

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re:

MIDWEST CHRISTIAN VILLAGES, INC.
et al.,¹

Debtors.

Chapter 11

Case No. 24-42473-659
(Joint Administration Requested)

Hearing Date: July 17, 2024
Hearing Time: 2:00 p.m. (CT)
Hearing Location: Courtroom 7

**DEBTORS' MOTION FOR ENTRY OF AN ORDER,
PURSUANT TO SECTION 333(A) OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 2007.2, (I) WAIVING THE APPOINTMENT OF A PATIENT
CARE OMBUDSMAN AND (II) ALLOWING THE DEBTORS TO SELF-REPORT**

The above-captioned debtors and debtors-in-possession (the “**Debtors**”), by and through their proposed counsel, submit this motion (the “**Motion to Forgo PCO Appointment**”) for entry of an order (i) determining that appointment of a patient care ombudsman (“**PCO**”) for the Debtors is not required at this time, (ii) allowing the Debtors to self-report information relating to the state of Resident (as defined below) care to this Court, the Office of the United States Trustee for the Eastern District of Missouri (the “**U.S. Trustee**”), and any Residents or family members thereof

¹ The address of the Debtors headquarters is 2 Cityplace Dr, Suite 200, Saint Louis, MO 63141-7390. The last four digits of the Debtors' federal tax identification numbers are: (i) Midwest Christian Villages, Inc. [5009], (ii) Hickory Point Christian Village, Inc. [7659], (iii) Lewis Memorial Christian Village [3104], (iv) Senior Care Pharmacy Services, LLC [1176], (v) New Horizons PACE MO, LLC [4745], (vi) Risen Son Christian Village [9738], (vii) Spring River Christian Village, Inc. [1462], (viii) Christian Homes, Inc. [1562], (ix) Crown Point Christian Village, Inc. [4614], (x) Hoosier Christian Village, Inc. [3749], (xi) Johnson Christian Village Care Center, LLC [8262], (xii) River Birch Christian Village, LLC [7232], (xiii) Washington Village Estates, LLC [9088], (xiv) Christian Horizons Living, LLC [4871], (xv) Wabash Christian Therapy and Medical Clinic, LLC [2894], (xvi) Wabash Christian Village Apartments, LLC [8352], (xvii) Wabash Estates, LLC [8743], (xviii) Safe Haven Hospice, LLC [6886], (xix) Heartland Christian Village, LLC [0196], (xx) Midwest Senior Ministries, Inc. [3401] and (xxi) Shawnee Christian Nursing Center, LLC [0068].



who specifically request a copy of such information, and (iii) granting related relief. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the Eastern District of Missouri (the “Court”) has jurisdiction over these chapter 11 cases (the “Cases”), the Debtors and this Motion, pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are § 333(a) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 2007.2 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

BACKGROUND

A. General Background

3. On July 16, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the Bankruptcy Code.

4. The Debtors continue in the operation and management of their business as debtors-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

5. No trustee, examiner or official committee has been appointed in these Cases.

6. Simultaneously with the filing of this Motion, the Debtors filed the *Declaration of Kate Bertram in Support of the Debtors’ Chapter 11 Petition and First Day Motions* (the “**First Day Declaration**”).

7. The Debtors filed these Cases to pursue one or more going concern sales for each of their facilities.

8. Additional factual background regarding the Debtors, their business operations, capital structure, and events leading to the filing of these Cases is set forth in detail in the First Day Declaration.

B. General Description of the Debtors

9. The Debtors are a faith-based, non-profit organization with a 60-year history of providing quality care to residents (the “**Residents**”) of their senior living communities. The Debtors’ facilities offer independent living as well as long-term healthcare and rehabilitation services for their Residents. The Debtors also offer end-of-life support and pharmacy services to Residents.

10. The Debtors are comprised of ten (10) communities spanning four (4) states in the Midwest and serve over 1,000 Residents. The majority of the Debtors’ facilities are located in Illinois with additional communities in bordering western Indiana. The Debtors’ remaining communities (Spring River Christian Village and Risen Son Christian Village) are in western Missouri and western Iowa.

