

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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| In re: |) | Chapter 11 |
| |) | Case No. 18-05665 |
| Curae Health, Inc., <i>et al.</i> , |) | Judge Walker |
| |) | Hearing Date: 05/09/19 at 9:00 a.m. |
| Debtors. |) | Re: D.I. No. 962, 970 |

OBJECTION OF CIGNA TO DEBTORS’ EXPEDITED MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF NORTHWEST MISSISSIPPI REGIONAL MEDICAL CENTER FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (II) APPROVING THE CLARKSDALE APA; (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

Cigna Health and Life Insurance Company (“Cigna”) hereby objects to the *Motion for Entry of an Order (I) Authorizing the Sale of Northwest Mississippi Regional Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (II) Approving the Clarksdale APA; (III) Authorizing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief* [D.I. 962] (“Sale Motion”), and in support thereof, respectfully state as follows:

BACKGROUND

1. Cigna and the above-captioned debtors (collectively “Debtors”) are parties to the following agreements (“Cigna Provider Agreements”), pursuant to which the Debtors, through the Northwest Mississippi Regional Medical Center that they operate (“Hospital”), provide covered healthcare services to eligible participants within the Cigna Provider Network:

- *Hospital Services Agreement* between Debtor Clarksdale Regional Medical Center, Inc. and Cigna, effective December 1, 2017 including all amendments, addendums, exhibits, schedules, etc. related thereto (“HSA”).

- *Provider Group Services Agreement* between Debtor Clarksdale Regional Physicians, LLC and Cigna, effective November 1, 2017, including all amendments, addendums, exhibits, schedules, etc. related thereto (“PSA”).

The Cigna Provider Agreements may not be assigned without written consent from Cigna. The HSA may only be terminated by Debtors on no less than 180 days’ advance written notice, and the PSA may only be terminated by Debtors on no less than 60 days’ advance written notice.

2. Pursuant to the Sale Motion, Debtors propose to sell substantially all of their assets related to the Hospital (“Sale”) to CHS/Community Health Systems, Inc. (“Purchaser”) as of the effective date of the Sale (“Effective Date”) pursuant to an Asset Purchase Agreement (“APA”). As part of the Sale, Debtors seek approval of the assumption and assignment of certain of Debtors’ executory contracts (“Assumed Contracts”) to the Purchaser.

3. The Sale Motion does not include a list of Assumed Contracts. Likewise, although the APA states that the list of contracts to be assumed and assigned as part of the Sale is included on its Schedules 2.1(d), no such Schedule is attached.

4. On April 25, 2019, the Debtors filed the *Notice of: (I) Debtors’ Intent to Assume and Assign Certain Executory Contracts, Unexpired Leases of Personal Property, and Unexpired Leases of Nonresidential Real Property; and (II) Cure Amounts Related to the Foregoing* [D.I. 970] (“Assumption Notice”). The Assumption Notice does not identify either of the Cigna Provider Agreements as contracts to be assumed and assigned. However, the Sale Motion and the APA permit the Purchaser to modify the list of Assumed Contracts up to 30 days after the Closing Date of the Sale.

OBJECTION

5. Cigna objects to the Sale Motion because it fails to provide for adequate and definitive notice of the proposed disposition of the Cigna Provider Agreements. Further, Cigna

objects to the lack of adequate assurance of future performance under the Cigna Provider Agreements by any proposed assignee, and preserves its right to cure under 11 U.S.C. § 365(b)(1).

A. Disposition Of The Provider Agreements.

6. Neither the Sale Motion nor the APA provide a list of Assumed Contracts. Further, both the Sale Motion and the Assumption Notice would permit the list of Assumed Contracts to be modified at any time, including up to 30 days after the Closing Date of the Sale. Thus, not only does Cigna currently have no notice of the proposed disposition of the Cigna Provider Agreements, the Sale Motion proposes that Cigna will not have any definitive notice until well after the Sale closes. This is both impermissible and impractical, and it unduly prejudices both Cigna and patients of the Hospital.

7. Because the Debtors are proposing to sell all of their Hospital operations, any failure to assume and assign the Cigna Provider Agreements as of the Effective Date as part of the Sale will sever the Cigna Provider Agreements from the Hospital, and thus immediately (as of the Effective Date of the Sale) sever the Hospital and its private practice physicians from Cigna's Provider Network. This *de facto* termination of the Cigna Provider Agreements will have a significant and immediate effect on, among others: (i) those patients who are in the Hospital awaiting or recovering from treatment because the Hospital is currently a Cigna in-network provider under the patients' healthcare coverage; (ii) people with Cigna healthcare coverage who may be contemplating treatment at the Hospital and have already received or are awaiting pre-authorization; and (iii) patients of private practice physicians in Cigna's health services network who have privileges only at the Hospital. Additionally, any failure to assume and assign the Cigna Provider Agreements as of the Effective Date as part of the Sale may

disrupt certain area doctors, employer groups and covered persons. It is for these reasons – the protection of third parties – that the Cigna Provider Agreements require minimum, definitive notice of any no-cause termination.

