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## FINANCIAL INSTITUTION E-BRIEF

### Lending to Healthcare Providers

When lending to healthcare providers, lenders must be aware of the restrictions under the Assignment of Claims Act (the Act) with regard to security interests in Medicare and Medicaid receivables. Specifically, under the Act, healthcare providers are prohibited from assigning their rights to payment for Medicare and Medicaid reimbursement claims to lenders. Although the Act provides for an overarching limitation on such assignments, courts have allowed healthcare providers to grant a security interest in their Medicare and Medicaid receivables in order to obtain working capital financing, so long as such security interest is properly structured.

Some courts have determined that the use of a double lockbox is an acceptable way to provide for such security interest in Medicare and Medicaid receivables, when structured as follows:

- First, the healthcare provider opens two deposit accounts.
- One account is set up to only contain Medicare and Medicaid receivables, while the other account contains all other receivables.
- Next, the healthcare provider enters into an agreement with its deposit bank and the lender under which the deposit bank recognizes the lender's

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security interest in the deposits in the account holding Medicare and Medicaid receivables, but also indicating the lender has no “control” over the account.

- The healthcare provider then sets up standing sweep instructions, requiring the deposit bank to sweep all deposits in the account containing Medicare and Medicaid receivables into the second account that holds all other receivables.
- After the sweep instructions are in place, the healthcare provider and the deposit bank enter into a control agreement over the second account holding all receivables, including the Medicare and Medicaid receivables following the sweep, wherein the healthcare provider grants the lender absolute control over the second account.
- The second account may then be swept to an account held at the lender’s bank to pay down the healthcare provider’s loan or otherwise may be used by the healthcare provider in a manner permitted under the loan agreement.

It is important to note that although anti-assignment provisions are applicable to Medicare and Medicaid receivables, thus requiring the use of the double lockbox approach, there is an exception allowing assignments of claims for Medicare and Medicaid reimbursement if there is a court order providing for such assignment. Therefore, any lenders taking Medicare and Medicaid receivables as security, upon default and acceleration of the loan, should be prepared to seek a court order which requires the proceeds of the Medicare and Medicaid receivables to be utilized to make payments directly to the lender.

Although the use of a double lockbox approach requires the lender to take additional steps to ensure its access to Medicare and Medicaid receivables, it is one way to protect valuable collateral within the limitations of the Act.

Furthermore, it is important to note that based upon continued increases in requirements for participation in Medicaid programs, as well as heightened concern over fraud and abuse in the medical systems, it does not appear these anti-assignment provisions will be removed anytime soon. Consequently, lenders should operate within the requirements of the anti-assignment provisions when lending to healthcare providers.

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