11. The Debtors use a combination of their own employees and staffing agencies to provide various services to Residents.

12. As discussed in greater detail herein, the Debtors are subject to frequent and thorough external state and federal regulatory oversight and also adhere to internal quality control policies and procedures to maintain the quality of Resident care for the overall communities. As of the Petition Date, the Debtors are in full compliance with their regulatory obligations at nine (9) of their eleven (11) communities. The two (2) communities Spring River Christian Village and River Birch Living which are not in substantial compliance have submitted acceptable plans of

correction to the regulatory bodies and are awaiting notice of compliance.² However, none of these deficiencies at these two (2) communities relate to a substandard level of care or pose an immediate jeopardy to patient safety. Instead, Spring River Christian Village was cited in May of 2024 for not having a record of fire alarm testing and use of an unauthorized waste basket. Both deficiencies have been corrected and the regulatory body has accepted the plan of correction. River Birch Living was inspected by the Fire Marshal in January of 2024 and a some concerns, all related to fire code compliance, were noted. While the Debtors took each of these deficiencies seriously and either have remediated, or are in the process of doing so, each of the deficiencies, none of the deficiencies related to patient care.

C. The Extensive External Monitoring of the Debtors' Resident Care

13. Each of the communities are governed and monitored on an annual basis by state agencies overseeing the Debtors in each of Illinois, Missouri, Indiana and Iowa, in addition to onsite visits for any complaint or self-reported incident that the state determines to investigate. The Centers for Medicaid and Medicare Services ("CMS") also provides oversight and reserves the right to conduct independent onsite investigations and surveys. Moreover, each community has Ombudsmen that also conducts routine visits and investigations to monitor patient care and safety. Each state's State Long-Term Care Ombudsman and regional Ombudsman that advocates for those residing in long-term care facilities, including nursing homes, assisted care living facilities, homes for the aged and adult care homes. Ombudsmen are available to help residents and their families resolve problems and answer questions related to long-term care. When residents and families cannot resolve their problems through consultation with the facility staff or governmental agencies involved, they may contact their Ombudsmen. Ombudsmen concerns can include quality of care,

² Lewis Memorial Christian Village SNF is on a Provisional License that should be upgraded to full licensure in August of 2024.

financial information, resident rights, admissions, transfer, and discharge. How to contact Ombudsmen is posted prominently in each of the Debtors' facilities. Moreover, each Resident, upon moving in to the Debtors' facilities, are also provided contact information on how to contact state regulatory agencies and Ombudsmen in their Residents' handbook.

D. Internal Quality Control Processes and Resources for Resident Care and Safety

14. The Debtors also have extensive internal policies and procedures to monitor the quality of Resident care for the overall community. Communities utilize policies and procedures following CMS pathways to ensure compliance with regulations. There is also a Quality Assurance and Process Improvement Program in place to continuously review quality of care and ensure practices are in place to ensure compliance. The Quality Assurance and Process Improvement Program each conduct internal audits on each facility and incorporate any findings from any outside agencies or Ombudsman, and issues reports to the Quality Assurance and Process Improvement Committee established by the Debtors; then institutes a regime to correct any areas of concern.

E. Grievance Processes

15. The Debtor has a company-wide policy that was updated and effective August 7, 2023. It is the policy of Christian Horizons to provide residents, their representative or family members with a grievance process to communicate in writing any concerns, suggestions, complaints or opportunities for improvement in care and services and receive a written response to the submitted grievance. Any resident or their representative or family member may submit a grievance concerning his or her treatment, medical care, safety or other issues without fear of reprisal of any type. Grievance forms are located throughout the community and forms are logged

and community has five (5) days to respond. The procedure is as follows once a grievance is received:

