

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

In re:)	
)	Chapter 11
Curae Health, Inc., <i>et al.</i> ¹)	Case No. 18-05665
)	
1721 Midpark Road, Suite B200)	Judge Walker
Knoxville, TN 37921)	
Debtors.)	Jointly Administered

**ORDER PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY
PROCEDURE APPROVING AMORY SETTLEMENT AGREEMENT AND
BATESVILLE SETTLEMENT AGREEMENT**

Upon the motion [Docket No. 980] (the “**Motion**”)² of the Debtors for entry of an order (the “**Order**”) approving the Amory Settlement Agreement among the Amory Parties and the Batesville Settlement Agreement among the Batesville Parties pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), all as more fully set forth in the Motion; and the Court having reviewed the Motion, the First Day Declaration, and upon the record of the hearing on the Motion, if any; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

given; and it appearing that no other or further notice is required; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED, as set forth herein.
2. The Court has jurisdiction over the parties and subject matter.
3. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of the Bankruptcy Rules and Local Rules are satisfied by such notice.
4. The Amory Settlement Agreement is hereby approved and Debtors are authorized to enter into the Amory Settlement Agreement. The automatic stay under Bankruptcy Code section 362(a) shall be, and hereby is, modified to the extent necessary to permit the Amory Parties to consummate the Amory Settlement Agreement. Upon entry of this Order and execution of the Amory Settlement Agreement, the Amory Parties shall be deemed to have exchanged mutual releases as provided in paragraphs 5, 6, and 7 of the Amory Settlement Agreement.
5. The Batesville Settlement Agreement is hereby approved and Debtors are authorized to enter into the Batesville Settlement Agreement. The automatic stay under Bankruptcy Code section 362(a) shall be, and hereby is, modified to the extent necessary to permit the Batesville Parties to consummate the Batesville Settlement Agreement. Upon entry of this Order and execution of the Batesville Settlement Agreement, the Batesville Parties shall be deemed to have exchanged mutual releases as provided in paragraphs 4, 5, and 6 of the Batesville Settlement Agreement.
6. The Clarksdale MDOM Claim and Clarksdale Estate Claims are explicitly preserved. Nothing in this Order, the Motion, or the MDOM Settlement Agreements shall be construed as prejudicing any rights or claims of any party with respect to the issues raised in the MDOM Motion and the Cross-Motion as they relate to the Clarksdale Hospital, including, but

not limited to, the Clarksdale MDOM Claim and the Clarksdale Estate Claims. The Clarksdale MDOM Claim and the Clarksdale Estate Claims and amounts allegedly owed with respect thereto shall be resolved either by a separate settlement agreement or by this Court following the presentation of evidence and argument by the parties at the Adjourned Hearing.

7. The total administrative claim alleged by MDOM shall be reduced by the amounts of the Amory MDOM Claim and the Batesville MDOM Claim as of April 1, 2019. MDOM's only remaining claim against the Debtors and their estates shall be the Clarksdale MDOM Claim, which as of April 1, 2019, totaled \$1,724,248.83.

8. The total amount alleged by Debtors and the Committee with respect to the Estate Claims against MDOM shall be reduced by the amounts of the Amory Estate Claims and the Batesville Estate Claims as of April 1, 2019.

9. Nothing contained in this Order or the MDOM Settlement Agreements shall be construed as a determination or an admission of liability by Debtors, their estates, the Committee, MDOM, NMHS, CHS, or Progressive.

10. Debtors, the Committee, MDOM, NMHS, and Progressive are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion and the MDOM Settlement Agreements.

11. This Order and the Settlement Agreements shall be binding on the Parties, any of the Parties' successors and/or assigns, and all other creditors and parties in interest in the Chapter 11 Cases (including, without limitation, the Creditors' Committee, any trustee or examiner appointed in the Chapter 11 Cases or any chapter 7 trustee, or any other person, party or entity to, in any jurisdiction anywhere in the world, directly or indirectly).

12. The provisions of this Order shall be incorporated into any plan and confirmation order entered in these cases and shall survive any order dismissing any or all of these cases or converting any or all of these cases under any chapter of the Bankruptcy Code.

13. The Debtors shall not file a Plan or amend the Plan in a manner that is inconsistent with the terms and provisions of the Settlement Agreements, take any other action in the Chapter 11 Cases that is inconsistent with the terms and provisions of the Settlement Agreements, or propose terms for any order confirming the Plan that are inconsistent with these Settlement Agreements.

14. The Parties to the Settlement Agreements have reserved all other rights or defenses that they may have with respect to the Plan.

15. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order and the MDOM Settlement Agreements.

