

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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

**THE DEADLINE FOR FILING A TIMELY RESPONSE IS: September 18, 2018.
THE HEARING WILL BE: September 25, 2018, at 11:00 a.m. Central Standard Time in
Courtroom 2, 2nd Floor Customs House, 701 Broadway, Nashville, TN 37203.**

**LIMITED OBJECTION TO
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 PROTECTION, (IV) ESTABLISHING CERTAIN PROCEDURES
FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (V) SCHEDULING AN AUCTION, (VI) SCHEDULING A
HEARING AND OBJECTION DEADLINES WITH RESPECT TO THE SALE OF
GILMORE MEDICAL CENTER, (VII) APPROVING THE FORM AND MANNER OF
NOTICE THEREOF, AND (VIII) GRANTING RELATED RELIEF**

MEDHOST of Tennessee, Inc., its wholly-owned subsidiary, MEDHOST Direct, Inc., and MEDHOST Cloud Services, Inc., formerly known as YourCareUniverse, Inc., sometimes referred to herein collectively as "MEDHOST," state the following in support of their limited objections to the 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)

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); Clarksdale Regional Center, Inc. (4755); Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); and Clarksdale Regional Physicians, LLC (5311).

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, (IV) SCHEDULING A HEARING AND OBJECTION DEADLINES WITH RESPECT TO THE SALE OF GILMORE MEDICAL CENTER, (VII) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (VIII) GRANTING RELATED RELIEF (the “Motion”), Docket No. 79:

1. Under date of July 7, 2015, MEDHOST of Tennessee, Inc. entered into that certain SOFTWARE LICENSE AND APPLICATION SERVICES AGREEMENT with Curae Health, Inc. (“Curae”). Thereby, Curae obtained the rights to use at certain “Licensed Sites,” as defined therein, MEDHOST’s Enterprise software, which is the primary electronic health research software in which most core hospital operations - both financial and clinical – function. By amendment dated July 13, 2017, the Gilmore Memorial Hospital, owned and operated by Amory Regional Medical Center, Inc., was added as a Licensed Site to this agreement.

2. Under date of July 7, 2015, MEDHOST Direct, Inc. entered into that certain HOSTING AND MANAGED SERVICES AGREEMENT with Curae, by which among other things MEDHOST hosts Curae’s licensed Enterprise software on servers owned and operated by MEDHOST at a MEDHOST data center. By amendment dated July 13, 2017, the Gilmore Memorial Hospital was added as a Licensed Site under this agreement.

3. Under date of July 7, 2015, MEDHOST Cloud Services, Inc. entered into that certain MASTER PRODUCTS AND SERVICES AGREEMENT with Curae, pursuant to which Curae receives certain cloud-based and/or SaaS services such as the operation of Curae’s patient portal.

4. Some or all of the agreements described in numbered paragraphs 1 through 3 (sometimes referred to herein collectively as the “MEDHOST Agreements”), may be deemed to be a “Multi-Facility Contract,” as that term is defined in section 2.3 (c) of the Asset Purchase Agreement (the “Gilmore APA”), among Curae, Amory Regional Medical Center, Inc., Amory Regional Physicians, LLC, on the one side, and North Mississippi Health Services, Inc., defined therein as the “Buyer,” on the other side. The Gilmore APA is Exhibit D to the Motion.

5. By the Motion, the Debtors seek this Court’s approval of certain “assumption and assignment procedures,” and a related notice which is appended to the Motion as Exhibit E (hereinafter, the “Proposed Notice of Assumption”). The Motion (par. 33) contemplates that the Proposed Notice of Assumption will be mailed to affected parties on or before October 29, 2018.

6. The APA refers (at pp. i and ii thereof) to numerous schedules and exhibits, a number of which appear to be related to the assumption and assignment of executory contracts and unexpired leases, and therefore, material to an evaluation of the Proposed Notice of Assumption and the related procedures. However, at this time none of the contemplated schedules or exhibits has been appended to the APA or otherwise made available for review by creditors and other parties in interest. Therefore, it is impossible for MEDHOST to determine, among other things, whether the parties to the APA deem any of the MEDHOST Agreements to be executory contracts subject to assumption or rejection pursuant to 11 U.S.C § 365, and, if so, whether they intend to schedule any of them as Assumed Contracts or treat them as Multi-Facility Contracts.