- a. The Responsible Person reviews open grievances in the Daily Quality Assurance meeting with the appropriate department leader and or the Executive Director/Administrator.
- b. The appropriate department leader investigates grievances, documents findings, and reports the outcome of the investigation to the Responsible Person
- c. The Responsible Person reviews the completed grievance with the Executive Director/Administrator. This review includes ensuring a response has been given to the person initiating the grievance and that the response, and corrective action plan, if applicable, is documented.
- d. The Executive Director/Administrator ensures grievances are addressed and resolved within a 5-day time frame and final outcome, including any corrective action plan, is communicated to the person originating the grievance. The Executive Director/Administrator will sign all completed grievances, indicating review and completion.
- e. Copies of all grievances are maintained per the Record Retention policy

F. Events Leading to the Filing of These Cases

16. As discussed in the First Day Declaration, the senior living space, including the Debtors' facilities, were significantly impacted by COVID-19.

17. In addition, there have been material additional costs related to agency staffing costs.

RELIEF REQUESTED

18. By this Motion, the Debtors request entry of an order (i) determining that appointment of a PCO for the Debtors is not required at this time, (ii) allowing the Debtors to self-report information relating to the state of Resident care to this Court, the U.S. Trustee, and any Residents or family members thereof who specifically request a copy of such information, and (iii) granting related relief.

BASIS FOR RELIEF REQUESTED

19. Appointment of a PCO is within the Court's discretion. Section 333(a)(1) of the Bankruptcy Code provides that "[i]f the debtor . . . 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.*" 11 U.S.C. § 333(a)(1) (emphasis added).³ Thus, the determination must focus on the need for protection of the patients under the facts of these Cases.

20. Pursuant to §§ 333(a)(2)(A) and 333(b) of the Bankruptcy Code, an ombudsman's duties are to:

- 1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;
- 2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and
- 3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

11 U.S.C. § 333(b).

21. The court in *In re Alternate Family Care*, 377 B.R. 754 (Bankr. S.D. Fla. 2007) introduced the most comprehensive and widely accepted test for evaluating whether the specific

³ Bankruptcy Rule 2007.2(b) authorizes the Court to appoint an ombudsman at a later time if the Court determines that such appointment is necessary. See Fed. R. Bankr. P. 2007.2(b).

facts of a case made the appointment of a PCO unnecessary. The court set forth a list of nine (non-exclusive) factors surrounding the bankruptcy filing and debtor's operations to be examined in considering the totality of the circumstances: (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 of the facility; (6) the likelihood of tension between the interests of the patients and 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 appropriate level of care; and (9) the impact of the cost of an ombudsman on the likelihood of a successful reorganization. Evaluation of those factors in these Cases demonstrates that the appointment of a PCO is unnecessary.

22. Additionally, the court in *In re Valley Health Sys.*, 381 B.R. 756, 761 (Bankr. C.D. Cal. 2008), listed the following factors that could be considered when evaluating whether to appoint a PCO: (1) the high quality of the debtor's existing patient care; (2) the debtor's financial ability to maintain high quality patient care; (3) the existence of an internal ombudsman program to protect the rights of patients, and/or (4) the level of monitoring and oversight by federal, state, local, or professional association programs which renders the services of an ombudsman redundant.

23. "The weight given to the factors is at the discretion of the reviewing court." *In re Flagship Franchises of Minn. LLC*, 484 B.R. 759, 762 (Bankr. D. Minn. 2013) (citing *In re N. Shore Hematology-Oncology Assocs., P.C.*, 400 B.R. 7 (Bankr. E.D.N.Y. 2008)).