This Order Was Signed And Entered Electronically As Indicated At The Top Of The First Page

Prepared and submitted by:

POLSINELLI PC

/s/ Michael Malone

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-and-

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*Counsel to the Debtors and
Debtors in Possession*

Exhibit 1

Amory Settlement Agreement

AMORY SETTLEMENT AGREEMENT

*In re Curae Health, Inc., Case No. 18-05665*¹
United States Bankruptcy Court for the Middle District of Tennessee

This Settlement Agreement (the “**Settlement Agreement**”) is entered into as of the ___ day of May, 2019, by and among Debtors and debtors-in-possession in the above captioned chapter 11 bankruptcy case (“**Debtors**”), the State of Mississippi Division of Medicaid (“**MDOM**”), the official committee of unsecured creditors appointed in the above captioned case (the “**Committee**”), and North Mississippi Health Services, Inc. (“**NMHS**”) to resolve the claims raised in the MDOM Motion (defined below) related to the Amory Hospital (defined below), the claims raised in the Cross-Motion (defined below) of the Debtors and the Committee related to the Amory Hospital, and any existing claims and disputes between NMHS and MDOM. Debtors, MDOM, the Committee, and NMHS are each referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, on August 24, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the above-referenced, jointly-administered bankruptcy cases (collectively, the “**Chapter 11 Cases**”) pending in the United States Bankruptcy Court for the Middle District of Tennessee (the “**Bankruptcy Court**”).

WHEREAS, on August 31, 2018, the Debtors filed *Debtors’ Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Gilmore Medical Center, (II) Authorizing the Sale of Gilmore Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Gilmore Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Docket No. 79] (the “**Amory Procedures Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to Gilmore Medical Center (the “**Amory Hospital**”).

WHEREAS, on September 28, 2018, the Bankruptcy Court entered an order on the Amory Procedures Motion [Docket No. 260] (the “**Amory Procedures Order**”) and set a sale hearing for November 27, 2018.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

WHEREAS, on November 30, 2018, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement for the sale of the Amory Hospital to NMHS (the “**Amory APA**”) and authorizing the Debtors to sell the Amory Hospital to NMHS free and clear of all liens, claims, encumbrances, and other interests [Docket No. 506] (the “**Amory Sale Order**”).

WHEREAS, on December 31, 2018, the closing of the sale of the Amory Hospital occurred, with an effective time of 12:01 a.m. on January 1, 2019 (the “**Effective Time**”).

WHEREAS, pursuant to the terms of the Amory APA, \$2,000,000.00 of the Purchase Price (as defined in the Amory APA) was deposited into an escrow account (the “**Amory Escrow Account**”). The Amory Escrow Account constitutes the sole source of satisfaction of any claims which may be asserted by NMHS against Debtors under the Amory APA.

WHEREAS, pursuant to the terms of the Amory APA, Debtors are required to indemnify NMHS for any losses arising out of any Excluded Liabilities (as defined in the Amory APA). Excluded Liabilities under the Amory APA include any liabilities related to the ownership or operation of the Amory Hospital prior to the Effective Time.

WHEREAS, NMHS asserts the MDOM Obligations that came due in 2018 relate to Debtors’ ownership and operation of the Amory Hospital before the Effective Time and are therefore Excluded Liabilities under the Amory APA.

WHEREAS, on February 13, 2019, MDOM filed the *State of Mississippi Division of Medicaid’s Motion to (I) Approve its Administrative Expense, and Compel Payment Thereof, and (II) Upon Any Failure to Pay that the Debtor(s) Be Required to Appear at a Hearing to Show Cause and for the Court to Hear and Consider Whether to Dismiss or Convert the Proceedings* [Docket No. 758] (the “**MDOM Motion**”). The MDOM Motion is fully incorporated herein by reference. In the MDOM Motion, MDOM asserts an administrative expense claim against the Debtors for failure to pay certain obligations, penalties, and interest owed to MDOM (“**MDOM Obligations**”). MDOM asserts a claim against Debtors with respect to the Amory Hospital for unpaid pre- and post-petition MDOM Obligations in the amount of \$[774,659.52] as of April 1, 2019 (the “**Amory MDOM Claim**”). The MDOM Motion is fully incorporated herein by reference.

