

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

In re: )  
 ) Chapter 11  
CURAE HEALTH, INC., et al.<sup>1</sup> ) Case No. 18-05665  
 ) Judge Walker  
Debtors. ) Jointly Administered  
 )

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

The State of Mississippi, Mississippi Division of Medicaid (“MSDOM”) hereby moves pursuant to 11 U.S.C. Section 503, for allowance of its administrative expenses, an order directing the immediate payment of such administrative expenses, and upon failure to pay for the defaulting hospital debtors and Curae Health, Inc., to be required to schedule and notice an expedited hearing

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<sup>1</sup> 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). This Motion does not concern and is not directed at Amory Regional Physicians, LLC (5044); Batesville Regional Physicians, LLC (4952); Clarksdale Regional Physicians, LLC (5311).

and to show cause why full payment was not made and for the Court to further consider the dismissal of proceedings or conversion to proceedings under Chapter 7 in conformity with 11 U.S.C. Section 1112.

As grounds therefor and in support hereof, MSDOM respectfully states as follows:

#### Jurisdiction, Venue, and Statutory Predicates

1. This Court has jurisdiction over this motion under 28 U.S.C. §§157 and 1334. This is a core proceeding under 28 U.S.C. §157(b). Venue is proper under 28 U.S.C. §§1408 and 1409. The statutory predicates for relief requested herein are sections 503 and 1112 of the Bankruptcy Code.

2. The State of Mississippi imposes many taxes upon persons and entities doing business in the State.

3. These taxes include the Disproportionate Share Hospital (DSH) Tax<sup>2</sup> and the Mississippi Hospital Access Program (MHAP) Tax and the Hospital Assessment Tax as set forth in Miss. Code §43-13-145(4).<sup>3</sup> These taxes are

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<sup>2</sup> “The DSH payments shall be paid on or before December 31, March 31, and June 30 of each fiscal year, in increments of one-third (  $\frac{1}{3}$  ) of the total calculated DSH amounts.” Miss. Code §43-13-145(12).

<sup>3</sup> The MS DOM “determines the tax” for all hospital. See e.g., Miss. Code §43-13-145(4)(e). The assessments levied under Miss. Code §43-13-145 “shall be in addition to any other assessments, taxes or fees levied by law, and the assessment shall constitute a debt due the State of Mississippi from the time the assessment is due until it is paid.” Miss. Code §43-13-145(8).

collected by the MSDOM and provide revenue for the State of Mississippi.<sup>4</sup> These taxes are imposed on each hospital licensed in Mississippi regardless of their consent. *Id.* See **In re Suburban Motor Freight, Inc.**, 36 F.3d 484, 487 (6th Cir. 1994) (citing **New York v. Feiring**, 313 U.S. 283, 285 (1941)) (“The Supreme Court has defined taxes as ‘those pecuniary burdens laid upon individuals or their property, regardless of their consent, for the purpose of defraying the expenses of government or of undertakings authorized by it.’”). See also **Nat’l Fed’n of Indep. Bus. v. Sebelius**, 567 U.S. 519, 564 (2012) (“This process yields the essential feature of any tax: It produces at least some revenue for the Government.”).

4. All taxes collected under Miss. Code §43-13-145 must be deposited by MSDOM in the Medical Care Fund created by Miss. Code §43-13-143. Miss. Code §43-13-145(7).

5. All transfers into the Medical Care Fund are “unconditional transfers” and funds can only be expended upon appropriation of the Mississippi Legislature. Miss. Code §43-13-143.

6. The monies in the Medical Care Fund can be expended only for health care services, which includes defraying the expenses of health care services by public health care providers, governing bodies of counties, municipalities, public

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<sup>4</sup> “Needless to say, all money collected by the Government goes toward defraying its expenses, and is used for public purposes.” **In re Suburban Motor Freight, Inc.**, 998 F.2d 338, 341 (6th Cir. 1993) (footnote omitted).

or community hospitals and other political subdivisions of the State of Mississippi.  
Id.

7. Curae Health, Inc. (5638); Amory Regional Medical Center, Inc. (2640); Batesville Regional Medical Center, Inc. (7929); and Clarksdale Regional Medical Center, Inc. (4755) filed their petitions for protection under Chapter 11 on August 24, 2018.

