

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY No.: 17-32654

Chapter 11

CareFocus Corporation,

**NOTICE OF EXPEDITED HEARING
AND MOTION FOR APPROVAL
TO PAY PRE-PETITION WAGES**

Debtor.

**TO: THE DEBTOR, THE UNITED STATES TRUSTEE, AND OTHER PARTIES IN
INTEREST AS SPECIFIED IN LOCAL RULE 9013.3.**

1. CareFocus Corporation (hereinafter "Debtor"), the Debtor-In-Possession in the above-referenced proceeding, moves the Court for expedited relief and gives notice of hearing.

2. The Court will hold an expedited hearing on the Debtor's motion at 1:30 p.m. on Tuesday, August 22, 2017, before the Honorable William J. Fisher, in Courtroom 2B, United States Courthouse, 316 North Robert Street, St. Paul, MN 55101, or as soon thereafter as counsel can be heard.

3. Any response or objection to the Expedited Motion shall be filed no later than 2 hours prior to 1:30 p.m. on August 22, 2017, which is the Hearing Date. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The case is now pending in this Court, having been filed on August 18, 2017.

5. The Debtor seeks an expedited Hearing on its Motion to pay pre-petition wages of the Debtor.

6. The Debtor's pre-bankruptcy assets are subject to a lien in favor of the Internal Revenue Service.

7. The Debtor's last payroll was issued on August 11, 2017 in the approximate amount of \$104,000. The Debtor's payroll is paid bi-weekly. The Debtor employs approximately 200 employees, most of whom are part-time. The Debtor's next payroll is August 25, 2017. The gross payroll is approximately \$104,000. This is a gross figure which includes withholding taxes and social security withholdings. Attached as **Exhibit A** is a payroll document generated by the Debtor. It is entitled "Payroll Summary". It reflects the August 11, 2017 payroll and itemizes the employee's paychecks by gross amount and net amount. The August 11, 2017 payroll covered the period of July 23, 2017 to August 5, 2017. The August 25, 2017 upcoming payroll will cover the period from August 6, 2017 to August 20, 2017. A review of the attached **Exhibit A** reflects that no employee whom the Debtor is seeking to pay will be paid an amount which would exceed the priority amount as allowed in 11 U.S.C. §507(a)(4).

8. The Debtor's payroll is paid in arrears. The Debtor will suffer irreversible and irreparable harm if it is not authorized to pay pre-petition wages. If the wages are not paid, the debtor's employees will leave and the debtor will not be able to continue to operate its business. Cause therefore exists to permit the Debtor to pay the August 25, 2017 payroll and ongoing payrolls and to grant the Debtor's motion on an expedited basis.

9. Pursuant to applicable rules, the Debtor reserves the right to call the Officers of the Debtor in support of this motion.

WHEREFORE, the Debtor, through its undersigned attorney, respectfully moves the Court for an Order granting the Debtor's Motion for expedited relief and granting the Debtor's Motion authorizing it pay pre-petition wages to the employees, and for such other and further relief as the Court may deem just and equitable.

STEVEN B. NOSEK, P.A.

Dated: August 18, 2017.

/e/ Steven B. Nosek
Steven B. Nosek, (#79960)
Yvonne R. Doose, (#397066)
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
Phone: (612) 335-9171
Fax: (612) 789-2109
snosek@noseklawfirm.com
ydoose@noseklawfirm.com
Attorneys for Debtor

VERIFICATION

I, Adewale Koleosho, Chief Executive Officer of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: 8-18, 2017.



