

NATIONAL LONG-TERM CARE OMBUDSMAN RESOURCE CENTER

TO: State LTC Ombudsman
FROM: Lori Smetanka
DATE: October 13, 2004

RE: New Bankruptcy Law and Role of the State Ombudsman

As you are aware, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 goes into effect on Monday, October 17, 2005. One of the provisions of this new law is a provision for the appointment of an ombudsman to act as a patient advocate when a health care business files for bankruptcy.

If the health care business provides long-term care services, the State LTC Ombudsman may be appointed by the Bankruptcy Court as the "Patient Care Ombudsman." The role of the patient care ombudsman is to "monitor the quality of patient care and represent the interests of the patients...."

At least 3 state ombudsmen have been contacted in the last few weeks by the Office of the U.S. Trustee Program responsible for the oversight of bankruptcy cases, making them aware that the law goes into effect October 17, and that they may be appointed as Patient Care Ombudsman in any future cases.

There is a provision in the law to compensate the patient care ombudsman for his/her services.

John Willis, TX State Ombudsman, was appointed as a Patient Care Ombudsman in a bankruptcy case in Texas in 2002. I have attached information about the Texas situation – including John's write up (available on the NORC website at www.ltombudsman.org); a press release from the Texas Office of Attorney General; and some notes from a conversation I had with John about his experience.

Also attached are copies of the bankruptcy law language, the definition of long-term care facility in this law; and the compensation provisions of the law.

Some issues to consider regarding the State Ombudsman's role as Patient Care Advocate:

- **Corporations that have facilities in multiple states** –it is unclear from the language of the law whether it is expected that the patient care ombudsman will serve as such for all residents/facilities that are part of the bankrupt corporation. Or if ombudsmen will be appointed or coordinated in each state in which the corporation operates.
- **Facilities that do not provide long-term care services** --- the language of the law provides that the State LTC Ombudsman may be appointed if the debtor is a health care business that provides long-term care. Otherwise, the

court trustee is to appoint a “disinterested person to serve as such ombudsman.”

- **Can the State LTC Ombudsman Choose not to serve as Patient Care Ombudsman?** – This is not clear in the law. The authority to appoint lies with the U.S. Trustee. The SLTCO likely would have to provide support for why s/he should not, or cannot, serve in this capacity.
- **Structure of the Role/Responsibilities of the Patient Care Ombudsman** – Putting structure on the roles and responsibilities all parties involved --- communication between your office and the court; your office and the corporation -- requiring written documentation of plans of correction and actions taken to resolve complaints and issues raised by the ombudsman.
- **Adequate Compensation** – John noted that this role is very time consuming, and involves not only the State Ombudsman, but legal counsel and support, and also the local long-term care ombudsmen.
- **What is the role of other agencies, such as Licensing and Certification?** – In the Texas case, L&C played no role other than performing their regular survey duties. HCFA (now CMS) asked states, as long ago as 1999, to be prepared to address the possibility that some national chains, due to financial difficulties, may find themselves in situations which adversely affect resident care. They needed to submit to HCFA a contingency plan that was useable for a variety of situations that could affect the health and safety of residents. Has your state submitted a contingency plan? What’s in it?

The Ombudsman Resource Center will continue to pursue information and guidance on this issue, as well as opportunities for State Ombudsmen to discuss their concerns, questions, and experiences.

Please make NORC staff aware if you have been contacted by the Department of Justice Trustee’s Office, or if you have been appointed as a Patient Care Ombudsman in a bankruptcy case.