

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
LAREDO DIVISION

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5	IN RE:	§	CASE NUMBER:
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7	HUMBERTO VELA, JR.	§	17-50111-L-11
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10	DEBTOR	§	CHAPTER 11
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**Third Patient Care Ombudsman Visit to  
San Agustin Home Health Services in Laredo, Texas**

**Background**

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 43 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 previous PCO visit was on September 13, 2017.

30 Quality and safety of care from home health care agencies are linked to medication error  
31 avoidance, fall prevention, hospital re-admission reduction, nurses work environment  
32 (shared decision making regarding patient care processes), outcomes based quality  
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35 improvement programs, and high patient satisfaction scores. Furthermore, quality is  
36 assessed through the Centers for Medicare & Medicaid Services (CMS) via the Outcome  
37 and Assessment Information Set (OASIS). OASIS is the official data collection tool  
38 used by Medicare to ensure standard quality care is being provided by  
39 home health agencies across Texas and the United States. The PCO visit concentrated on  
40 assessing how well the Debtor's organizational structure, processes and outcomes  
41 address the above indicators and is assessed by CMS.  
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49 **Executive Summary**

50 For the sake of the Court, the following summarizes the PCO visit on November 9,  
51 2017.  
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- 53 1. Patient care at the Facility continues to be delivered in a manner equal to what  
54 was delivered prior to filing Chapter 11. There has been no apparent decrease in  
55 quality, safety or types of services from what existed prior to the filing.  
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- 62 2. The Debtor's license from the Texas Department of Aging and Disability Services  
63 (DADS) is current and will not expire until May 31, 2019. The Facility's most  
64 recent DADS compliance summary score dated April 19, 2017 was 97.56%.  
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- 69 3. Once again, the patient census decreased since the last visit. Patient billings and  
70 deposits have not yet decreased but, based on patient census/visits over the past  
71 few months, a decline will probably follow in the next couple of months. The  
72 following table represents patient census, numbers of patients in the two services,  
73 patient billings and deposits over the past six months. The dollar figures given to  
74 the PCO seem to be rounded numbers rather than exact amounts.  
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Month/Year	# Of Patients in Skilled Services	# Of Patients in Provider Services	Patient Billings	Deposits
May, 2017	No data	No data	\$56,000	\$93,000
June, 2017	No data	No data	\$74,000	\$58,000
July, 2017	82	98	\$68,000	\$85,000
August, 2017	No data	No data	\$105,000	\$94,000
September, 2017	73	83	\$70,000	\$93,000
October, 2017	No data	No data	\$105,000	\$85,000
November, 2017	60	79	No data	No data

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4. Despite the PCO's request for the Debtor to arrange an interview with at least one nurse provider, none was present for the visit.

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5. Patient volume must increase if the agency is to be financially healthy and maintain, or increase, quality and safety of care.

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6. While not a new problem, the OASIS report from CMS, based on 9 measures, indicates quality of care is far below the State of Texas or national averages.

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7. Patient chart reviews revealed many patients are not being weighed on a regular basis.

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### **Facility Overview**

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There have been no changes in the Facility since the previous visit. The Facility is a

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home health care agency in a one-story office building located at 1001

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Corpus Christi Street, Laredo, Texas. Mr. Humberto Vela, RN (Debtor) is the founder

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and owner since 2006. The Facility, while operating under one license from the State

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of Texas, is actually divided into two sections: Skilled Services and Provider Services.

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114  
115 The Skilled Services area cares for approximately 60 patients (down from 73 at the last  
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117 visit) with some six office personnel, five (5) part-time field registered nurses (RN) and  
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119 eight (8) part-time licensed vocational nurses (LVN). Services provided to patients  
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121 include those for which the Facility is licensed: licensed and certified home health  
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123 services, licensed home health services and personal assistance. Specifically, services  
124  
125 provided to patients include typical home health care nursing: medication management,  
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127 follow up post-hospitalizations care, patient education, etc.

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129  
130 The Provider Services area cares for approximately 79 patients (down from 83 patients at  
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132 the last visit) with 88 personal assistants (down from 94 at the last visit) and three office  
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134 staff. The personal assistants range from part to full time workers. The employees are not  
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136 licensed, nor are they required to be, and provide personal assistance services such as  
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138 bathing, assisting with medications, laundry, shaving, grooming, etc.

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141 **Acknowledgement of Debtor Cooperation**

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143 The PCO consistently experienced cooperation and candor at all levels of the Debtor's  
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145 organization, both in the Skilled Services and Provider Services areas. Staff are  
146  
147 knowledgeable about the Chapter 11 proceeding and provided the PCO with sincere  
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149 responses to questions asked. However, two weeks prior to the appointment the PCO  
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151 specifically requested a meeting with at least one of the LVN/RN providers. None was  
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153 present for the visit.