Adewale Koleosho, Chief Executive Officer

10:01 AM

08/17/17

Carefocus Corp
Payroll Summary
 August 11, 2017

	Hours	Rate	Aug 11, 17
Employee Wages, Taxes and Adjustments			
Gross Pay			
HHA	387	13.75	5,321.26
HHA Visits	22	25.90	569.80
HM	462.5	11.80	5,457.50
Interpreting		15.00	0.00
LPN	4	22.00	88.00
LPN Visits	57	31.50	1,795.50
OCCUPATIONAL THERAPY EVAL		100.00	0.00
OCCUPATIONAL THERAPY VIST	1	85.00	85.00
Office Vacation		41.50	0.00
Office Wages	342	45.00	9,948.00
On Call	37	25.20	606.00
PCA	5,746.5	10.80	62,244.69
PCA Overtime	235.5	16.20	3,582.72
PCA Vacation		10.80	0.00
Physical Therapy Eval	1	100.00	100.00
Physical Therapy Visit	16	85.00	1,360.00
RN	118.5	26.00	3,628.13
RN Holiday		50.63	0.00
RN Sup	26	31.25	812.50
RN Supervisory	2	31.25	62.50
RN Vacation		25.20	0.00
RN Visits	174.5	37.55	6,552.48
Insurance Reimburse-Co. Paid			0.00
Mileage			1,576.50
Office Expense			271.59
Total Gross Pay	7,632.5		104,062.17
Deductions from Gross Pay			
Accidental Pre-Tax			-9.12
AFLAC Cancer Care			-48.00
D Fowler Child Support			-138.44
Garnishment			0.00
GI Short Term Disability			-95.22
Group Health Insurance Plan			-225.84
Internal Revenue Service Levy			-40.00
Life Whole and Term			-18.55
Lump Sum Critical Illness			-28.56
MN Dept of Revenue Collections			0.00
Personal Sickness Indemnity			-39.71
Total Deductions from Gross Pay			-643.44
Adjusted Gross Pay	7,632.5		103,418.73
Taxes Withheld			
Federal Withholding			-7,599.00
Medicare Employee			-1,482.12
Social Security Employee			-6,337.29
MN - Withholding			-3,203.00
Medicare Employee Addl Tax			0.00
Total Taxes Withheld			-18,621.41
Deductions from Net Pay			
Midland Funding/Wells Fargo Ban			-98.21
MN Dept of Revenue			-233.16
MN Revenue I			0.00
North Star Capital/Capital One			-34.90
Wage Garnishment			-375.84
Total Deductions from Net Pay			-742.11
Net Pay	7,632.5		84,055.21

10:01 AM

08/17/17

Carefocus Corp
Payroll Summary
August 11, 2017

	<u>Hours</u>	<u>Rate</u>	<u>Aug 11, 17</u>
Employer Taxes and Contributions			
Federal Unemployment			119.43
Medicare Company			1,482.12
Social Security Company			6,337.29
MN - Unemployment Company			1,859.54
MN - Workforce Enhancement Fee			92.05
			<hr/>
Total Employer Taxes and Contributions			<u>9,890.43</u>

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY No.: 17-32654

Chapter 11

**CareFocus Corporation,
Debtor.**

MEMORANDUM OF LAW

CareFocus Corporation (the “Debtor”) submits this Memorandum of Law in support of its Motion for (1) Expedited Hearing; and (2) Order Authorizing Payment of Pre-Petition Wages (the “Motion”).

I. Statement of Facts

The Debtor relies on the facts set forth in the Motion and incorporates the same herein by this reference.

II. Statement of Law and Argument

A. Expedited Hearing

Bankruptcy Rule 9006(d) provides that a written motion and notice of any hearing is to be served not later than five days before the time specified for such hearing. Local Rule 9006-1(a) directs that moving papers be delivered not later than seven days, including weekends and legal holidays, or mailed not later than ten days, before the hearing date.

Bankruptcy Rule 9006(c) provides that the Court, for cause shown, may order a notice period reduced. Local Rule 9006-1(d) provides that if expedited relief is necessary, the party requesting expedited hearing and shall take all reasonable steps to provide all parties with the most expeditious service and notice possible and shall file an affidavit specifying the efforts made.

Cause exists to grant the Debtor an expedited hearing on the Motion. As indicated in the Motion, the Debtor's bankruptcy estate would suffer immediate and irreparable harm as a result of the loss of an effective staff. As a delay in the payment of wage and benefit claims would result in increased risk of damage to employee relations, expedited relief is warranted.

B. Payment of Pre-Petition Wages and Benefits

Generally speaking, pre-petition claims against a Chapter 11 debtor may not be paid except under a confirmed plan of reorganization. Although exceptions to this rule are few, in the case of employee claims that are otherwise subject to priority treatment courts have recognized the need for permitting the continuation of ordinary course payments without regard to the bankruptcy filing to the extent necessary in maintaining an effective work force.

