

party in interest or the United States trustee disagrees with the determination by the debtor or the petitioning creditors as to whether the debtor is a health care business, this rule provides procedures for resolving the dispute.

Rule 2007.2 Appointment of Patient Care Ombudsman in a Health Care Business Case

1 (a) ORDER TO APPOINT PATIENT CARE

2 OMBUDSMAN. In a chapter 7, chapter 9, or chapter 11 case in
3 which the debtor is a health care business, the court shall order
4 the appointment of a patient care ombudsman under § 333 of the
5 Code, unless the court, on motion of the United States trustee or a
6 party in interest filed not later than 20 days after the
7 commencement of the case or another time fixed by the court,
8 finds that the appointment of a patient care ombudsman is not
9 necessary for the protection of patients under the specific
10 circumstances of the case.

11 (b) MOTION FOR ORDER TO APPOINT OMBUDSMAN.

12 If the court has ordered that the appointment of an ombudsman is
13 not necessary, or has ordered the termination of the appointment
14 of an ombudsman, the court, on motion of the United States
15 trustee or a party in interest, may order the appointment at any
16 time during the case if the court finds that the appointment of an
17 ombudsman has become necessary to protect patients.

18 (c) APPOINTMENT OF OMBUDSMAN. If a patient care
19 ombudsman is appointed under § 333, the United States trustee
20 shall promptly file a notice of the appointment, including the
21 name and address of the person appointed. Unless the person
22 appointed is a State Long-Term Care Ombudsman, the notice
23 shall be accompanied by a verified statement of the person
24 appointed setting forth the person's connections with the debtor,
25 creditors, patients, any other party in interest, their respective
26 attorneys and accountants, the United States trustee, and any
27 person employed in the office of the United States trustee.

28 (d) TERMINATION OF APPOINTMENT. On motion of the
29 United States trustee or a party in interest, the court may
30 terminate the appointment of a patient care ombudsman if the
31 court finds that the appointment is not necessary for the protection
32 of patients.

33 (e) MOTION. A motion under this rule shall be governed by
34 Rule 9014. The motion shall be transmitted to the United States
35 trustee and served on the debtor, the trustee, any committee
36 elected under § 705 or appointed under § 1102 of the Code or its
37 authorized agent, or, if the case is a chapter 9 municipality case or
38 a chapter 11 reorganization case and no committee of unsecured

39 creditors has been appointed under § 1102, on the creditors
40 included on the list filed under Rule 1007(d), and such other
41 entities as the court may direct.

COMMITTEE NOTE

Section 333 of the Code, added in 2005, requires the court to order the appointment of a health care ombudsman within the first 30 days of a health care business case, unless the court finds that the appointment is not necessary for the protection of patients. The rule recognizes this requirement and provides a procedure by which a party may obtain a court order finding that the appointment of a patient care ombudsman is unnecessary. In the absence of a timely motion under subdivision (a) of this rule, the court will enter an order directing the United States trustee to appoint the ombudsman.

Subdivision (b) recognizes that, despite a previous order finding that a patient care ombudsman is not necessary, circumstances of the case may change or newly discovered evidence may demonstrate the necessity of an ombudsman to protect the interests of patients. In that event, a party may move the court for an order directing the appointment of an ombudsman.

When the appointment of a patient care ombudsman is ordered, the United States trustee is required to appoint a disinterested person to serve in that capacity. Court approval of the appointment is not required, but subdivision (c) requires the person appointed, if not a State Long-Term Care Ombudsman, to file a verified statement similar to the statement filed by profession persons under Rule 2014 so that parties in interest will have information relevant to disinterestedness. If a party believes that the person appointed is not disinterested, it may file a motion asking the court to find that the person is not eligible to serve.

Subdivision (d) permits parties in interest to move for the termination of the appointment of a patient care ombudsman. If the movant can show that there no longer is any need for the ombudsman, the court may order the termination of the

appointment.

1 **Rule 2015.1 Patient Care Ombudsman**

2 (a) REPORTS. Unless the court orders otherwise, a patient
3 care ombudsman, at least 10 days before making a report under §
4 333(b)(2) of the Code, shall give notice that the report will be
5 made to the court. The notice shall be transmitted to the United
6 States trustee, posted conspicuously at the health care facility that
7 is the subject of the report, and served on the debtor, the trustee,
8 all patients, and any committee elected under § 705 or appointed
9 under § 1102 of the Code or its authorized agent, or, if the case is
10 a chapter 9 municipality case or a chapter 11 reorganization case
11 and no committee of unsecured creditors has been appointed
12 under § 1102, on the creditors included on the list filed under
13 Rule 1007(d), and such other entities as the court may direct. The
14 notice shall state the date and time when the report will be made,
15 the manner in which the report will be made, and, if the report is
16 in writing, the name, address, telephone number, email address,
17 and website, if any, of the person from whom a copy of the report
18 may be obtained at the debtor's expense.

