Pierce the Corporate Veil-Can Healthcare Owners Be Personally Liable?

(March 13, 2015): Owners of healthcare companies often wonder whether the government can pierce the corporate veil and try to hold the owners personally liable for overpayment claims when facing ZPIC and MAC contractor audits. This rarely happens, but one way for these contractors to collect overpayment demands is by **"piercing the corporate veil."** A healthcare provider usually has one or more individual owners. The owners need to organize the provider into an entity such as a corporation or Limited Liability Company (LLC). This is specifically done to limit each individual owner's personal liability. Owners of incorporated health care providers can only be found personally liable for their companies' debts to the Centers for Medicare & Medicaid Services ("CMS") in certain very narrow circumstances, one of which is "piercing the corporate veil."

I. Will the Government Seek to Pierce the Corporate Veil?

The legal doctrine of piercing the corporate veil allows creditors to reach through the corporate structure and collect their debts from shareholders or similar owners. This doctrine is not unique to healthcare. In fact it is a potential way for all creditors to collect debts from individual entity owners.

CMS and its contractors rarely seek to pierce the corporate veil, and courts also tend to disfavor the practice. Veil piercing depends on facts that by their nature are difficult to prove in court. The burden of proving the facts is always on the creditor. Even though it may be difficult for a creditor to prove these facts exist, it is still important to know how a creditor could pierce a healthcare corporation's "veil" to prevent individual owner liability. Creditors must prove specific factors to justify imposing liability on owners for a provider's debts to CMS, including the following:

1. ***Defective Incorporation:* If the legal statutory requirements for organizing the corporation or LLC are not met, no corporation exists to shield owners from liability.**

2. ***Ignoring the Separateness of the Corporation:* Entering into contracts and otherwise transacting business variously in a corporate name and an individual name can justify piercing the corporate veil. Commingling corporate and individual assets, transferring assets between the provider and an owner without formalities, or transferring assets between the provider and a sister company, can also suggest the owners did not respect the separate nature of the entity, potentially allowing CMS to pierce the corporate veil.**

3. ***Significant Undercapitalization:* A corporation must have a reasonably sufficient amount of capital to pay its expected debts. Undercapitalization is grounds to impose liability on the owners.**

4. ***Excessive Dividends or Other Payments to Owners:* When owners are actually working for a corporation, they can usually pay themselves fair compensation, as long as it is clearly characterized as salary or wages. However, additional dividends and other non-compensation distributions can only be safely taken out by an owner to the extent the distributions reflect profits. If an owner takes non-compensation distributions exceeding profits, these distributions constitute a return of capital and can give rise to an undercapitalization claim by a corporate creditor. If such distributions are made when the corporation is insolvent, the creditors' claims against the owner will be almost impossible to defend.**

5. ***Misrepresentation and other Unfair Dealings with Creditors:* Deceptive practices such as dishonesty, false statements to corporate creditors, and asset concealment can make owners liable for corporate debts.**

6. ***Absence or Inaccuracy of Records:* If corporate records are missing or**

inaccurate, this can form a basis to pierce the corporate veil, especially if they hinder a creditor's collection efforts against the provider.

7. ***Failure to Maintain Ongoing Legal Requirements: Each state's statutes impose annual franchise fees and report-filing requirements on corporations and similar entities. These usually have grace periods and cure provisions, but if they are neglected long enough the corporation or LLC will legally cease to exist, resulting in owner liability.***

II. Case Example:

In *United States v. Bridle Path Enterprises, Inc.,* a Massachusetts federal district court held the owners of a home health agency personally liable for the provider's Medicare overpayment debt. The provider, Bridle Path, made payments toward the overpayment until they sold all of their assets to another provider. At the time of the sale, $64,807.84 was outstanding on the overpayment liability. The United States sought to hold Bridle Path's owners personally liable for the Medicare overpayment, using the piercing the corporate veil doctrine. Due to the number of checks Bridle Path wrote to its owners, their home health agency, and their real-estate holding company, the court found that the owners did not treat Bridle Path as a separate corporate entity and pierced the corporate veil to hold the owners liable for the Medicare debt.

III. Final Remarks:

If any of the factors above exist, CMS and its Medicare contractors can seek to pierce the corporate veil of a healthcare provider's company and collect debts from the provider's owners. These circumstances are not typical for health care providers and are easily avoided by maintaining personal owner dealings separate from all entity business. Do your practice's day-to-day operations expose you to unnecessary liability? If your business was assessed a huge fine and forced into bankruptcy, are you 100% confident that you, as the owner, will be free of individual liability? If you have any questions about this or any other health law issue, **call 1-800-475-1906** for a complimentary consultation.

The attorneys at Liles Parker, Attorneys & Counselors at Law represent health care suppliers and providers around the country. We specialize in regulatory compliance reviews, Medicare audits, HIPAA Omnibus Rule risk assessments, privacy breach matters, and State Medical Board inquiries. If you have any questions about healthcare provider liability, contact us at: 1 (800) 475-1906.