



PATIENT CARE OMBUDSMAN: A NEW ROLE IN HEALTH CARE BANKRUPTCY CASES

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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 implemented certain amendments to the Bankruptcy Code that govern the operation of health care businesses while in bankruptcy. One significant modification is the creation of a Patient Care Ombudsman ("PCO"). The PCO is an independent professional appointed by the U.S. Trustee, who is charged with the duty to monitor the quality of patient care provided by debtor health care businesses.

There are a number of requirements the PCO must follow once appointed, making it is advisable for a PCO to retain bankruptcy counsel to help navigate the procedural complexities. For instance, the PCO must formally report findings regarding the quality of patient care to the Bankruptcy Court every 60 days, and if the PCO finds that the quality of patient care is "declining significantly," the PCO must immediately report such a decline in writing. Despite this directive, the Bankruptcy Code does not automatically grant the PCO authority to review patient records. Rather, upon appointment the PCO must petition the Bankruptcy Court for authority to review patient records. In granting such authority, the judge is required to impose restrictions on the PCO to ensure patient confidentiality.

The law governing the appointment of a PCO is new and evolving. As more healthcare business bankruptcy cases are filed, it is anticipated that the PCO's role will grow and become better defined.



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