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156 **Goals and Description of PCO's Visit**

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158 The PCO visited the Facility on Thursday, November 9, 2017 for the third time during

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

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161 1. To determine and document any changes in the safety and quality of care being

162 provided to patients by the Facility since the previous visit.

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

164 Summaries from previous visits.

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166 To achieve the above goals the PCO met with the Performance Improvement

167 Coordinator/Scheduler/Billing Clerk and Primary Home Care Assistant Supervisor over a

168 four-hour period of time. The Debtor was out of town on the day of the visit.

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170 During the on-site visit the PCO examined the following: up-to-date organizational chart

171 for the Facility, personnel files, Professional Advisory Committee reports, Annual

172 Infection Control Evaluation, Policies and Procedures Manual, In-service Training Log,

173 Infection Control Log, Incident Report Log, and several patient electronic charts.

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### **Operations and Personnel**

177 The number of personnel in the Skills Services area, including non medical office staff, is

178 20 as three LVN were terminated due to not attending meetings and/or out of date

179 credentials. This does not present a service issue given the number of patient visits have

180 decreased. There are ample providers to see the 60 patients cared for by the Facility.

181 Additionally, nurses making home visits are hired on a part-time basis and have a

182 caseload of 8-10 patients per day.

183

184 The Texas Board of Nursing (BON) has no authority over workplace or employment  
185 issues, such as staffing ratios. However, “home health is a growing sector in  
186 U.S. health care. Staffing models fall somewhere between acute care hospitals and long-  
187 term care in terms of the proportions of unlicensed personnel and practical nurses.  
188 Allocation of nursing time to patients presumably influences quality and thoroughness of  
189 nursing acts and assessments. There may be skill-mix issues as well. However, to date  
190 there have been no studies of home health agency staffing models, nurse workloads, or  
191 skill mix. OASIS (Outcomes Assessment and Information Set) data gathered by home  
192 health providers by mandate from the Medicare program, skillfully analyzed and  
193 interpreted, will offer opportunities to examine safety in home care in relation to staffing  
194 decisions. Similar statements can be made about nurse staffing in most other ambulatory  
195 and community settings as well.” From: **Patient Safety and Quality: An Evidence-  
196 Based Handbook for Nurses. Chapter 25 Nurse Staffing and Patient Care Quality  
197 and Safety.** Sean P. Clarke; Nancy E. Donaldson.

198 <http://www.ncbi.nlm.nih.gov/books/NBK2676/> accessed 7/10/17

199  
200 “Home health executives and supervisors have described pressure to increase nurse  
201 workload due to budget constraints. Nurses are reporting “...we will go to our  
202 supervisors and say I’m at my max...I can’t take anymore (cases) and to me that should  
203 be addressed by the head, and I don’t think it is.” These qualitative findings underscore  
204 a recent national study of over 1000 home health agencies that found nurse caseloads  $\geq 27$   
205 were associated with lower patient satisfaction scores, and **productivity expectations  $\geq 8$**   
206 **visits/d were associated with lower quality of care.**”  
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214 From: **Home Health Agency Work Environments and Hospitalizations**

215  
216 [Olga Jarrín, PhD, RN,<sup>¶</sup>\\* Linda Flynn, PhD, RN,<sup>†</sup> Eileen T. Lake, PhD, RN,<sup>\\*‡</sup> and Linda](#)  
217 [H. Aiken, PhD, RN<sup>\\*‡</sup> http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4174033/](#)  
218  
219 [accessed 7/10/17](#)

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221  
222 Personnel records of the LVNs and RNs were reviewed. With the exception of not having  
223 a copy of one nurse license on file, all records are up to date. The PCO verified on the  
224 Texas Board of Nursing website the nurse possesses a current/up-to-date license.

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226 The number of personnel in the Provider Services area fluctuates with the number of  
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228 patients enrolled. Currently there are 79 patients enrolled (down from 83 at the last visit)  
229  
230 and 88 employees (down from 94) who work on a part and full time basis. High  
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232 turnover of personnel is common in the industry.

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236 **Patient Care, Safety and Quality Control**

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239 The Debtor's license from the Texas Department of Aging and Disability Services  
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241 (DADS) is current and will not expire until May 31, 2019. The Facility's most recent  
242  
243 DADS compliance summary score dated April 19, 2017 was 97.56%. Another site visit is  
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245 planned in April, 2018.