A. The Appointment of a PCO is Unnecessary for the Protection of the Residents

24. Even a cursory review of the factors articulated in the *Alternate Family Care* and *Valley Health* cases demonstrate that there is no need to appoint a PCO to protect the patients of

the Debtors. As a threshold matter, it is important to note that only a portion of the Debtors' operations fall within the Bankruptcy Code's definition of a "health care business." *See* 11 U.S.C. § 101(27). Approximately 70% of the Debtors' Residents care services and the remaining units are independent living or Low Income House Units. *See* 11 U.S.C. § 101(27)(A)(B)(ii). Those units and residents are not subject to or have any need under the Bankruptcy Code for the appointment of a PCO. Nonetheless, the Court need not decide if any portion of the Debtors' operations qualify as a "health care business" if it concludes that a patient care ombudsman would not be necessary in any event. *See In re Smiley Dental Arlington, PLLC*, 503 B.R. 680, 688 (Bankr. N.D. Tex. 2013) (observing that the "patient care ombudsman analysis is not lock-step, [and] the court is not bound to decide first whether [d]ebtors are health care businesses" if the court first determines that appointment of a patient care ombudsman is not necessary).

(i) Cause of the Bankruptcy Filing

25. The Debtors' bankruptcy filing was not "precipitated by concerns relating to the quality of patient care or privacy matters." *In re Saber*, 369 B.R. 631, 637 (Bankr. D. Colo. 2007). Rather, the Debtors sought bankruptcy protection primarily due to, among other things, declining occupancy levels resulting from the lingering impact of the COVID-19 pandemic. *See Valley Health Sys.*, 381 B.R. at 761 (finding ombudsman unnecessary in case precipitated by the burden of servicing bond debt); *see also Alternate Family Care*, 377 B.R. at 759 (finding ombudsman unnecessary in case precipitated by "a fire at [the debtor's] primary facility"); *In re The Total Womens Healthcare Center P.C.*, 2006 Bankr. LEXIS 3411 at *5 (Bankr. M.D. Fla. 2006) ("[m]ost of [the debtor's] obligations appear to be for taxes. The obligations do not appear to arise from deficient patient care."). Moreover, the Debtors' financial difficulties have not impacted their

ability to provide the assistance they have promised to Residents at their facilities. Thus, this factor supports granting the Motion.

(ii) The Presence and Role of Licensing or Supervising Entities

26. The Debtors are subject to extensive oversight by multiple government agencies and professional associations. The Debtors are required by state and federal regulations to maintain a particular quality of patient care. For example, the Debtors' communities are surveyed annually by the state agencies contracted with Centers for Medicaid and Medicare Services to conduct onsite verification of patient care, safety, and compliance with State and Federal Regulations. In addition, the State Agencies conduct unannounced investigations on complaints and self-reported incidents on an as needed basis. Moreover, as discussed, each community has state and, in some states, regional ombudsman that conducts routine visits to monitor patient care and safety (respectively, the "**State Long-Term Care Ombudsman**" and "**District Ombudsman**" and collectively the "**Existing Ombudsman**"). *See In re Valley Health Sys.*, 381 B.R. at 761-62 (noting that the hospital district "is subject to substantial monitoring by a variety of federal and state regulatory agencies and independent accreditation associations."); *In re Alternate Family Care*, 377 B.R. at 759 (No ombudsman needed where "adding an ombudsman . . . would be a total duplication of the efforts of the various public and private entities already playing an oversight role."); *In re N. Shore Hematology-Oncology Assocs.*, P.C., 400 B.R. 7, 12-13 (Bankr. E.D.N.Y. 2008) (noting that debtor was monitored by New York State Department of Health and that its labs were certified by the Clinical Laboratory Improvement Amendments the directives of which are carried out by the Food and Drug Administration, which performs a bi-annual audit and inspection of the labs).

(iii) The Debtors' Past History of Patient Care

27. The Debtors' past history shows no systemic concerns with patient care or lack of compliance with Federal and State regulations. The Debtors and their facilities are fully accredited and licensed and, are staffed with a team of highly qualified and experienced physicians, nurses, and professional personnel. The Debtors have no pending issues with any state or federal regulatory agency for a violation of the standards of care they provide to their residents.

(iv) The Ability of the Patients to Protect Their Rights

28. The Debtors have appropriate internal safeguards, policies, procedures, protocols, resources and personnel in place to adequately promote and protect Residents' rights, to effectively consider and address the interests and needs of their residents, and to ensure an appropriate level of patient care.

