

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

1
2
3
4
5 IN RE: § CASE NUMBER:
6 §
7 HUMBERTO VELA, JR. § 17-50111-L-11
8 §
9 §
10 DEBTOR § CHAPTER 11
11
12
13

14 **First Patient Care Ombudsman Visit to**
15 **San Agustin Home Health Services in Laredo, Texas**

16
17 **Background**
18

19 Humberto Vela, Jr. (the “Debtor”) filed for relief under Chapter 11 of the Bankruptcy
20 Code in early July, 2017. Dr. Thomas A. Mackey was appointed as the Patient Care
21 Ombudsman (PCO) with the intent of evaluating and reporting to the Court on the quality
22 and safety of patient care. Dr. Mackey is a Registered Nurse and Nurse Practitioner with
23 42 years of clinical, teaching, business and administrative experience. Dr. Mackey has
24 provided PCO services since 2012. The PCO was directed to submit bi-monthly
25 reports on his evaluation pursuant to §333(b) regarding the patient care, safety,
26 and quality provided post bankruptcy petition by the Debtor through the San
27 Agustin Home Health Services (Facility). Dr. Mackey served as the PCO in the
28 Debtor’s prior Chapter 11 case. The last visit was on May 17, 2016.
29

30 Professional literature research indicates quality and safety of care from home health care
31 agencies are linked to medication error avoidance, fall prevention, hospital re-admission
32 reduction, nurses work environment (shared decision making regarding patient care

33 processes), outcomes based quality improvement programs, and high patient satisfaction
34 scores. The PCO visit concentrated on assessing how well the Debtor's organizational
35 structure and functioning addresses the above indicators.

36
37 **Executive Summary**
38

39 For the sake of the Court, the following summarizes the salient points of the PCO visit on
40 July 10, 2017.
41

- 42
43 1. Patient care at the Facility continues to be delivered in a manner equal to what
44 was delivered prior to filing Chapter 11. There has been no apparent decrease in
45 quality, safety or types of services from what existed prior to the filing.
46
47 2. The staff is still operationalizing patient safety and quality of care programs
48 suggested by the PCO and put in place during the previous Chapter 11
49 proceedings.
50
51 3. The Debtor's license from the Texas Department of Aging and Disability Services
52 (DADS) is current and will not expire until May 31, 2019. The Facility's most
53 recent DADS compliance summary score dated April 19, 2017 was 97.56%.
54
55 4. The Centers for Medicare and Medicare Services (CMS) Quality of Patient Care
56 Star Rating is very low (1.5 out of 5 stars). Additionally, the OASIS C Quality
57 Measure Scores for outcome measures were significantly lower than the state and
58 national averages on seven out of eight quality measures. Both the ratings and
59 scores are from the same survey conducted from 1/1/16 through 12/31/16.
60
61 5. The Joint Commission Official Accreditation Report from a June 13, 2017 visit
62 indicates multiple nursing documentation errors/omissions needing attention by
63 the Debtor.
64
65
66
67
68
69
70
71
72
73
74
75

Facility Overview

76
77
78 The Facility is a home health care agency in a one-story office building located at 1001
79
80 Corpus Christi Street, Laredo, Texas. Mr. Humberto Vela, RN (Debtor) is the founder
81
82 and sole owner since 2006. The Facility, while operating under one license from the State
83
84 of Texas, is actually divided into two sections: Skilled Services and Provider Services.

85
86
87 The Skilled Services area cares for approximately 82 patients with some six office
88
89 personnel, five (5) part-time field registered nurses (RN) and eight (8) part-time licensed
90
91 vocational nurses (LVN). Services provided to patients include those for which the
92
93 Facility is licensed: licensed and certified home health services, licensed home health
94
95 services and personal assistance. Specifically, services provided to patients include
96
97 typical home health care nursing: medication management, follow up post-
98
99 hospitalizations care, patient education, etc.

100
101
102 The Provider Services area cares for approximately 98 patients with 101 personal
103
104 assistants and three office staff. The personal assistants range from part to full time
105
106 workers. The employees are not licensed, nor are they required to be, and provide
107
108 personal assistance services such as bathing, assisting with medications, laundry, shaving,
109
110 grooming, etc.