WHEREAS, on March 26, 2019, the Debtors and the Committee filed the *Joint Objection of the Debtors and Official Committee of Unsecured Creditors Opposing the State of Mississippi Division of Medicaid’s Motion and Joint Cross Motion of the Debtors and Official Committee of Unsecured Creditors Seeking (A) Payment of Actual Damages for the State of Mississippi Division of Medicaid’s Willful Violations of the Automatic Stay and (B) Turnover of Estate Funds* [Docket No. 901] (the “**Cross-Motion**”). The Cross-Motion is fully incorporated herein by reference. In the Cross-Motion, Debtors and the Committee assert certain claims against MDOM regarding, *inter alia*, failure to pay Mississippi Hospital Access Program (“**MHAP**”).

payments to the Amory Hospital (the “**Amory Estate Claims**”). The Cross-Motion is fully incorporated herein by reference.

WHEREAS, on April 2, 2019, MDOM filed the *Reply of the State of Mississippi Division of Medicaid to Joint Objection of the Debtors and Official Committee of Unsecured Creditors and Objection to Cross-Claim* [Docket No. 919] (the “**MDOM Reply and Objection**”). The MDOM Reply and Objection is fully incorporated herein by reference.

WHEREAS, on April 5, 2019, NMHS filed the *Statement of Interested Party North Mississippi Health Services in Response to the State of Mississippi Department of Medicaid’s Motion* [Docket No. 930] (the “**NMHS Response**”).

WHEREAS, a hearing on the MDOM Motion and Cross-Motion was set for April 9, 2019 (the “**Hearing**”).

WHEREAS, prior to the Hearing, the Parties began discussing terms of settlement to resolve the claims asserted in the MDOM Motion and the Cross-Motion.

WHEREAS, at the Hearing, the Parties agreed to adjourn the Hearing to May 9, 2019 to pursue good-faith settlement negotiations.

WHEREAS, the Parties now desire to settle the MDOM Motion and the Cross-Motion with respect to the Amory Hospital as provided in this Settlement Agreement.

WHEREAS, on April __, 2019, Debtors filed the *Expedited Motion for Entry of an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Amory Settlement Agreement and the Batesville Settlement Agreement*, seeking, *inter alia*, entry of an order approving this Settlement Agreement (the “**9019 Order**”).

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual obligations and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Pre-Effective Time MDOM Obligations. NMHS shall pay \$774,659.52 to MDOM on account of the pre-Effective Time MDOM Obligations owed by Debtors in connection with the Amory Hospital. Such payment shall fully and completely satisfy the Amory MDOM Claim.

2. Amory Escrow Account. In accordance with the Amory APA, NMHS shall have the right to withdraw \$774,659.52 from the funds held in the Amory Escrow Account on account of payment of the pre-Effective Time MDOM Obligations.

3. Post-Effective Time MDOM Obligations. NMHS shall pay to MDOM all MDOM Obligations owed in connection with the Amory Hospital that have come due after the Effective Time and shall continue to pay the MDOM Obligations to MDOM going forward as required under state law.

4. MHAP Payments. After receipt of the above referenced payments, MDOM shall pay to NMHS all MHAP payments related to the Amory Hospital that would have come due after the Effective Time and shall continue to pay the MHAP payments to NMHS going forward in accordance with state law and future amendments. For the avoidance of doubt, nothing contained in this Settlement Agreement shall create any contractual rights between MDOM and NMHS as to future tax obligations of NMHS, if any or as to the future payment obligations of MDOM, if any.

5. MDOM Releases. Upon entry of the 9019 Order, MDOM hereby fully and irrevocably releases and discharges (i) Debtors, their estates, and each of the Debtors' employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest; and (ii) NMHS and its employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions, losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, whether arising pre- or post-petition, of any kind, nature or priority, which it now has or holds, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the MDOM Motion solely with respect to the Amory Hospital, including, but not limited to, any claims of MDOM for unpaid MDOM Obligations relating to the Amory Hospital and any claims of MDOM relating to any MHAP payments owed or paid to the Amory Hospital. The claims of MDOM against Batesville Regional Medical Center, Inc., its estate and successor in interest, and against Clarksdale Regional Medical Center, Inc., its estate, any lessee and/or successor in interest, are expressly reserved and are not compromised or released hereunder.

6. Estate and Committee Releases. Upon entry of the 9019 Order, Debtors, on behalf of themselves and their estates, and the Committee hereby fully and forever release and discharge (i) MDOM and its employees, agents, attorneys, representatives, independent contractors, including but not limited to MCO and CCO, affiliates, assignees, licensees, predecessors, successors in interest, insurers and sureties; and (ii) NMHS and its employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions,

losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, which they now have or hold, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the Cross-Motion solely with respect to the Amory Hospital, including, but not limited to, the Amory Estate Claims, any claims of the Debtors' estates relating to unpaid MDOM Obligations for the Amory Hospital and any claims of the Debtors' estates relating to any payments by MDOM allegedly due or payable to the Debtor Amory Regional Medical Center, Inc., or its estate or otherwise allegedly owed or payable to the Amory Hospital. Debtors and their Estates warrant that no other party owns or has an interest in the claims being released in this paragraph. Notwithstanding the foregoing, nothing set forth herein shall be deemed to release NMHS from its obligations under the Amory APA.