29. As described above, between the State Long-Term Care Ombudsman, any the District Ombudsman, the Quality Assurance and Process Improvement Program, and the Grievance Process, there are numerous safeguards and remedial processes in place to ensure that the quality of care for residents is maintained, and, if there are any issues in doing so, that such potential deficiencies will be addressed.

(v) The Level of Dependency of the Patients of the Facilities

30. Many Residents are under the care of physicians and nurses, none of whom are in bankruptcy. These skilled professionals are caring for the residents' needs and responding to the residents' concerns, and there is no evidence to the contrary. Moreover, the physicians are independent and are not employed by the Debtors.

(vi) The Likelihood of Tension Between the Interests of the Patients and the Debtors

31. It is highly unlikely that the interests of the Debtors and their Residents will diverge. Rather, their interests are aligned in seeking a successful sale or affiliation of the Debtors so the Residents can continue to live in their communities. *See Alternate Family Care*, 377 B.R. at 760 (noting a “low likelihood that patient care will be sacrificed or compromised in order to effectuate [a] reorganization” in that case). Thus, this factor supports granting the Motion.

(vii) The Potential Injury to the Patients if the Debtors Drastically Reduce Their Level of Patient Care

32. There has been no reduction in services to Residents, prepetition or postpetition, and the level of patient care provided by the Debtors has not been reduced. The physicians and nurses continue to provide excellent care to the Residents.

(viii) The Presence and Sufficiency of Internal Safeguards to Ensure Appropriate Level of Care

33. The Debtors’ internal safeguards will ensure an appropriate level of care regardless of whether a PCO is appointed. *See, e.g., North Shore*, 400 B.R. at 12-13 (debtor’s internal monitoring programs weighed against appointment of ombudsman). The Debtors regularly check on the quality of assistance provided to the Residents treated within their facilities. Residents are able to call the Debtors if there are problems at the facilities, use the Grievance Process and the Debtors have trained employees who respond to any complaints. Furthermore, the Debtors have physicians on-call after hours in the event any Resident has medical needs related to the facilities. Thus, “the high quality of the [D]ebtor’s existing patient care” also weighs against appointment of a patient care ombudsman. *Id.* at 11 (citing *Valley Health Sys.*, 381 B.R. at 762) (citations omitted). Indeed, as the Debtors’ quality management program is a robust, multi-tiered “internal safeguard[]” that “ensure[s the] appropriate level of care,” *North Shore*, 400 B.R. at 11 (citing

Alternate Family Care, 377 B.R. at 758), the services of a PCO would be duplicative and unnecessary.

(ix) The Impact of the Cost of an Ombudsman on the Likelihood of a Successful Conclusion of These Cases

34. The expense and duplication of efforts associated with appointment of a PCO would hamper the Debtors' ability to successfully conclude these Cases. Those expenses would include not only the ombudsman's fees but may also include the fees of professionals retained by the ombudsman. *See* 11 U.S.C. § 330(a)(1)(B) (allowing reimbursement for ombudsman's "actual, necessary" expenses). These Cases are relatively small. In a similarly sized healthcare bankruptcy, *In re Borrego Community Health Foundation*, the PCO's fees and expenses totaled almost \$400,000 over the course of a year. *See In re Borrego Community Health Foundation*, Case No. 2:22-02384-LT11 [Dkt. No. 907] (Bankr. S.D. Cal. Sept. 13, 2023); *see also In re Astria Health, et al.*, Case No. 19-01189 WLH [Dkt. No. 2240] (Bankr. E.D. Wa. Jan. 1, 2021) (requesting final approval of PCO fees and expenses totaling over \$230,000). Therefore, particularly in light of the duplication of the Debtors' existing internal and external monitoring and the Debtors' history of quality patient care, the costs associated with the appointment of a PCO in these Cases would serve only to drain the Debtors' financial resources and jeopardize the Debtors' ability complete these Cases. *See Valley Health Sys.*, 381 B.R. at 764–65 (ombudsman would duplicate debtor's internal monitoring and external monitoring by the state and external national accreditation organization); *Alternate Family Care*, 377 B.R. at 761 (ombudsman costs could preclude reorganization); *In re Medical Assocs. of Pinellas, L.L.C.*, 360 B.R. 356, 362 (Bankr. M.D. Fla. 2007) (ombudsman expenses would serve little purpose). Thus, this factor supports granting the Motion.

