

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY No.: 17-32654

Chapter 11

CareFocus Corporation,

Debtor.

**NOTICE OF EXPEDITED HEARING AND MOTION OF THE DEBTOR
FOR DETERMINATION THAT A PATIENT
CARE OMBUDSMAN IS NOT NECESSARY**

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

1. CareFocus Corporation (hereinafter "Debtor") by and through its undersigned attorney hereby moves the Court for relief and gives notice of hearing.

2. The Court will hold an expedited hearing on the Debtor's motion at 9:00 a.m. on Wednesday, September 13, 2017 in Courtroom No. 2B, United States Courthouse, 316 North Robert Street, St. Paul, MN 55101, or as soon thereafter as counsel can be heard.

3. A response or objection to the Motion shall be filed no later than 2 hours prior to the Wednesday, September 13, 2017 Hearing Date. **UNLESS A RESPONSE OR OBJECTION 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. The Debtor continues to manage its business as a Debtor-In-Possession pursuant to 11 U.S.C. §1107(a) and §1108 of the Bankruptcy Code. This Motion arises under 11 U.S.C. §333(a)(1). The Debtor seeks an Order determining that a patient care ombudsman is not necessary in this case. No party will be prejudiced by an expedited determination of this issue.

5. The present case filed is due to set-offs made against the Debtor by the United States Department of Treasury. In the last eight to nine weeks, the Department of Treasury has set-off funds payable to the Debtor by the Veterans Administration and retained those funds. The amount is in excess of \$104,000. That has caused the Debtor to experience extreme cash flow problems and default on payments to the Internal Revenue Service, the MN Department of Revenue and the MN Department of Economic Security.

6. The Debtor operates a home health care agency. Health insurance companies contract with the Debtor to provide services to the health insurance companies' insureds. The Debtor does maintain a website and will provide services to any qualified person. The Debtor also receives referrals from Medicaid and Medicare. The vast majority of the Debtor's business is generated by referrals from Medicaid and Medicare which constitutes approximately 70% of the Debtor's business.

7. The Debtor has approximately 200 employees that perform various services for third-parties at their homes. Approximately 75% of the Debtor's employees are personal care attendants who perform routine personal services for third-parties such as home cleaning, grocery purchasing, home maintenance assistance, etc. Approximately 25% of the Debtor's employees are registered nurses or licensed practical nurses who perform said services as dispensing medications to third-parties. The Debtor is a certified Medicare Home Health Agency.

8. The Debtor's office facility is utilized solely for business administration and maintenance of financial and client records. The Debtor does not perform any services for third-party clients at its office facility.

9. As indicated above, this matter is governed by 11 U.S.C. §333(a)(1). The Debtor does not believe that appointment of a patient care ombudsman is necessary to protect the Debtor's clients. The Debtor's bankruptcy filing was caused by set-offs made against the Debtor by the US States Department of Treasury. The Debtor alleges that there is no indication of poor patient care that contributed in any way to the Debtor's filing of Chapter 11. In addition, the Debtor does not maintain any facilities to perform services for clients. The Debtor is subject to Medicare inspections in connection with the maintenance of its Medicare certification. Under the present circumstances a patient care ombudsman is not necessary to protect the Debtor's clients.

10. The Debtor filed Chapter 11 proceedings in 2010 and 2013. Those cases were filed because of amounts owing to taxing authorities. The case nos. were 10-30828 and 13-32591. The Debtor, on Motions of the U.S. Trustee, obtained Orders of Bankruptcy Judge Gregory Kishel and Bankruptcy Judge Kathleen H. Sanberg that patient ombudsman were not necessary in each of the prior chapter 11 cases. The Debtor's operation and business in 2017 is substantially the same as it was in 2010 and 2013.

11. This Court has recently addressed the issues arising under 11 U.S.C. §333(a)(1). The case was ***Flagship Franchises of Minnesota, LLC and Flagship Franchises of Minnesota, Inc.*** BKY Nos. 12-36898 and 12-36900. The Debtor would submit that its case is similar to the ***Flagship Franchises*** cases. The Debtor alleges that reviewing the nine-factor test utilized by most Courts, the Court should conclude that the appointment of an ombudsman is not necessary.

