

Judge Scott C. Clarkson’s General Local Rule for Compensation Process for Patient Care Ombudsman (“PCO”) Professionals

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 implemented certain amendments to the Bankruptcy Code that govern the operation of health care businesses while in bankruptcy. One significant modification is the creation of a Patient Care Ombudsman (“PCO”). The PCO is an independent professional appointed by the United States Trustee, who is charged with the duty to monitor the quality of patient care provided by debtor health care businesses. To be clear, the PCO is not a professional of the Debtor in Possession, the Debtor, or a Chapter 7 or 11 Trustee. The PCO is an independent professional of the Estate.

The PCO Appointment and Compensation Process

When a health care business files for bankruptcy, the appointment of an ombudsman to monitor the quality of patient care and represent the interests of the patients is required unless the Bankruptcy Court finds that an ombudsman “is not necessary for the protection of patients under the specific facts of the case.” Bankruptcy Code §333(a)(1).¹ A health care business is broadly defined in the Bankruptcy Code to mean any entity that provides medical, psychiatric, or long-term care services.

Compensation for PCOs is guided by the mandates of Bankruptcy Code § 330. Compensation is fixed by the Court following notice and hearing as provided in § 330 and Rule 2016 of the Federal Rules of Bankruptcy Procedure. Compensation is the sole prerogative of the Court. The Court notes that the United States Trustee’s notices of appointments do not set forth any terms of compensation. That compensation is strictly determined by the Court.

There are several requirements the PCO must follow once appointed. For instance, the PCO must formally report findings regarding the quality of patient care to the Bankruptcy Court every 60 days, and if the PCO finds that the quality of patient care is “declining significantly,” the PCO must immediately report such a decline in writing. Patient information is not immediately available to the PCO upon appointment; the PCO must petition the Bankruptcy Court for authority to review patient records. In granting such authority, the judge is required to impose restrictions on the PCO to ensure patient confidentiality. As such, the PCO is eligible to seek authority to employ an attorney under Bankruptcy Code §§ 327 and 330. Such an application is submitted in the same manner as that which is submitted to the Court by a Debtor in Possession or duly appointed and serving trustee.

¹ Bankruptcy Code §333(a)(1) provides as follows:

If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

Standard Procedures for Monthly Payments to PCOs

It is the Court's determination that each PCO should have the opportunity to be compensated for fees and costs from the Estate on a monthly basis, unless otherwise ordered by the Court. Therefore, it shall be the default position of this Court that each appointed PCO may follow the regular monthly fee notice protocols (with opportunity for objection and hearing. See, Professional Fee Statement, Form USTR16-6.0) used for professionals seeking monthly draw-down of retainers pursuant to the Office of the United States Trustee's Guidelines and Requirements for Chapter 11 Debtors in Possession (For All Cases Filed in the Central District-CA). The PCO may utilize the same form, USTR16-6.0, which may be obtained at https://www.justice.gov/ust-regions-r16/file/ustla_6_fee_statement.pdf/download and simply note "N/A" in response to any question which is not applicable, or may prepare a similar form containing all pertinent information consistent with this notice, at the PCO's election. If a party objects to the monthly payment, a noticed hearing on the objection, obtained by the PCO, shall be conducted to determine a variance, if any, of the payment or protocol.

IT IS SO ORDERED.

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