(x) The High Quality of the Debtors' Existing Patient Care

35. As discussed, the Debtors have an excellent history of providing quality care to their Residents. This history of quality care has continued to date.

(xi) The Debtors' Financial Ability to Maintain High Quality Patient Care

36. As discussed, the Debtors' financial difficulties have not impacted their ability to provide the assistance they have promised to Residents at their facilities. Moreover, the Debtors have obtained a commitment to provide post-petition financing to fund these Cases and ensure that the Debtors' will be able to financially afford to maintain its provision of quality patient care to Residents. Simultaneously with the filing of this Motion to Forgo PCO Appointment, the Debtors are also filing a motion seeking authorization to incur such post-petition financing.

(xii) The Existence of Existing Ombudsman Program to Protect Patients

37. As discussed, the Debtor works closely with its Existing Ombudsman at each community to address any patient concerns and grievances.

(xiii) The Level of Monitoring and Oversight by Federal, State, Local, or Professional Association Programs Which Renders the Services of an Ombudsman Redundant

38. As discussed, the Debtors are subject to extensive oversight by multiple state and federal agencies. The Debtors are also required by state and federal regulations to maintain a particular quality of patient care. Thus, the appointment of a PCO in these Cases would duplicate the efforts by those agencies to oversee patient care and would render the PCO's services redundant.

B. A Patient Care Ombudsman Is Not Necessary

39. Only one of the *Alternate Family Care* factors — the potential injury to the patients if the Debtors drastically reduced their level of patient care — even remotely weighs in favor of the appointment of a PCO, while the other eight factors, including particularly the fact that the

Debtors (i) are supervised by state and private agencies, and (ii) have a track record of providing a high level of assistance for many years, weigh against the appointment of a PCO.

40. Other cases decided prior to the *Alternate Family Care* case also are worthy of note for declining to order the appointment of a patient care ombudsman based on the circumstances of the case. In these cases, the courts focused on the fact that the filing of the bankruptcy petition was unrelated to patient care, and that the debtors understood their responsibilities with respect to their patients, as the reasons for declining to order the appointment of an ombudsman.

41. In *In re William L. Saber M.D., P.C.*, 369 B.R. 631, 637 (Bankr. D. Colo. 2007), the court found that the appointment of a PCO was unnecessary because the debtor's "bankruptcy filing was not precipitated by concerns relating to the quality of patient care or patient privacy matters but to the entry of a state court judgment based on a contractual dispute between the debtor and a physician formerly employed by the debtor."

42. Also, in *In re The Total Woman Healthcare Center, P.C.*, 2006 Bankr. LEXIS 3411 (Bankr. M.D. Ga. Dec. 14, 2006), the bankruptcy court declined to appoint a patient care ombudsman where: (1) there was no evidence that patient care had been adversely affected by the bankruptcy filing, (2) the debtor's obligations which resulted in the bankruptcy did not arise from deficient patient care but rather from unpaid taxes, and (3) the debtor understood and was compliant with state and federal law obligations. Here the Debtors satisfy the same standards, in that there is no evidence that patient care has been adversely affected; the obligations which forced the Debtors into bankruptcy do not arise out of patient care issues, and the Debtors are, by all accounts, compliant with applicable state and federal laws and regulations.