111
112
113 **Acknowledgement of Debtor Cooperation**

114
115 The PCO consistently experienced cooperation and candor at all levels of the Debtor's
116
117 organization, both in the Skilled Services and Provider Services areas. Staff are
118
119 knowledgeable about the Chapter 11 proceeding and provided the PCO with sincere
120
121 responses to questions asked.

Goals and Description of PCO's Visit

122

123

124 The PCO visited the Facility on Tuesday, May 17, 2016 for the first time during the

125 current Chapter 11 process. The goals of the visit were:

126

127 1. To determine and document the safety and quality of care being

128 provided to patients by the Facility

129 2. To assess progress on the recommendations mentioned in Executive

130 Summaries from previous visits.

131

132 To achieve the above goals the PCO met with the Debtor, Performance Improvement

133 Coordinator/Scheduler/Billing Clerk, one RN and LVN and two office staff over a four

134 hour period of time.

135

136 During the on-site visit the PCO examined the following: updated organizational chart for

137 the Facility, in-service training log, patient satisfaction surveys, infection control log,

138 incident reports, safety manual, patient charts, policies and procedures, personnel files,

139 tuberculosis skin test files of employees, quality improvement plans, DADS and Joint

140 Commission reports and a CMS report.

141

142

143

144

Operations and Personnel

145 The number of personnel in the Skills Services area is 23. Prior to filing for Chapter 11 in

146 July the Debtor terminated three office employees (coder, performance improvement

147 coordinator and medical records clerk) due to financial reasons. Since then, other office

148 personnel have absorbed the work performed by the terminated employees. The PCO was
149 not able to determine if the terminations interfere with patient quality and safety of care.
150 However, at the time of the visit, there were no indications of compromise in care. Nurses
151 making home visits are hired on a part-time basis and have a caseload of 8-10 patients per
152 day. The Texas Board of Nursing (BON) has no authority over workplace or employment
153 issues, such as staffing ratios. However, “home health is a growing sector in U.S. health
154 care. Staffing models fall somewhere between acute care hospitals and long-term care in
155 terms of the proportions of unlicensed personnel and practical nurses. Allocation of
156 nursing time to patients presumably influences quality and thoroughness of nursing acts
157 and assessments. There may be skill-mix issues as well. However, to date there have been
158 no studies of home health agency staffing models, nurse workloads, or skill mix. OASIS
159 (Outcomes Assessment and Information Set) data gathered by home health providers by
160 mandate from the Medicare program, skillfully analyzed and interpreted, will offer
161 opportunities to examine safety in home care in relation to staffing decisions. Similar
162 statements can be made about nurse staffing in most other ambulatory and community
163 settings as well.” From: **Patient Safety and Quality: An Evidence-Based Handbook**
164 **for Nurses. Chapter 25 Nurse Staffing and Patient Care Quality and Safety.** Sean P.
165 Clarke; Nancy E. Donaldson. <http://www.ncbi.nlm.nih.gov/books/NBK2676/> accessed
166 7/10/17

167
168 “Home health executives and supervisors have described pressure to increase nurse
169 workload due to budget constraints. Nurses are reporting “...we will go to our
170 supervisors and say I’m at my max....I can’t take anymore (cases) and to me that should
171
172 be addressed by the head, and I don’t think it is.” These qualitative findings underscore
173
174

175 a recent national study of over 1000 home health agencies that found nurse caseloads ≥ 27
176 were associated with lower patient satisfaction scores, and **productivity expectations ≥ 8**
177 **visits/d were associated with lower quality of care.**
178
179

180
181 From: **Home Health Agency Work Environments and Hospitalizations**

182
183 [Olga Jarrín, PhD, RN,^{✉*}](#) [Linda Flynn, PhD, RN,[†]](#) [Eileen T. Lake, PhD, RN,^{*‡}](#) and [Linda](#)
184 [H. Aiken, PhD, RN^{*‡}](#) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4174033/>

185
186 accessed 7/10/17
187

188
189 The number of personnel in the Provider Services area fluctuates with the number of
190 patients enrolled. Currently there are 98 patients enrolled and 101 employees who work
191 on a part and full time basis. High turnover of personnel is common in the industry. One
192 of the staff was unable to provide data on hires/terminations but verbally assured the
193 PCO that there has not been a decrease in personnel to patient ratio since the filing of
194 Chapter 11.
195
196
197
198
199
200