8. Adequate, advance notice of the Debtors’ definitive, irrevocable decision to assume and assign either or both of the Cigna Provider Agreements must be provided to ensure that patients, covered individuals in the Hospital community and healthcare providers are smoothly transitioned from the Hospital and are not economically prejudiced through no fault of their own. Accordingly, Cigna hereby requests that the Debtors, no later than the earlier of (i) five (5) business days prior to the hearing on the Sale Motion, and (ii) thirty (30) days prior to the Effective Date, provide Cigna with written notice of its irrevocable decision as to whether or not the Debtors propose to assume and assign either or both of the Cigna Provider Agreements as part of the Sale.

B. Adequate Assurance.

9. To the extent that the Debtors seek to assume and assign either of the Cigna Provider Agreements, they must provide Cigna with adequate assurance of the Purchaser’s future performance thereunder (“Adequate Assurance Information”). 11 U.S.C. § 365(b)(1)(C).

10. Healthcare providers within the Cigna Provider Network are carefully evaluated and must be credentialed prior to being accepted into that network. Adequate Assurance Information relating to the Purchaser and its proposed use and operation of the Hospital must be carefully reviewed and evaluated by multiple departments at Cigna in the context of, and consistent with, the terms and functions of the Cigna Provider Agreements. Cigna will need adequate time to complete this review and evaluation. Accordingly, no hearing on the proposed assumption and assignment of the Cigna Provider Agreements should be held until at least ten

(10) days after Adequate Assurance Information for any proposed assignee of the Cigna Provider Agreements is provided to Cigna and its undersigned counsel.

C. Protective Cure Objection.

11. When a contract is assumed under section 365 of the Bankruptcy Code, the non-debtor third-party to that contract must be “made whole at the time of the debtor’s assumption of the contract.” *Id.* (emphasis added). Accordingly, any cure amount for the Cigna Provider Agreements must include all accrued and unpaid amounts due under the Cigna Provider Agreements as of the Effective Date. *See* 11 U.S.C. § 365(b)(1).

12. Amounts due and owing to Cigna under the Cigna Provider Agreements accrue and are satisfied on a rolling basis. Accordingly, amounts will continue to become due and owing to Cigna under the Cigna Provider Agreements on and after the date of any deadline to object to a proposed cure amount, and no cure amount can be fixed prior to the Effective Date.

13. To the extent that the Debtors seek to assume and assign either or both of the Cigna Provider Agreements, the Debtors must pay the full amount due and unpaid thereunder as of the Effective Date. *See* 11 U.S.C. § 365(b)(1); *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998) (“The cure of a default under an unexpired lease pursuant to 11 U.S.C. § 365 is more akin to a condition precedent to the assumption of a contract obligation than it is to a claim in bankruptcy”).

D. Reservation Of Right To Affirmatively Object To Any Proposed Assignment Of The Cigna Provider Agreements.

14. The Cigna Provider Agreements are in the nature of personal services contracts. Cigna’s approval of a healthcare provider for the Cigna Provider Network is a critical component to all Cigna Provider Agreements. Persons whose healthcare insurance is provided by or through Cigna rely on Cigna’s diligence in selecting and maintaining providers for the Cigna Provider

Network. For this reason, the Cigna Provider Agreements require Cigna's consent to any proposed assignment. Cigna hereby reserves its rights to decline to give such consent, and oppose any such assignment.

WHEREFORE, Cigna respectfully requests that this Court: (i) deny the Sale Motion to the extent it is inconsistent with the foregoing, and (ii) grant Cigna such additional relief as this Court deems just and equitable.

Dated: May 3, 2019

WYATT TARRANT & COMBS LLP

/s/ B. Anthony Saunders
B. Anthony Saunders
333 Commerce Street
Suite 1400
Nashville, TN 37201
Telephone: (615) 251-6670
Facsimile: (615) 256-1726
Email: tsaunders@wyattfirm.com

and

CONNOLLY GALLAGHER LLP

/s/ Jeffrey C. Wisler
Jeffrey C. Wisler (DE Bar No. 2795)
1201 North Market Street, 20th Floor
Wilmington, Delaware 19801
Telephone: (302) 757-7300
Facsimile: (302) 658-0380
Email: jwisler@connollygallagher.com

Counsel to Cigna Health and Life Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that, on May 3, 2019, a copy of the foregoing document was transmitted electronically to the parties consenting to electronic service in this case through the ECF system maintained by the United State Bankruptcy Court for the Middle District of Tennessee.

/s/ B. Anthony Saunders
B. Anthony Saunders