

IN THE UNITED STATE BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

**FILED**

JUN 22 1998

IN RE:

QUALICARE, INC.,

Debtor.

)  
)  
) 97-16891 BH  
) Chapter 7

GRANT PRICE  
CLERK, U.S. BANKRUPTCY COURT  
WESTERN DISTRICT OF OKLAHOMA  
BY: \_\_\_\_\_, DEPUTY

APPLICATION/MOTION FOR ORDER TO EMPLOY  
RECORDS AUDITOR AND/OR CUSTODIAN

COMES NOW, Lyle R. Nelson, duly appointed Trustee herein, and hereby requests that this Court issue its Order authorizing the Trustee to employ pursuant to Section 327 of Title 11, U.S.C. ("Code") and individual or company to audit and/or inventory the records of the Debtor presently in the possession of the Trustee. In support of its request, the Trustee would state as follows:

1. The Debtor was primarily involved in the providing of home health care as authorized by Medicaid/Medicare regulations. The vast majority, though not all of the Debtors services were to be reimbursed by Medicaid/Medicare. The Debtor did perform some private insurance reimbursable services.

2. The Trustee has been inundated with investigatory subpoena's by the U.S. Attorney's office, the FBI, and requests have been orally made by the Department of Housing and Urban Development, the Oklahoma State Employment Commission, Palmetto Benefits Administrator, the Security and Exchange Commission, the U.S. Department of Labor and others to examine the records as well. All of this was never anticipated by the Trustee when the case was filed.

3. To date, three (3) subpoena's have been served on the Trustee by the FBI. In complying with one subpoena to date, the Trustee has been required to incur, on behalf of the estate, additional costs not originally contemplated. Specifically, the auditors for the estate HCBS, had, as part of the agreement negotiated by the Trustee, agreed to store the records, which are considerable.

4. After an FBI subpoena, and months of negotiation, including conversations with the Office of the United States Attorney and the Office of the United States Trustee, the records were

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moved to the Trustee's offices, with a corresponding increase in expense to the Estate in that the Estate has been required to lease space to store the hundreds of boxes of records. The original agreement with the FBI and Office of the U.S. Attorney was that the records could then be reviewed by the various agencies.

5. Now, the U.S. Attorney and FBI have unilateral set aside that informal agreement. The Trustee has again been served with a subpoena, this time to appear before a grand jury which is apparently investigating the Debtor. The FBI and U.S. Attorney are now insisting that the Estate inventory the records, rather than just make them available. In brief, it appears that the U.S. Attorney and FBI would like this Estate to perform their work for them.

6. At issue is approximately 374 bankers size boxes of records. The Trustee can only estimate, but there are probably several hundred thousand pages of records. The subpoena also directs and demands that all of the records be delivered to the grand jury. The Trustee believes that this act could materially impair the Estates ability to recover additional accounts receivable which have been discovered. These receivables total over \$1.1mm.

7. Since there are many agencies competing for the records, and due to the enormous size of the records involved, it appears that the Trustee should employ an individual to inventory the records, for all the various agencies wanting those records and, if ultimately necessary, depending on the Trustee's objections to production of the original records to the grand jury, to maintain those records.

8. If the FBI succeeds in its apparent plan to force this estate to do its work for them, the estate may not be able to hold the records, and the Trustee may not actually need a records custodian. However, due to the various and competing requests, and the grand jury/FBI subpoena, an individual is needed to at least inventory the records prior to July 7, 1998, the date the grand jury subpoena must be complied with.



9. The Trustee is presently searching for an individual or company to accept this task. The Trustee has been unable to locate any person to accept this responsibility as of yet. However, time is short. The grand jury subpoena directing the production is for July 7, 1998, right after a holiday weekend. The Trustee is actively looking and searching for a person willing to be a records custodian because of the competing requests for these records.

10. The Trustee seeks an Order of this Court, authorizing the Trustee to retain a records custodian to be paid up to \$25.00 an hour, on a contract basis, by the estate. From the few people the trustee has visited with, most will not accept less than this amount. Further, the Trustee has had a difficult time obtaining any interest since the Trustee cannot say specifically what can be offered.

11. The Trustee will provide, upon and with separate pleading, an applicable affidavit that the records custodian, whoever that might be (or whatever company that might be) has no interest adverse from the estate.

12. It is consistent with practice and procedure before this Court that the employment of representatives for the estate may be made by Application. The Estate has already employed attorneys, accountants, and auditors by Application. The Trustee simply seeks to employ an individual or company to inventory the records and, if possible, become the records custodian.

13. This Application is in the best interests of this estate. The subpoena was served on the Trustee Friday, June 19, 1998. There is only slightly over two (2) weeks before the grand jury appearance is required. Time will be very short to get the records inventoried. If the Trustee is not able to employ an records custodian, the inventory of the records could fall to the accountant or the counsel for the Trustee, which would be at a significantly higher cost to this estate.

14. If a traditional Motion is required, and the trustee is required to wait 18 days before an order is presented, the Trustee will not have the records inventoried in time to comply with the grand jury subpoena. The costs which would be incurred by the estate and associated with defending a

complaint for failing to timely comply with a subpoena would exceed the estimated costs of employing a records custodian.

15. The Trustee cannot estimate with any degree of certainty the costs which would be incurred in employing a records custodian/examiner. There are so many factors outside the control of the Trustee which will impact the hours required by the records custodian/examiner. They include, but are not limited to:

(a) how many grand jury appearances are required, and what records the grand jury may want;

(b) how many days the FBI, Palmetto, Department of Housing and Urban Development, the Oklahoma Employment Security Commission, the Securities, the U.S. Department of Labor and Exchange Commission want to examine the records. The FBI has already caused the trustee's counsel to lose the use of one of his employees for approximately 4 days to monitor the FBI;

(c) whether the grand jury attempts to retain the original records, and/or if the Court will agree with the Trustee's arguments that the original records can be retained by the Trustee.

16. Notwithstanding the foregoing, the Trustee generally believes, without limitation, the work of an records auditor should not exceed 200 hours. At \$25.00 per hour, this would result in gross charges to the estate of \$5,000.00.

17. The trustee wishes that there was an alternative. However, the trustee has continually suggested, asked, plead, spoken and directed the various governmental agencies to conduct their own research, rather than direct this court to effectively perform their job for them. Apparently, that option will not be available. To comply with the subpoena's already served will require some unique assistance.

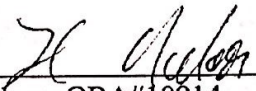
18. Section 327 of Title 11 U.S.C. authorizes the Trustee to employ such persons or company. If the Trustee cannot locate an individual in the next few days, the Trustee will consider



hiring a temporary agency. Again, the Trustee is in need of this Order to at least be able to obtain the interest of someone or a company to perform this work on behalf of the estate.

WHEREFORE, premises considered, the Trustee respectfully requests that this Court issue its Order allowing the Trustee to employ either an individual or company, at a rate not to exceed \$25.00 per hour, to perform record auditing and/or record retention services on behalf of the estate.

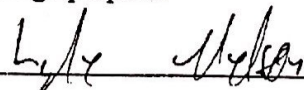
Respectfully submitted,

  
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ATTORNEY FOR TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was mailed to counsel for Debtor, the Debtor, and all parties who have entered an appearance herein as reflected on the attached matrix on June 23, 1998, by regular mail, postage prepaid.

  
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