201
202 The on-call system (24/7) remains the same as during previous visits. There are at least
203 three persons accountable for maintaining the on-call system. There are approximately
204 five after hour calls per day. The PCO verified that personnel understand to call the after
205 hour phone service if a blood-borne pathogen exposure occurs.
206
207
208
209

210 211 212 **Patient Care, Safety and Quality Control**

213
214 The Joint Commission (JC) first accredited the Facility on June 29, 2013 for a three-year
215 period of time. The JC recently visited for a re-accreditation and the Facility is addressing
216 the deficiencies discovered by the site visitors. Most notably, the deficiencies were
217
218
219

220 related to such matters as nursing documentation, not submitting discharge summaries to
221
222 physician offices in a timely manner, medication reconciliation between the electronic
223
224 medical record and what is actually in a patient's home, unsigned nurses' notes, etc.
225

226 While the JC findings are of low to moderate concern they are not out of bounds in the
227
228 home health care industry.
229

230
231 The Debtor's license from the Texas Department of Aging and Disability Services
232
233 (DADS) is current and will not expire until May 31, 2019. The Facility's most recent
234
235 DADS compliance summary score dated April 19, 2017 was 97.56%. Another site visit is
236
237 planned in April of next year.
238

239
240 The Centers for Medicare and Medicare Services (CMS) Quality of Patient Care Star
241
242 Rating is very low (1.5 out of 5 stars). Additionally, the OASIS C Quality Measure
243
244 Scores for outcome measures were significantly lower than the state and national
245
246 averages on seven out of eight quality measures. Both the ratings and scores are from the
247
248 same survey conducted from 1/1/16 through 12/31/16 and are of some concern. The
249
250 results were discussed with the Debtor and Performance Improvement Coordinator and,
251
252 as indicated in the JC responses, process improvement action will occur. For example, in-
253
254 service sessions and individual provider discussions will occur on a regular basis. A
255
256 culture of process improvement related to improving patient outcomes needs to occur.
257

258 Patient satisfaction is not a clearly defined concept, although it is identified as an
259
260 important quality outcome indicator to measure success of the services delivery system.
261

262 Instrument validity aside, the Facility regularly performs patient satisfaction surveys on
263
264 patients served. The PCO viewed dozens of the surveys and there were no outstanding
265

266 concerns.

267

268

269

270

Summary and Recommendations

271 In general, systems and personnel are in place to continue to provide quality safe care to
272 patients of the Facility. The PCO believes the Facility is currently providing quality safe
273 care with the exception of the areas mentioned above. The Facility has addressed and
274 made excellent progress on patient safety and quality issues addressed last year.

275 Currently, the PCO is satisfied with corrective actions on those issues and believes the
276 infrastructure now in place provides a permanent solution for continued delivery of safe
277 quality care.

278

279 However, there are two areas needing attention:

280 FINDING #1

281 Once again, as was the case during the last visit, provider (nurses) chart notes are not
282 always completed in a timely manner after visiting a patient. The same issue was
283 addressed in previous PCO reports and the Debtor addressed it during staff meetings.
284 A new policy requiring nurses to complete charting within 48 hours of seeing a patient
285 is written into the Debtor's policy and procedure manual.

286

287 RECOMMENDATION #1

288 In-service the nursing personnel at least three time over the next three months on the
289 importance of completing charts in accordance with the policy and procedure.

290 Additionally, the Quality Assurance Supervisor can audit nurses with a history of
291 not completing charts in a timely fashion. If a nurse is frequently delinquent in

292 completing charts then disciplinary action should be taken.

293

294 FINDING #2

295 Outcome measures as reported by the CMS OASIS C Quality Measure Scores for Year

296 January 2016-December 2016 are far below state and national averages.

297

298 RECOMMENDATION #2

299 Develop a culture of discussing and consistently reporting the OASIS data in patient

300 electronic records. Multiple ways to develop such a culture were discussed with the

301 Debtor and Performance Improvement Coordinator.

302

303 At the next visit in September the PCO will review continued progress on the above

304 recommendations and determine if overall levels of patient safety and care are being

305 maintained or improved.

306

307 Respectively submitted by

308 Thomas A. Mackey, PhD, ARNP-BC, FAAN, FAANP

309 NURSING BUSINESS

310 2883 Palomino Springs

311 Bandera, Texas 78003

312 (713) 775-2892

313 tmackey70@gmail.com

314 July 11, 2017

315
316
317