skills in operations improvement, staff development and quality assurance, with expertise in marketing and census development as well as operations enhancement for the whole spectrum of senior housing, long-term care and other health care entities requiring turnaround services. Ms. Koenig's professional experience has included executive positions in marketing, development and operations management for both regional and national health care providers representing property portfolios throughout the U.S. Recently, she has been appointed as the patient care ombudsman, receiver, examiner and chapter 11 trustee in several health care bankruptcy filings (chapters 11 and 7) under BAPCPA, including physician practices and hospitals. In addition, she has served in an advisory and consulting capacity for numerous client engagements involving bankruptcy proceedings, as well as in turnaround-management situations. An owner and operator, licensed nursing home administrator and licensed social worker, Ms. Koenig

has experience as a long-term care provider and also serves as an officer and director for several of the states' long-term-care-provider associations. She serves on the board of directors of the Summit Healthcare REIT Inc. Ms. Koenig was elected to the Global Turnaround Management Association's board of trustees and co-chairs the Steering Committee of the Turnaround Management Association's Midwest Chapter. She also serves on ABI's Board of Directors and is a member of its Health Care Insolvency Committee. In addition, she serves as an officer and director for several of the state's long-term-care-provider associations, and she serves on the board of directors for the School of Social Work at the University of Illinois, Champaign-Urbana. Ms. Koenig is a frequent speaker for various health care industry associations and business affiliates, where she conducts continuing education and training programs. She received her undergraduate degree in social work from the University of Illinois, Urbana-Champaign and her M.S. from Spertus College.

**Martin D. Smith** is a retired president and COO of Quorum Health in Franklin, Tenn., and has nearly 30 years of hospital and health system senior leadership experience. He is a health care industry veteran, operations consultant and advisor. As president and COO, Mr. Smith was responsible for approximately \$2 billion in revenue and operations of Quorum's hospital and related outpatient facilities across 13 states. He was central in the 2015 formation of Quorum Health, a publicly traded spin-off from Community Health Systems, and he helped Quorum navigate several operational startup challenges, including portfolio-rationalization, separation from transitional support service agreements related to the spin-off, and a 2019 restructuring of the company's inherited balance sheet, which enabled the company to go private. Throughout the restructuring, Mr. Smith oversaw the company's multi-channel communication strategy, which proved extremely effective in maintaining key relationships with physicians, payers and tertiary care partners. Although the restructuring took place as COVID-19 was emerging as a global health crisis, the plan's transparency was instrumental in keeping Quorum's corporate support and hospital operations teams moving forward without interruption. In addition to leading Quorum's day-to-day operations, Mr. Smith also oversaw the company's support services for managed care, engineering, medical staff recruitment, physician practice management and strategic development projects. He retired from Quorum Health in September of 2021. Prior to his time with Quorum, Mr. Smith spent 18 years with CHS, joining the company in 1998 as a hospital CEO, becoming a corporate vice president of Operations in 2005 and moving to a division president position in 2008. He received his undergraduate degree in communications from Lee University and his M.B.A. from the University of Tennessee.

**Sharon F. Whittle** is a practice leader of Human Capital Services in the Charlotte, N.C., office of Grant Thornton, LLP and has more than 20 years of experience providing human capital services as a consultant and benefits director for several Fortune 500 companies. Her diversified experience includes working closely with organizations that are conducting significant merger, acquisition, restructuring or realignment activity, experiencing changes in top management and business strategy, being spun-off from a larger company, or are financially distressed. Ms. Whittle frequently discusses the impact of the Affordable Care Act on employer-sponsored medical benefit plans and initiatives, and recently spoke at the Construction Financial Management Association conference on attracting, retaining and motivating talent during an economic recession. She has worked in a number of sectors, including real estate and construction; transportation, logistics, wholesale and distribution; health care; hospitality and restaurants; manufacturing; nonprofit and higher education. Ms. Whittle received her B.S. in business management from North Carolina State University and her M.B.A. from the University of North Carolina – Charlotte.