7. NMHS Releases. Upon entry of the 9019 Order, NMHS hereby fully and forever releases and discharges (i) Debtors, their estates, and each of the Debtors' employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest; and (ii) MDOM and its employees, agents, attorneys, representatives, independent contractors, including but not limited to MCO and CCO, affiliates, assignees, licensees, predecessors, successors in interest, insurers and sureties, from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions, losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, which they now have or hold, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the MDOM Motion and the Cross-Motion solely with respect to the Amory Hospital, arising on or before December 31, 2018. Provided, however, this release does not apply to the individual denial of patient claims for treatment rendered prior to January 1, 2019. Notwithstanding the foregoing, nothing set forth herein shall be deemed to release the Debtors from their obligations under the Amory APA.

8. Governing Law; Venue. The Parties agree that this Settlement Agreement shall be governed by, and construed in accordance with, the substantive internal laws (as opposed to conflicts of law provisions) and decisions of the State of Mississippi and that any dispute arising from this Settlement Agreement must be heard in the Bankruptcy Court. Notwithstanding the language of this provision, after the above referenced payments are made any future disputes not related to this Settlement Agreement between NMHS and MDOM shall be exclusively governed by the laws of the State of Mississippi and that the exclusive forum shall be the administrative process of MDOM and the appropriate state court located in Hinds County, Mississippi.

9. No Admission. The releases contemplated herein and payment of funds in relation thereto shall not in any way be construed as an admission by any party of any liability whatsoever, and the parties specifically disclaim any liability to or wrongdoing against any persons or entities, on the part of themselves, their estates, their employees, or their agents. Instead the consideration is exchanged in full compromise and settlement of any and all Amory Hospital related claims of every nature, including but not limited to damages, attorneys' fees, costs, or expenses, which any of the parties may have now has or may hereafter have by reason of any and all breaches of contract, torts or other intentional or unintentional conduct, action, omission, employment, agreements, violation of common or statutory law or transactions involving or connected to the parties or any contract between or among the parties. It is expressly understood that the releases shall be a complete bar to all claims or suits for losses, injuries or damages of any nature which the Parties now have against the Released Parties or any one or more of them related to Amory Hospital.

10. Integrated Settlement Agreement. This Settlement Agreement is a full and final integration and resolution of all prior discussions, negotiations, arrangements, relationships, agreements, commitments or contracts of any kind (express or implied, written or verbal) between the Parties and all such prior and any contemporaneous statements, commitments, writings, stipulations, contracts or instruments are superseded hereby and shall not survive the execution of this Settlement Agreement. This Settlement Agreement may only be amended by a written stipulation signed by both of the Parties and no waiver of any right, benefit or interest of a Party hereunder shall be binding unless the said waiver is in writing and signed by the Party charged with such waiver. Each Party hereby acknowledges and represents that, in entering into this Settlement Agreement, the Party has neither received nor relied upon any representations or promises made by the other Party, or the other Party's officers, directors, employees, agents, attorneys, or representatives, other than those representations and promises that are expressly set forth in writing in this Settlement Agreement. The making of any such representations or promises, other than those that are expressly set forth in writing in this Settlement Agreement, is specifically denied by any and all Parties.

11. Counterparts. This Settlement Agreement may be executed in electronic format and in one or more counterparts and when all Parties have executed a counterpart hereof, the said counterparts shall constitute a single, complete and binding contract and Settlement Agreement between the Parties.

12. Authorization. Each Party represents and warrants that the person signing this Settlement Agreement on that Party's behalf is fully authorized to execute this Settlement Agreement on that Party's behalf and to bind them legally to the covenants and stipulations set forth herein. Each person signing this Settlement Agreement represents and warrants that he or she is fully authorized to execute this Settlement Agreement by the Party on whose behalf he or she is signing this Settlement Agreement.

13. No Agency. This Settlement Agreement is not intended, and shall not be construed, to create any relationship of employment, partnership, agency, affiliation, combination, or joint venture between the Parties.