43. Recently, the court in *In re Aknouk*, 648 B.R. 755 (Bankr. S.D.N.Y. 2023) also ruled that a chapter 11 dental provider established that a patient care ombudsman was unnecessary

to protect its patients where, among other things, the cause of the bankruptcy (i.e., the debtor's alleged failure to remit employer contributions to a union), was unrelated to patient care; the debtor, which was regulated by the state, had been operating for 25 years in good standing and had no history of compromised patient care or malpractice claims; the debtor had sufficient internal mechanisms to monitor patient care; and the cost of an ombudsman could be the difference between positive and negative cash flow.

44. Also, in *In re Mississippi Maternal-Fetal Medicine, P.A.*, 2021 WL 1941627, at **3–4 (Bankr. S.D. Miss. Feb. 18, 2021), the court applied the *Alternate Family Care* factors and found that an ombudsman was unnecessary because, among other things, there was no evidence that the debtor's standard of care was deficient, the costs of appointment could adversely affect the debtor's ability to reorganize, and the bankruptcy filing was not precipitated by concerns relating to quality of patient care or to patient privacy matters.

C. The Debtors Are Willing to Self-Report

45. Other courts have determined that the appointment of an ombudsman was unnecessary or could be waived because the debtor was willing to self-report relevant information regarding patient care to the court. *See, e.g., In re RGV Smiles by Rocky L. Salinas, D.D.S. P.A.*, Case No. 20-70209 (EVR) (Bankr. S.D. Tex. July 20, 2020) [Docket No. 28] (ombudsman was unnecessary in light of debtor's self-reporting); *Tarrant Cnty. Senior Living Center*, Case No. 19-33756 (SGJ) (Bankr. N.D. Tex. Dec. 6, 2019) [Docket No. 92] (ombudsman was unnecessary in light of debtor's agreement to self-report); *In re The Clare at Water Tower*, Case No. 11-46151 (SPS) (Bankr. N.D. Ill. Dec. 7, 2011) [Docket No. 112] (same); *In re Hingham Campus, LLC*, Case No. 11-33912 (SGJ) (Bankr. N.D. Tex. July 28, 2011) [Docket No. 156] (same); *In re LC Liquidating et al.*, Case No. 10-34176 (SGJ) (Bankr. N.D. Tex. Aug. 19, 2010) [Docket No. 247]

(same); *In re Laredo Urgent Care, PA*, Case No. 08-50180 (WWS) (Bankr. S.D. Tex. July 11, 2008) [Docket No. 19] (same); *see also In re LRGHealthcare*, Case No. 20-10892 (MAF) (Bankr. D.N.H. Nov. 18, 2020) [Docket No. 246] (directing the debtor to “promptly file a status report with the court in the event there is a material adverse change to the debtor’s operations that adversely affects patient care”).

46. Here, the Debtors are willing to self-report to the Court. Indeed, the Debtors agree that, beginning from thirty (30) days following entry of an order approving this Motion to Forgo PCO Appointment, and every thirty (30) days thereafter, until the effective date of the Debtors’ confirmed plan of reorganization, or as may otherwise be ordered by this Court, the Debtors will provide a verified statement (the “**Self Report**”) reporting the following information:

- **Staff Members:** Report the number of “Staff Members,” their positions, the status or standing of any licenses held by staff members, and any formal complaints made by Residents or families of Residents concerning the type and level of care provided (“Care”) by the Staff Members at the Debtors’ facilities. The term “Staff Members” includes: (a) W-2 employees or independent contractors, who are directly contracted with or by the Debtors, and (b) individuals who, at the request of the Debtors, whether or not directly contracted with, provide any form of care to the Residents. The term “Care” includes, but is not limited to: (a) services of medical personnel, whether licensed or unlicensed, who provide care to Residents in (i) the long-term healthcare and rehabilitation sections of the Debtors’ communities and (ii) the independent living sections of the Debtors’ communities, (b) use of physicians, medical specialists, dentists, or other medical practitioners whose practices are based, in whole or in part, within the communities, or who at the request of the Debtors or their employees, treat Residents on a regular and recurring basis, (c) use of rehabilitation or therapy rooms and related medical equipment by Residents, and (d) the providing of pharmaceutical services or supplies to Residents.
- **Staffing Changes:** Report any material increase or decrease in the number of staff members over the reporting period, and the reasons or justifications for such increase or decrease.
- **Patient/Resident Records:** Report the measures taken by the Debtors to continue securing Resident records at the facilities.