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247  
248 As discussed in the previous report to the Court, the Centers for Medicare and Medicare  
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250 Services (CMS) Quality of Patient Care Star Rating is very low (1.5 out of 5 stars).

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252 Additionally, the OASIS C Quality Measure Scores for outcome measures were  
253  
254 significantly lower than the state and national averages on seven out of eight quality  
255  
256 measures. Both the ratings and scores are from the same survey conducted from 1/1/16  
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258 through 12/31/16 and are of some concern. The next OASIS report, for 2017, is due in  
259  
260 January, 2018. Again, the results and ways to improve, of the 2016 report were discussed  
261  
262 with the Performance Improvement Coordinator. For example, in-service sessions,  
263  
264 emails on how to complete the OASIS forms, and individual provider  
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266 discussions should occur on a regular basis. While the Debtor is attempting to create a  
267  
268 culture of process improvement related to bettering patient outcomes there is little  
269  
270 outcome evidence to indicate progress is being made.

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273 Throughout the healthcare industry patient satisfaction is still not a clearly defined  
274  
275 concept, although it is identified as an important quality outcome indicator to measure  
276  
277 success of the services delivery system. Instrument validity aside, the Facility regularly  
278  
279 performs patient satisfaction surveys on patients served. The PCO viewed dozens of the  
280  
281 surveys on previous visits and there were no outstanding concerns.

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284 Safety, quality, infection control, incident and in-service training logs are up to date.  
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286 Appropriate in-service training related to safety and quality of care seems to be  
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288 occurring on a regular basis with good attendance at meetings as verified by sign-in log  
289  
290 sheets.

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293 As previously recommended, the Facility is providing flu vaccines for the employees.  
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295 Employees must show proof of flu vaccine immunization by the end of next week or they  
296  
297 will not receive patient care assignments.

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300 Several electronic patient charts were reviewed. Recordings of some patient respirations  
301  
302 were often recorded at the same rate over 5-10 visits. On a previous visit the PCO had a  
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304 similar finding regarding blood pressure readings. While possible, it is doubtful a  
305 patient would consistently, over multiple visits, have the exact same respiratory rate.  
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307 Patient weights were seldom recorded if recorded at all. Not recording a patient's weight  
308  
309 could potentially present a quality/safety of care issue.  
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312 **Summary and Recommendations**  
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314 In general, systems and personnel are in place to provide quality safe care to  
315 patients of the Facility. The PCO believes the Facility is not jeopardizing or  
316 compromising quality or safety of care as a result of the Chapter 11 proceedings.  
317 However, as is the case for most health care facilities, there is great room for  
318 improvement.

319  
320 The Facility continues to address and make excellent progress on patient  
321 safety and quality issues previously discussed by the PCO. Currently, the PCO is satisfied  
322 with corrective actions on those issues and believes the infrastructure now in place is an  
323 improvement from the past.

324  
325 Patient census continues to decrease and is undoubtedly impacting the agency finances in  
326 a negative fashion. To date, the Debtor has not decreased staff or Facility infrastructure  
327 impacting the safety or quality of care. However, if finances continue to decline the  
328 infrastructure will probably need to change and consequently effect care delivery.

329 Consequently, the PCO discussed marketing strategies to increase patient volume and  
330 services.

331

332 The PCO has the following recommendations to the Debtor concerning patient care and  
333 safety.

334

335 **RECOMMENDATIONS**

336 #1 All staff with patient contact must show proof of being immunized with the current flu  
337 vaccine by November 17, 2017. Personnel unable to show proof will not be allowed  
338 patient contact until proof of immunization is provided.

339 #2 For the nurse who did not have a paper copy of her license on file, place a paper copy  
340 of the license in the employee file.

341 #3 Ensure at least one of the field nurses is present for the next PCO visit.

342 #4 Increase patient volume for the financial health of the Facility

343 #5 Concentrate Facility processes on improving OASIS outcome measures. For example,  
344 office staff can push YouTube training videos to providers and committee or in-  
345 service trainings can emphasize the OASIS measures and how to improve.

346 #6 Dedicate at least one in-service training to the importance of accurately recording  
347 patient vital statistics such as respirations and weights.

348

349 At the next visit in January, 2018 the PCO will review continued progress on the above  
350 and previous recommendations to determine if overall levels of patient safety and care  
351 are being maintained or improved. Additionally, the PCO will review the Annual  
352 Infection Program Evaluation, the Annual Tuberculosis Risk Assessment Plan and the  
353 Tuberculosis Annual Employee Aggregate Data Base. The PCO will also review multiple  
354 patient charts to determine if progress is being made on accurate recording of patient vital

355 statistics.

356

357 Respectively submitted by

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364 November 13, 2017

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