19 (b) AUTHORIZATION TO REVIEW CONFIDENTIAL
20 PATIENT RECORDS. A motion by a health care ombudsman

21 under § 333(c) to review confidential patient records shall be
22 governed by Rule 9014, served on the patient and any family
23 member or other contact person whose name and address has been
24 given to the trustee or the debtor for the purpose of providing
25 information regarding the patient's health care, and transmitted to
26 the United States trustee. Unless the court orders otherwise, a
27 hearing on the motion may be commenced no earlier than 15 days
28 after service of the motion.

COMMITTEE NOTE

This rule implements § 333, added to the Code in 2005. Subdivision (a) is designed to give parties in interest, including patients or their representatives, sufficient notice so that they will be able to review written reports or attend hearings at which reports are made. The rule permits a notice to relate to a single report or to periodic reports to be given during the case. For example, the ombudsman may give notice that reports will be made at specified intervals or dates during the case.

Subdivision (a) of the rule requires that the notice be posted conspicuously at the health care facility in a place where it will be seen by patients and their families or others visiting the patient. This may require posting in common areas and patient rooms within the facility. Because health care facilities and the patients they serve can vary greatly, the locations of the posted notice should be tailored to the specific facility that is the subject of the report.

Subdivision (b) requires the ombudsman to notify the patient and the United States trustee that the ombudsman is seeking access to confidential patient records so that they will be able to appear and be heard on the matter. This procedure should assist the court in reaching its decision both as to access to the records and appropriate restrictions on that access to ensure continued

confidentiality.

RULE 2015.2 Transfer of Patient in Health Care Business Case

1 Unless the court orders otherwise, if the debtor is a health care
2 business, the trustee may not transfer a patient to another health
3 care business under § 704(a)(12) of the Code unless the trustee
4 gives at least 10 days' notice of the transfer to the patient care
5 ombudsman, if any, and to the patient and any family member or
6 other contact person whose name and address has been given to
7 the trustee or the debtor for the purpose of providing information
8 regarding the patient's health care.

COMMITTEE NOTE

Section 704(a)(12), added to the Code in 2005, authorizes the trustee to relocate patients when a health care business debtor's facility is in the process of being closed. The Code permits the trustee to take this action without the need for any court order, but the notice required by this rule will enable a patient care ombudsman appointed under § 333, or a patient who contends that the trustee's actions violate § 704(a)(12), to have those issues resolved before the patient is transferred.

The rule also permits the court to enter an order dispensing with or altering the notice requirement in proper circumstances. The facility could be closed immediately, or very quickly, such that 10 days notice would not be possible in some instances. In that event, the court may shorten the time required for notice.

Rule 6011. Disposal of Patient Records in Health Care Business Case

1 (a) COURT APPROVAL OF NOTICE OF INTENT TO
2 DISPOSE OF PATIENT RECORDS. A trustee may not publish
3 or mail a notice of intent to dispose of patient records under
4 § 351(1)(A) or (B) of the Code unless the court approves the form
5 of notice.

6 (b) NOTICE UNDER § 351(1)(B). Any notice regarding the
7 claiming or disposing of patient records under § 351(1) (B) shall:

8 (1) state the name of the patient whose records the
9 trustee proposes to destroy;

10 (2) identify with particularity the health care facility
11 whose patient records the trustee proposes to destroy;

12 (3) state the name, address, telephone number, email
13 address, and website, if any, of a person from whom
14 information about the patient records and how those
15 records may be claimed can be obtained;

16 (4) direct that a patient's family member or other
17 representative who receives the notice inform the patient of
18 the notice;

19 (5) state the date by which patient records must be
20 claimed, and that if they are not so claimed the records will

21 be destroyed;
22 (6) include such other information as ordered by the
23 court; and
24 (7) be mailed to the patient and any family member or
25 other contact person whose name and address have been
26 given to the trustee or the debtor for the purpose of
27 providing information regarding the patient's health care,
28 and to known insurance companies providing health care
29 insurance to the patient.

30 (c) REPORT OF DESTRUCTION OF RECORDS. The
31 trustee shall file a report not later than 30 days after the
32 destruction of patient records under § 351(3) certifying that the
33 unclaimed records have been destroyed and explaining the
34 method used to effect the destruction. The report shall not
35 identify patients by name or other identifying information.

COMMITTEE NOTE

This rule implements § 351(1), which was added to the Code in 2005. That provision requires the trustee to notify patients that their patient records will be destroyed if they remain unclaimed for one year after the publication of a notice in an appropriate newspaper. The Code provision also requires that individualized notice be sent to each patient and to the patient's family member or other contact person.

The variety of health care businesses and the range of patients currently and formerly under the care of the debtor present the

need for flexibility in the creation and publication of the notices that will be given. Nevertheless, there are some matters that must be included in any notice being given to patients, their family members, and contact persons to ensure that sufficient information is provided to these persons regarding the trustee's intent to dispose of patient records. Subdivision (b) of the rule lists the minimum requirements and provides further that the court may order the inclusion in the notice of any other information as is appropriate.

Subdivision (c) requires the trustee to file a report with the court regarding the destruction of patient records. This certification is intended to ensure that the trustee properly completed the destruction process. However, because the report will be filed with the court and ordinarily will be available to the public under § 107, the names, addresses, and other identifying information of the patient shall not be included in the report so that the patient's privacy will be maintained.