

RECOMMENDATIONS

A hospital bankruptcy should not be the cause of additional or increased risks for patient safety. It is therefore important that the winding down and transfer of care takes place in an orderly manner that guarantees the continuity of care for the individual patient. The patient must be able to trust the system to provide the care he or she is entitled to. A recalibration of the duty to provide care requirements should ensure that health insurers and bankrupt hospitals work together to realize an orderly resolution of the bankruptcy. The NZa, in its role as regulator, must supervise and enforce compliance with the duty to provide care requirements.

Due to the strategic dynamics that arise around a hospital bankruptcy, timely preparation is of crucial importance. A hospital largely depends on health insurers for the financing of its healthcare activities. After a bankruptcy, health insurers must continue providing hospitals with financial support until the care for patients has been transferred to other healthcare providers – or until a relaunch has been realized.

The Dutch Safety Board therefore makes the following recommendation:

To the Minister for Medical Care and Sport:

1. Ensure that the resolution of hospital bankruptcies always takes place in an orderly manner. To this end, the Board considers the following measures important:
 - a. Recalibrate the duty to provide care requirements for health insurers in such a manner that the continuity of individual diagnosis and treatment processes is guaranteed in the event of a hospital bankruptcy.
 - b. Oblige health insurers, on the grounds of their duty to provide care, to collectively guarantee sufficient financial resources for the orderly winding down and/or transfer of care in the event of a hospital bankruptcy. This can be done, for instance, through the formation of a collective fund or a collective guarantee scheme.

The healthcare that a hospital provides is of great social significance. In addition to timely preparation, it is also important to ensure – when weighing up conflicting interests during the settlement of a hospital bankruptcy – that the public interest (i.e. patient safety) prevails over the private interests of creditors. As things stand, adequate preparations and the protection of public interests versus private interests are not guaranteed within bankruptcy legislation. In conjunction with the above recommendation, the Dutch Safety Board therefore makes the following recommendation which can be implemented within the framework of the current 'Bankruptcy Law Recalibration' Programme.

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To the Minister for Legal Protection:

2. Adjust the bankruptcy laws in relation to hospital bankruptcies in such a manner that:
 - a. A hospital can only go bankrupt after a period of 'silent administration' during which adequate preparations are made for an orderly resolution of the hospital bankruptcy.
 - b. When weighing up conflicting interests, the trustee shall give priority to the public interest (i.e. patient safety during the winding down operation and/or continuation of healthcare activities) over the interests of creditors.