14. EACH PARTY REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT:

(i) IT HAS REVIEWED ITS RECORDS, EVALUATED ITS POSITION AND CONDUCTED DUE DILIGENCE WITH REGARD TO ALL RIGHTS, CLAIMS, OR CAUSES OF ACTION WHATSOEVER WITH RESPECT TO THE OTHER PARTY AND/OR THIS SETTLEMENT AGREEMENT; (ii) IT HAS CONSULTED WITH OR HAS HAD THE OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF ITS OWN CHOICE CONCERNING THIS SETTLEMENT AGREEMENT AND HAS BEEN ADVISED TO DO SO; AND (iii) IT HAS CAREFULLY READ THE FOREGOING, AND KNOWS AND UNDERSTANDS THE CONTENT AND MEANING OF ALL PROVISIONS IN THIS SETTLEMENT AGREEMENT, IS FULLY AWARE OF THE LEGAL EFFECT OF ALL PROVISIONS, AND HAS ENTERED INTO THIS SETTLEMENT AGREEMENT FREELY BASED ON ITS OWN JUDGMENT.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement to be effective as of the date first set forth above by and through their duly authorized representatives.

CURAE HEALTH, INC., ET AL.
DEBTORS AND DEBTORS-IN-
POSSESSION

By: _____
Name: _____
Title: _____

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

By: _____
Name: _____
Title: _____

MISSISSIPPI DIVISION OF MEDICAID

By: _____
Name: _____
Title: _____

NORTH MISSISSIPPI HEALTH
SERVICES, INC.

By: _____
Name: _____
Title: _____

Exhibit 2

Batesville Settlement Agreement

BATESVILLE SETTLEMENT AGREEMENT

*In re Curae Health, Inc., Case No. 18-05665*¹
United States Bankruptcy Court for the Middle District of Tennessee

This Settlement Agreement (the “**Settlement Agreement**”) is entered into as of the ___ day of May, 2019, by and among Debtors and debtors-in-possession in the above captioned chapter 11 bankruptcy case (“**Debtors**”), the State of Mississippi Division of Medicaid (“**MDOM**”), the official committee of unsecured creditors appointed in the above captioned case (the “**Committee**”), and Progressive Medical Management of Batesville, LLC (together with its affiliates, “**Progressive**”) to resolve the claims raised in the MDOM Motion (defined below) related to the Batesville Hospital, the claims raised in the Cross-Motion (defined below) of the Debtors and the Committee related to the Batesville Hospital, and any existing claims and disputes between Progressive and MDOM. Debtors, MDOM, the Committee, and Progressive are each referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

RECITALS

WHEREAS, on August 24, 2018 (the “**Petition Date**”), the Debtors filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the above-referenced, jointly-administered bankruptcy cases (collectively, the “**Chapter 11 Cases**”) pending in the United States Bankruptcy Court for the Middle District of Tennessee (the “**Bankruptcy Court**”).

WHEREAS, on November 6, 2018, the Debtors filed their *Motion for Entry of an Order (I) Authorizing and Approving Bidding Procedures for the Sale of Panola Medical Center, (II) Authorizing the Sale of Panola Medical Center Free and Clear of All Liens, Claims, Encumbrances and Other Interests, (III) Approving Stalking Horse Purchaser, Break-up Fee, and Overbid Protections, (IV) Establishing Certain Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (V) Scheduling an Auction, (VI) Scheduling a Hearing and Objections Deadlines With Respect to the Sale of Panola Medical Center, (VII) Approving the Form and Manner of Notice Thereof, and (VIII) Granting Related Relief* [Docket No. 401] (the “**Batesville Procedures Motion**”), seeking to, *inter alia*, sell all, or substantially all, of their assets related to Panola Medical Center (the “**Batesville Hospital**”).

WHEREAS, on November 30, 2018, the Bankruptcy Court entered an order on the Batesville Procedures Motion [Docket No. 507] (the “**Batesville Procedures Order**”) set a sale hearing.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

WHEREAS, on January 22, 2019, the Bankruptcy Court entered an order, *inter alia*, approving the Asset Purchase Agreement for the sale of the Batesville Hospital to Progressive (the “**Batesville APA**”) and authorizing the Debtors to sell the Batesville Hospital to Progressive free and clear of all liens, claims, encumbrances, and other interests [Docket No. 694] (the “**Batesville Sale Order**”).

WHEREAS, on February 13, 2019, MDOM filed the *State of Mississippi Division of Medicaid’s Motion to (I) Approve its Administrative Expense, and Compel Payment Thereof, and (II) Upon Any Failure to Pay that the Debtor(s) Be Required to Appear at a Hearing to Show Cause and for the Court to Hear and Consider Whether to Dismiss or Convert the Proceedings* [Docket No. 758] (the “**MDOM Motion**”). The MDOM Motion is fully incorporated herein by reference. In the MDOM Motion, MDOM asserts an administrative expense claim against the Debtors for failure to pay certain obligations, interest, and penalties to MDOM (“**MDOM Obligations**”). MDOM asserts a claim against Debtors with respect to the Batesville Hospital for unpaid pre- and post-petition MDOM Obligations in the amount of \$1,664,947.29 as of April 1, 2019 (the “**Batesville MDOM Claims**”). The MDOM Motion is fully incorporated herein by reference.