7. Section 15 of the APA states that the parties to the APA shall complete the contemplated schedules and exhibits no later than September 24, 2018. September 24, 2018 is the eve of the Sale Hearing, as proposed by the Debtors. Thus, creditors and interested parties

may have no meaningful opportunity to review material information contained in the schedules and exhibits before the commencement of the Sale Hearing.

8. There appear to be numerous inconsistencies between the APA and the Proposed Notice of Assumption which are material to an evaluation of the Proposed Notice and related procedures. By way of example, and not of limitation, MEDHOST cites the following:

A. Section 2.3 (a) of the APA provides that assumption of any Assumed Contract shall be effective as of the “Effective Time,” which is defined (section 3.1) to be one second after midnight of the date of the Closing.² By contrast, the Proposed Notice of Assumption states that any assumption will be effective on the “Assumption Effective Date,” which is defined to be “...the later of (a) the date following expiration of the Objection Deadline, if no Assumption Objection is filed, and (b) the entry of an order by the court authorizing the assumption and assignment of such Contract or Lease.” It is important that the effective time of any assumption be made clear because, among other things and in general, such determines when the assignee’s liabilities for future obligations arising or maturing under the contract begin, and when any cure amount must be paid.

B. Section 2.3 (c) of the APA provides that, “...at any time (and from time to time) prior to the Closing,” the Buyer may remove any previously - designated contract from the schedule of Assumed Contracts, or add to such schedule any previously – undesignated contract. By contrast, the Proposed Notice of Assumption specifies that the Buyer may take such an action, “...up to the date that is thirty (30) days following the

² Section 3.1 further specifies that the Closing shall occur on the last day of a calendar month. Paragraph 21 of the Motion states that the Closing must occur no later than December 12, 2018. Reading this together with Section 3.1, the Closing must occur no later than November 30, 2018. Paragraph 28.k. of the Motion proposes that the Sale Hearing be held on November 27, 2018.

closing of the Sale, or such other date as mutually agreed upon by the purchaser and Debtors (the “Designation Deadline”), ...” Besides the inconsistency between the two documents, if the provisions of the Proposed Notice of Assumption prevail, the counterparty to any contract that has been assumed as of the Closing will be subjected to needless uncertainty, possible delay and other prejudice.

9. MEDHOST is also concerned with the break-up fee component and the incremental bidding component of the sale procedures and the APA. The proposed break-up fee (of 4%) is excessive, and is higher than is the custom in this District. Similarly, MEDHOST is concerned that the initial incremental bid and the other incremental bids at auction are elevated, which could have a chilling effect on the bidding process.

10. MEDHOST reserves the right to amend or supplement these objections based upon the results of its further review and investigation of this matter, which are continuing, and within a reasonable time after the schedules and exhibits to the APA become available for review by MEDHOST.

WHEREFORE, MEDHOST prays that any consideration for approval of the assignment and assumption procedures, and the Proposed Notice of Assumption, as proposed by the Motion, be deferred until amended documents resolving the inconsistencies between the APA and the Motion, and the contemplated schedules and exhibits to the APA, have been made available for review by creditors and parties in interest and said entities have been afforded a reasonable opportunity to review the same. MEDHOST also opposes the excessive break-up fee and the incremental bid components of the sale procedures and the APA. MEDHOST respectfully requests that it be granted such other and further general relief to which it may be shown to be entitled.

This the 18th day of September, 2018.

/s/ Thomas H. Forrester

Thomas H. Forrester

G. Rhea Bucy

Linda W. Knight

Gullett, Sanford, Robinson & Martin, PLLC

150 Third Avenue South, Suite 1700

Nashville, TN 37201

(615) 244-4994

tforrester@gprm.com; rbucy@gprm.com;

lcatabay@gprm.com

Attorneys for MEDHOST of Tennessee, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2018, a true and correct copy of the foregoing document was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Thomas H. Forrester

Thomas H. Forrester