12. The nine-factor test utilized by most is to review the following:

- (1) The cause of the bankruptcy;
- (2) The presence and role of licensing or supervising entities;

- (3) The debtor's past history of patient care;
- (4) The ability of the patients to protect their rights;
- (5) The level of dependency of the patients on the facility;
- (6) The likelihood of tension between the interests of the patients and the debtor;
- (7) The potential injury to the patients if the debtor drastically reduced its level of patient care;
- (8) The presence and sufficiency of internal safeguards to ensure the appropriate level of care; and
- (9) The impact of the cost of the ombudsman on the likelihood of a successful reorganization.

In this case, none of the nine factors exist that would cause the Court to appoint a patient care ombudsman. The bankruptcy was not caused by licensing issues or issues with patient and/or client care. As indicated, the Debtor has never had any disciplinary actions taken against it. The Debtor is regularly reviewed by licensing authorities. The bankruptcy will not adversely impact patients or their rights. The Debtor does not intend to reduce its level of patient care. The Debtor has sufficient safeguards to ensure the appropriate level of care. An ombudsman would add a substantial and an unnecessary expense to the reorganization process.

13. The Debtor states that no federal, state or local regulatory authority has issued any disciplinary action against the Debtor.

14. The Debtor reserves the right to call Tony Koleosho to testify in support of this Motion.

WHEREFORE, the Debtor requests that the Court find that the appointment of a patient care ombudsman is not necessary for the protection of the Debtor's clients and for such other relief as is just and proper.

Dated: September 6, 2017.

STEVEN B. NOSEK, P.A.

By: /e/ Steven B. Nosek
Steven B. Nosek (No. 79960)
Yvonne R. Doose (No. 397066)
Attorneys for Debtor
2855 Anthony Lane South
Suite 201
St. Anthony, MN 55418
Telephone: (612) 335-9171

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: 9-6, 2017.



Adewale Koleosho, Chief Executive Officer

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 September 6, 2017, I caused a copy of **Notice of Expedited Hearing and Motion of the Debtor for Determination that a Patient Care Ombudsman is not Necessary; Verification; 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

Michael R. Fadlovich: Michael.fadlovich@usdoj.gov

Roylene A. Champeaux: Roylene.Champeaux@usdoj.gov,

karen.malikowski@usdoj.gov;

usamn.ecfbankruptcy@usdoj.gov; muriel.holland@usdoj.gov

I further certify that I caused a copy of the **Notice of Expedited Hearing and Motion of the Debtor for Determination that a Patient Care Ombudsman is not Necessary; Verification; 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 Pat Patton 30 E 7th Street, #1222 Saint Paul MN 55101 Fax: 1-855-802-9440
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 35283-0794 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

Department of Human Services Licensing Division Cynthia Jahnke-Licensing Legal Manager PO Box 64242 St. Paul MN 55164 Cynthia.Jahnke@state.mn.us	Department of Human Services Licensing Division Regina Wagner- Deputy Inspector General PO Box 64242 St. Paul MN 55164 Regina.Wagner@state.mn.us	Minnesota Department of Health Home Care and Assisted Living Program PO Box 64900 85 E 7 th Place East, Suite 220 St. Paul MN 55164-0900 Health.homecare@state.mn.us
Minnesota Department of Health 625 Robert Street North PO Box 64975 St. Paul MN 55155 benha@state.mn.us		

Dated this 6th day of September, 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

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY No.: 17-32654

Chapter 11 Case

CareFocus Corporation,

Debtor.

Order

The Motion of the Debtor for Determination that a Patient Care Ombudsman is Not Necessary came before the Court. Based upon the motion, the file, and the record of the proceedings herein,

IT IS ORDERED:

1. The U.S. Trustee need not appoint a patient care ombudsman in this case.
2. The U.S. Trustee may file a Motion for a patient care ombudsman at a later date if he determines that the need for a patient care ombudsman has risen.

Dated:

William J. Fisher
United States Bankruptcy Judge