WHEREAS, on March 13, 2019, the Court entered the *Expedited Consent Order (I) Approving the First Amendment to the Panola APA, (II) Authorizing the Debtors to Pay the Purchase Price from the Sale of Panola Medical Center to ServisFirst Bank, (III) Authorizing Certain Releases, and (IV) Granting Related Relief* [Docket No. 876] (the “**Supplemental Sale Order**”).

WHEREAS, on March 14, 2019, the Sale of the Batesville Hospital closed in accordance with the terms set forth in the Supplemental Sale Order, with an effective time of 12:01 a.m. on March 1, 2019 (the “**Effective Time**”).

WHEREAS, on March 15, 2019, in connection with the Sale of the Batesville Hospital, Progressive mailed a check to MDOM, payable to the order of MDOM, in the amount of \$363,443.09.

WHEREAS, on March 26, 2019, the Debtors and the Committee filed the *Joint Objection of the Debtors and Official Committee of Unsecured Creditors Opposing the State of Mississippi Division of Medicaid’s Motion and Joint Cross Motion of the Debtors and Official Committee of Unsecured Creditors Seeking (A) Payment of Actual Damages for the State of Mississippi Division of Medicaid’s Willful Violations of the Automatic Stay and (B) Turnover of Estate Funds* [Docket No. 901] (the “**Cross-Motion**”). The Cross-Motion is fully incorporated herein by reference. In the Cross-Motion, Debtors and the Committee assert certain claims against MDOM regarding, *inter alia*, failure to pay Mississippi Hospital Access Program (“**MHAP**”) payments to the Batesville Hospital (the “**Batesville Estate Claims**”).

WHEREAS, on April 2, 2019, MDOM filed the *Reply of the State of Mississippi Division of Medicaid to Joint Objection of the Debtors and Official Committee of Unsecured Creditors and Objection to Cross-Claim* [Docket No. 919] (the “**MDOM Reply and Objection**”). The MDOM Reply and Objection is fully incorporated herein by reference.

WHEREAS, a hearing on the MDOM Motion and Cross-Motion was set for April 9, 2019 (the “**Hearing**”).

WHEREAS, prior to the Hearing, the Parties began discussing terms of settlement to resolve the claims asserted in the MDOM Motion and the Cross-Motion.

WHEREAS, at the Hearing, the Parties agreed to adjourn the Hearing to May 9, 2019 to pursue good-faith settlement negotiations.

WHEREAS, the Parties now desire to settle the MDOM Motion and the Cross-Motion with respect to the Batesville Hospital as provided in this Settlement Agreement.

WHEREAS, on April __, 2019, Debtors filed the *Expedited Motion for Entry of an Order Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure Approving the Amory Settlement Agreement and the Batesville Settlement Agreement*, seeking, *inter alia*, entry of an order approving this Settlement Agreement (the “**9019 Order**”).

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual obligations and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Pre-April 2019 MDOM Obligations. MDOM shall recoup its Batesville MDOM Claim in relation to the Batesville Hospital from the January, February, and March 2019 supplemental payments and shall deduct the remaining balance due it from the \$363,443.09, tendered to MDOM following the Batesville Sale. Application of such payment and the waiver and release of any claim, right or interest in payments which would have been due in January, February, and/or March 2019 shall fully and completely satisfy the obligation of Debtors in relation to the Batesville MDOM Claim as far as same might otherwise be claims against Progressive as the successor operator of the Batesville Hospital.

2. April 2019 and Future MDOM Obligations. MDOM shall deduct the April 2019 Invoice of \$157,585.00 from the remaining balance of the \$363,443.09 tendered to MDOM following the Batesville Sale, and any balance remaining thereafter shall be applied to partial payment of the amount invoiced or to be invoiced in May 2019. Progressive shall pay to MDOM all MDOM Obligations owed by the Batesville Hospital going forward in May and thereafter.

3. MHAP Payments. After receipt of the above referenced payments, MDOM shall direct its CCOs to pay to Progressive all MHAP payments related to the Batesville Hospital that would have come due on and after April 1, 2019, and shall continue to direct that the CCOs make the MHAP payments to Progressive going forward as required in accordance with state law and future amendments. For the avoidance of doubt, nothing contained in this Settlement Agreement shall create any contractual rights between MDOM and Progressive as to future tax obligations of Progressive, if any or as to the future payment obligations of MDOM, if any. Under no circumstances shall any MHAP Payments be made to the Debtors or their estates. Under no circumstances shall any supplemental payments be made to Progressive, and Progressive shall make no such claim, for March, 2019 or earlier.