8. After August 24, 2018, the following Disproportionate Share Hospital (DSH) Tax has been assessed for periods after August 24, 2018, and interest and penalties are past due and payable as follows:

Amory Regional Medical Center, Inc. \$96,418.09

Batesville Regional Medical Center, Inc. \$124,418.81

Clarksdale Regional Medical Center, Inc. \$97,168.83.

9. After August 24, 2018, the following Mississippi Hospital Access Program (MHAP) Tax has been assessed for periods after August 24, 2018, and interest and penalties are past due and payable as follows:

Amory Regional Medical Center, Inc. \$254,434.54

Batesville Regional Medical Center, Inc. \$331,041.22

Clarksdale Regional Medical Center, Inc. \$281,017.90.

10. After August 24, 2018, the following Hospital Assessment Tax has been assessed for periods after August 24, 2018, and interest and penalties are past due and payable as follows:

Amory Regional Medical Center, Inc. \$208,736.23

Batesville Regional Medical Center, Inc. \$271,580.23

Clarksdale Regional Medical Center, Inc. \$230,542.63.

11. The calculation of these taxes, unpaid interest and penalties are set forth in Exhibit “A” attached hereto. A proposed Order is Attached as Exhibit “B.”

#### Relief Requested

12. MSDOM requests allowance of its administrative expense in the amounts specified above; an order directing the immediate payment of such administrative expense; and, upon failure to pay these administrative expenses that the defaulting hospital debtors and Curae Health, Inc., to be required to schedule and notice an expedited hearing within fourteen (14) calendar days to show cause why full payment was not made and for the Court to further hear and consider the dismissal of proceedings or conversion to proceedings under Chapter 7 in conformity with 11 U.S.C. §1112.

#### Basis For Relief

13. The identified hospital debtors have failed and refused to pay MSDOM the taxes, interest and penalties after demand was made by MSDOM.<sup>5</sup>

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<sup>5</sup> “[I]f a health care facility fails or refuses to pay the assessment after receiving notice and demand from the division, the division may file a notice of a tax lien with the chancery clerk of the county in which the health care facility is located, for the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. Miss. Code § 43-13-145(9)(b).

14. The above referenced taxes are taxes incurred by the estates of the identified debtors. 11 U.S.C. §503(a) and (b)(1)(B).

15. The above referenced penalties are penalties relating to a tax of a kind specified 11 U.S.C. §503(b)(1)(B).

16. The indented hospital debtors have made no effort to pay these post-petition taxes and post-petition penalties and indicate no intention of making payment.

17. Good cause exists to convert the cases of the identified hospital debtors to cases under chapter 7 or to dismiss the referenced cases. 11 U.S.C. §1112(b).

18. Cause exists under 11 U.S.C. §1112(b)(4)(I), i.e., “failure to timely pay taxes owed after the date of the order for relief ....”

19. A review of the docket and reports of the debtor in possession suggest that there is substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation and that gross mismanagement of the estate has occurred. 11 U.S.C. §1112(b)(4)(A) and (B). See Docket #722.

#### Reservation of Rights

MSDOM reserves its right to amend or supplement this motion, or to file additional motions, to seek authority to commence and prosecute other claims and or/causes of action and to seek discovery and/or present evidence at any hearing on the motion.

#### Conclusion

Accordingly, MSDOM requests allowance of its administrative expenses in the amounts specified above; an order directing the payment of such administrative expenses within five (5) calendar days; and, upon failure to pay these administrative expenses on time that the defaulting hospital debtors and Curae Health, Inc., be required to schedule and notice an expedited hearing within fourteen (14) calendar days to show cause why full payment was not made and for the Court to further hear and consider the dismissal of proceedings or conversion to proceedings under Chapter 7 in conformity with 11 U.S.C. §1112. MSDOM further prays that the Court grant it such other and further relief as is just and proper.

Dated: February 13, 2019.

Respectfully submitted,

THE STATE OF MISSISSIPPI,  
MISSISSIPPI DIVISION OF MEDICAID

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Local Counsel

### CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2019, a copy of the foregoing was sent via ECF to all parties registered to receive electronic notice in the case and via U.S. mail, postage prepaid, to the parties listed on the mailing matrix attached as Exhibit C.

/s/ James A. Bobo  
JAMES A. BOBO