- **Vendors:** Report all formal complaints, if any, raised by the Debtors' vendors regarding payment or ordering issues for post-petition payments/orders.
- **Formal Complaints:** Report all formal complaints, if any, made by Residents, the families of Residents, or referring physicians (including formal complaints made by physicians, medical specialists, dentists, or other medical practitioners whose practices are based, in whole or in part at the Debtors' communities or who at the Debtors' request, treat Residents on a regular and recurring basis) regarding patient care and/or other services rendered by the Debtors.
- **Litigation:** Report any postpetition litigation or administrative actions exempt from the automatic stay under § 362(b)(4) of the Bankruptcy Code initiated postpetition against the Debtors, and the status of any pending administrative actions against the Debtors.
- **Expansion/Closures:** Report any plans to open or close any part of the Debtors' facilities.
- **Condition of Facilities:** Report any major maintenance work that needs to be done, is in process, or that has recently (within the past year) been done to the Debtors' facilities. This can include, but is not otherwise limited to, structural concerns such as roofing, electrical, plumbing, and flooding issues.
- **Life-Safety Issues:** Affirmatively report that there are no life-safety issues regarding the facilities where Residents live and are treated or otherwise receive care. Life-safety issues include the ability of the Debtors' medical personnel to respond in a timely manner, using staff members on premises, to emergency situations whether by phone or emergency pull cord. In the event that there are life-safety issues, report them immediately to the Court and state what is being done to rectify them.

47. The Debtors will mail (by U.S. first class mail), e-mail, or fax a copy of the Self Reports to: (a) the U.S. Trustee (b) any Residents or family members thereof who specifically request a copy of such affidavit; (c) to each state agency (Illinois Department of Public Health, Indiana State Department of Health, Missouri Department of Health and Senior Services, and Iowa Department of Inspections, Appeals, Licensing) and federal agency (CMS) to which the Debtors report and are subject to their regulatory scheme; and (d) be posted on the Claims Agent's website that is maintained relating to the Debtors' cases.

48. The Debtors' proposed self-reporting goes beyond that which is required of a PCO and is sufficient to determine whether the level of patient care at their facilities is adequate, without incurring the added expense of a PCO.

D. The Court Can Appoint a PCO Later in the Cases if Necessary

49. Finally, if the Court agrees that no PCO is required for the protection of residents at this time, nothing precludes the Court from revisiting the issue at a future date if issues develop with regard to the assistance provided to residents. Bankruptcy Rule 2007.2(b) expressly provides that any party in interest can move for the appointment of a PCO during a case if the situation suggests the appointment of a PCO is warranted. The Debtors would agree that such a motion could be brought on an emergency basis, to ensure that such a motion would be brought before the Court quickly to resolve the alleged need for the PCO. Thus, if the situation changes in the future, the United States Trustee or any party in interest could quickly bring that change to the Court's attention for resolution.

NO PREVIOUS REQUEST

50. No previous application for the relief sought herein has been made to this or any other Court.

NOTICE

51. This Motion to Forgo PCO Appointment and notice of the Motion to Forgo PCO Appointment will be served respectively on Master Service List No. 1 (dated July 16, 2024) and Master Notice List No. 1 (dated July 16, 2024). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1). The Debtors submit that, under the circumstances, no other or further notice is required.

The Debtors request that the Court enter an order granting (a) the relief requested herein;

(b) finding that no PCO is necessary for the protection of the residents receiving treatment in the Debtors' facilities at this time; and (c) granting such other and further relief as is just and proper under the circumstances.

Dated: July 16, 2024

St. Louis, Missouri

Respectfully submitted,

DENTONS US LLP

/s/ Stephen O'Brien

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