4. MDOM Releases. Effective upon the receipt of above referenced payments by MDOM and final court approval, MDOM hereby fully and irrevocably releases and discharges (i) Debtors, their estates, and each of the Debtors' employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest; and (ii) Progressive and its employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions, losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, whether arising pre- or post-petition, of any kind, nature or priority, which it now has or holds, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the MDOM Motion solely with respect to the Batesville Hospital, including, but not limited to, any claims of MDOM for unpaid MDOM Obligations relating to the Batesville Hospital and any claims of MDOM relating to any MHAP payments owed or paid to the Batesville Hospital. The claims of MDOM against Amory Regional Medical Center, Inc., its estate and successors in interest or hospital purchaser, and against Clarksdale Regional Medical Center, Inc., its estate, any lessee and/or successor in interest, are expressly reserved and are not compromised or released hereunder.

5. Estate and Committee Releases. Effective upon entry of the 9019 Order, Debtors, on behalf of themselves and their estates, and the Committee hereby fully and forever release and discharge (i) MDOM and its employees, agents, attorneys, representatives, independent contractors, including but not limited to MCOs and CCOs, affiliates, assignees, licensees, predecessors, successors in interest, insurers and sureties; and (ii) Progressive and its employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions,

losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, which they now have or hold, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the Cross-Motion solely with respect to the Batesville Hospital, including, but not limited to, the Batesville Estate Claims, any claims of the Debtors' estates relating to unpaid MDOM Claims for the Batesville Hospital and any claims of the Debtors' estates relating to any payments by MDOM allegedly due or payable to the Debtor Batesville Regional Medical Center, Inc. or its estate or otherwise allegedly owed or payable to the Batesville Hospital before April 1, 2019. Debtors and their Estates warrant that no other party owns or has an interest in the claims being released in this paragraph. Notwithstanding the foregoing, nothing set forth herein shall be deemed to release Progressive from its obligations under the Progressive APA.

6. Progressive Releases. Effective upon entry of the 9019 Order, Progressive hereby fully and forever releases and discharges (i) Debtors, their estates, and each of the Debtors' employees, agents, officers, directors, attorneys, representatives, independent contractors, subsidiaries, affiliates, assignees, licensees, predecessors, and successors in interest; and (ii) MDOM and its employees, agents, attorneys, representatives, independent contractors, including but not limited to its MCOs and CCOs, affiliates, assignees, licensees, predecessors, successors in interest, insurers and sureties, from any and all claims, demands, complaints, damages, suits, debts, dues, sums, controversies, liens, accounts, obligations, costs, expenses, accounts, promises, indemnifications, causes of action or actions, losses, and liabilities of every kind and nature whatsoever, whether at law or in equity, whether now known or unknown, liquidated or unliquidated, direct or indirect, due or to become due, contingent or otherwise, suspected or unsuspected, which they now have or hold, or at any time heretofore ever had or held, that were raised or could have been raised in connection with or concurrently with the MDOM Motion and the Cross-Motion solely with respect to the Batesville Hospital, including, but not limited to, any claims of Progressive for unpaid MDOM Obligations relating to the Batesville Hospital and any claims of Progressive relating to any payments by MDOM allegedly due Progressive or allegedly owed, paid, or payable to the Batesville Hospital before April 1, 2019. Notwithstanding the foregoing, nothing set forth herein shall be deemed to release the Debtors from their obligations under the Progressive APA.

7. The Debtors shall not file a Plan or amend the Plan in a manner that is inconsistent with the terms and provisions of the Settlement Agreements, take any other action in the Chapter 11 Cases that is inconsistent with the terms and provisions of the Settlement Agreements, or propose terms for any order confirming the Plan that are inconsistent with these Settlement Agreements.

8. Governing Law; Venue. The Parties agree that this Settlement Agreement shall be governed by, and construed in accordance with, the substantive internal laws (as opposed to conflicts of law provisions) and decisions of the State of Mississippi and that any dispute arising from this Settlement Agreement or the Batesville APA must be heard in the Bankruptcy Court. Notwithstanding the language of this provision, after the above referenced payments are made, any future disputes not related to this Settlement Agreement between Progressive and MDOM arising out of Progressive's operation of the Batesville Hospital on or after April 1, 2019 shall be exclusively governed by the laws of the State of Mississippi and that the exclusive forum shall be the administrative process of MDOM and the appropriate state court located in Hinds County, Mississippi.