"The need to pay wages in an ordinary course time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted." *In re Equalnet Communications Corp.*, 258 B.R. 368, 370 (Bankr. S.D. Tex. 2000).

Whether one looks to the general equitable powers of the Court as set forth in Section 105(a), to the Bankruptcy Code provisions related to the use of property of the estate as set forth in Section 363, or some intersection of the two, there is ample authority to support the payment of pre-petition wage and benefit claims on the terms set forth in the Motion.

III. Conclusion

For the reasons set forth in the Motion and in this Memorandum, the Debtor respectfully requests that the Court enter an order: (1) authorizing the payment of wages; and (2) granting such further and additional relief as may be just and equitable.

STEVEN B. NOSEK, P.A.

Dated: August 18, 2017.

/s/ Steven B. Nosek
Steven B. Nosek, (#79960)
Yvonne R. Doose, (#397066)
2855 Anthony Lane South, Suite 201
St. Anthony, MN 55418
Phone: (612) 335-9171
Fax: (612) 789-2109
snosek@noseklawfirm.com
ydoose@noseklawfirm.com
Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

BKY No.: 17-32654

Chapter 11

CareFocus Corporation,
Debtor.

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I caused a copy of **Notice of Expedited Hearing and Motion for Approval to Pay Pre-Petition Wages; Verification; Exhibits; Memorandum of Law; Proposed Order** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

US Trustee: ustpreion12.mn.ecf@usdoj.gov, ecfbkup@comcast.net

I further certify that I caused a copy of the **Notice of Expedited Hearing and Motion for Approval to Pay Pre-Petition Wages; Verification; Exhibits; Memorandum of Law; Proposed Order** to be faxed and/or emailed and/or mailed by US Mail to the following:

CareFocus Corporation 2429 University Avenue West Suite 200 St. Paul MN 55114-1541 akoleosho@carefocuscorp.net	IRS District Director Room 320 Stop 5700 30 7 th Street E #1222 St. Paul MN 55401 No Fax or Email	MN Dept of Revenue 551 Bankruptcy Sections PO Box 64447 St. Paul MN 55164 Mdor.bkysec@state.mn.us
Internal Revenue Services Centralized Insolvency Office PO Box 7346 Philadelphia PA 19101-7346 No Fax or Email	US Attorney 300 South 4 th Street #600 Minneapolis MN 55415 Fax: 612-664-5788	Internal Revenue Service Eileen Barr 30 E 7th Street, #1222 Saint Paul MN 55101 Fax: 1-855-802-9441
Minnesota Revenue 600 North Robert Street Saint Paul MN 55146-6553	Minnesota Unemployment Ins PO Box 64621 Saint Paul MN 55164-0621 Fax: 651-297-5283	New Wine Church 810 - 31st Street W Minneapolis MN 55408 info@nwcmpls.com
US Dept. of The Treasury Bureau of the Fiscal Services PO Box 830794 Birmingham AL 35201-1686 Fax: 1-855-292-9700	US Dept. of The Treasury Debt Management Services PO Box 979101 St. Louis MO 63197-9000	US Dept. of The Treasury Bureau of the Fiscal Services PO Box 1686 Birmingham AL 35201-1686

Dated this 18th day of August, 2017.

STEVEN B. NOSEK, P.A.

/e/ Steven B. Nosek

Steven B. Nosek, #79960

Yvonne R. Doose, #397066

2855 Anthony Lane South, Suite 201

St. Anthony, MN 55418

(612) 335-9171

snosek@noseklawfirm.com

ydoose@noseklawfirm.com

ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**BKY No.: 17-32654
Chapter 11**

CareFocus Corporation,

ORDER

Debtor.

The Motion of CareFocus Corporation ("Debtor") for an expedited hearing and for an Order granting approval to pay pre-petition wages came on for hearing before the undersigned on the 22nd day of August, 2017. Steven B. Nosek appeared on behalf of the Debtor and all other appearances were noted.

The Debtor is seeking an expedited hearing and is seeking an order for approval to pay pre-petition wages.

IT IS HEREBY ORDERED:

1. The Debtor's Motion for expedited relief is GRANTED;
2. The Debtor's Motion to pay pre-petition wages is GRANTED.

Dated:

**William J. Fisher
US Bankruptcy Judge**