9. No Admission. The releases contemplated herein and payment of funds in relation thereto shall not in any way be construed as an admission by any party of any liability whatsoever, and the parties specifically disclaim any liability to or wrongdoing against any persons or entities, on the part of themselves, their estates, their employees, or their agents. Instead the consideration is exchanged in full compromise and settlement of any and all Batesville Hospital related claims of every nature, including but not limited to damages, attorneys' fees, costs, or expenses, which any of the parties may have now has or may hereafter have by reason of any and all breaches of contract, torts or other intentional or unintentional conduct, action, omission, employment, agreements, violation of common or statutory law or transactions involving or connected to the parties or any contract between or among the parties. It is expressly understood that the releases shall be a complete bar to all claims or suits for losses, injuries or damages of any nature which the Parties now have against the Released Parties or any one or more of them related to Batesville Hospital.

10. Integrated Settlement Agreement. This Settlement Agreement is a full and final integration and resolution of all prior discussions, negotiations, arrangements, relationships, agreements, commitments or contracts of any kind (express or implied, written or verbal) between the Parties and all such prior and any contemporaneous statements, commitments, writings, stipulations, contracts or instruments are superseded hereby and shall not survive the execution of this Settlement Agreement. This Settlement Agreement may only be amended by a written stipulation signed by both of the Parties and no waiver of any right, benefit or interest of a Party hereunder shall be binding unless the said waiver is in writing and signed by the Party charged with such waiver. Each Party hereby acknowledges and represents that, in entering into this Settlement Agreement, the Party has neither received nor relied upon any representations or promises made by the other Party, or the other Party's officers, directors, employees, agents, attorneys, or representatives, other than those representations and promises that are expressly set forth in writing in this Settlement Agreement. The making of any such representations or promises, other than those that are expressly set forth in writing in this Settlement Agreement, is specifically denied by any and all Parties.

11. Counterparts. This Settlement Agreement may be executed in electronic format and in one or more counterparts and when all Parties have executed a counterpart hereof, the said counterparts shall constitute a single, complete and binding contract and Settlement Agreement between the Parties.

12. Authorization. Each Party represents and warrants that the person signing this

Settlement Agreement on that Party's behalf is fully authorized to execute this Settlement Agreement on that Party's behalf and to bind them legally to the covenants and stipulations set forth herein. Each person signing this Settlement Agreement represents and warrants that he or she is fully authorized to execute this Settlement Agreement by the Party on whose behalf he or she is signing this Settlement Agreement.

13. No Agency. This Settlement Agreement is not intended, and shall not be construed, to create any relationship of employment, partnership, agency, affiliation, combination, or joint venture between the Parties.

14. EACH PARTY REPRESENTS, WARRANTS AND ACKNOWLEDGES THAT: (i) IT HAS REVIEWED ITS RECORDS, EVALUATED ITS POSITION AND CONDUCTED DUE DILIGENCE WITH REGARD TO ALL RIGHTS, CLAIMS, OR CAUSES OF ACTION WHATSOEVER WITH RESPECT TO THE OTHER PARTY AND/OR THIS SETTLEMENT AGREEMENT; (ii) IT HAS CONSULTED WITH OR HAS HAD THE OPPORTUNITY TO CONSULT WITH INDEPENDENT LEGAL COUNSEL OF ITS OWN CHOICE CONCERNING THIS SETTLEMENT AGREEMENT AND HAS BEEN ADVISED TO DO SO; AND (iii) IT HAS CAREFULLY READ THE FOREGOING, AND KNOWS AND UNDERSTANDS THE CONTENT AND MEANING OF ALL PROVISIONS IN THIS SETTLEMENT AGREEMENT, IS FULLY AWARE OF THE LEGAL EFFECT OF ALL PROVISIONS, AND HAS ENTERED INTO THIS SETTLEMENT AGREEMENT FREELY BASED ON ITS OWN JUDGMENT.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement to be effective as of the date first set forth above by and through their duly authorized representatives.

CURAE HEALTH, INC., ET AL.
DEBTORS AND DEBTORS-IN-
POSSESSION

By: _____
Name: _____
Title: _____

OFFICIAL COMMITTEE OF UNSECURED
CREDITORS

By: _____
Name: _____
Title: _____

MISSISSIPPI DIVISION OF MEDICAID

By: _____
Name: _____
Title: _____

PROGRESSIVE MEDICAL
MANAGEMENT OF BATESVILLE, LLC

By: _____
Name: _____
Title: _____