

Charles M. Walker
U.S. Bankruptcy Judge

Dated: 4/26/2019



**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

EXPEDITED AGREED ORDER (I) AUTHORIZING THE USE OF CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order (this “**Order**”) (i) authorizing the Debtors to use Cash Collateral through and including May 10, 2019, (ii) granting ServisFirst adequate protection upon the terms set forth in this Order, (iii) modifying the automatic stay, and (iv) granting such other and further relief as the Court deems just and appropriate; the Court having reviewed the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consented 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 the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given, under the circumstances, and that

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 them in the Motion.

no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor:

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted in accordance with the terms and conditions of this Order.
2. All objections, responses to, and statements and comments, if any, in opposition to the Motion, other than those resolved in their entirety by prior order of this Court, are hereby overruled; provided, however, that nothing in this Order shall affect the rights and claims of the Mississippi Division of Medicaid asserted in *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 Debtors 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] and the *Partial Objection to Proposed Agreed Interim Order Authorizing Debtors to Pay the DIP Obligations, and Other Relief and Alternative Motion for Leave to File Objection to March 8, 2019 Motion and/or to Adjourn the Hearing on the Proposed Agreed Interim Order to a Date After April 9, 2019, and for Other Relief* [Docket No. 898].
3. Effect of this Order and Reservations of Rights. Notwithstanding anything in this Order, the Motion or otherwise, any and all rights, claims, liens, remedies and/or protections of any kind or nature granted herein to ServisFirst, including without limitation, any and all Replacement Liens (as defined below) and Superpriority Administrative Claim (as defined below) shall be subject to and conditioned upon the determination of the adversary proceeding commenced on January 16, 2019 by the Official Committee of Unsecured Creditors (the “**Committee**”) on behalf of the Debtors’ estates against ServisFirst, pending before this Court under adversary proceeding number 3:19-ap-90010 (the “**Adversary Proceeding**”). Nothing

herein shall constitute (i) an allowance of the amount, nature, validity or priority of any pre-petition or post-petition claims or interests of ServisFirst; (ii) a determination of the extent, validity or priority of any of ServisFirst's asserted liens or security interests; or (iii) a determination that any portion of the Cash Collateral, any other property of the Debtors' estates or any proceeds thereof constitute ServisFirst's collateral. All of the rights, claims and defenses of the Committee and ServisFirst, including, without limitation, any rights, claims and defenses in the Adversary Proceeding, are expressly reserved and preserved and nothing herein shall operate as an admission, have any estoppel effect or otherwise prejudice any such rights, claims or defenses. Nothing herein shall be deemed to vacate, alter or otherwise modify any provisions of the *Final Order Authorizing the Debtors to (I) Authorizing the Debtor's to (A) Obtain Postpetition Secured Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Status, (III) Granting Adequate Protection, and (IV) Modifying the Automatic Stay* [Docket No. 455].

4. Use of Cash Collateral. Subject to the terms and conditions set forth in this Order, the Debtors are, through and including the earlier of: (a) May 10, 2019, (b) the effective date of any chapter 11 plan of liquidation in these Chapter 11 Cases, or (c) termination of this Order following issuance of a Termination Notice as set forth in Paragraph 9 below, authorized pursuant to Bankruptcy Code sections 105, 361, 362, and 363, and Bankruptcy Rules 2002, 4001, 6003, and 9014 to use Cash Collateral. The Cash Collateral may only be used to fund the types and corresponding amounts of itemized expenditures through and including May 10, 2019 contained in the consensual budget attached hereto as Exhibit 1 (the "**Budget**"); provided, however, that the Debtors may use Cash Collateral in excess of the amount designated for a particular line-item so long as the percentage of deviation of each line item during any rolling 4-

week period does not exceed ten percent (10%) (the “**Variance**”). This Order does not authorize the use of Cash Collateral to fund any expenditures contained in the Budget for time periods after May 10, 2019; nor does ServisFirst agree to any part of the Budget for weeks ending after May 10, 2019. ServisFirst does not consent to the use of Cash Collateral for payment of any allowed amount of any claim of the Mississippi Division of Medicaid.

5. Reporting. As additional protection for the Debtors’ use of Cash Collateral, the Debtors shall allow ServisFirst and its respective professionals and designees reasonable access, during normal business hours, to the premises of the Debtors in order to conduct appraisals, analyses, and/or audits of the Collateral, and shall otherwise reasonably cooperate in providing any other financial information requested by ServisFirst for this purpose. From and after the entry of this Order, the Debtors shall provide to ServisFirst on Wednesday of each week (commencing with the second week after the Petition Date), a weekly report (the “**Weekly Budget Report**”) certified by the Debtors’ chief financial officer and in the same form as the Budget indicating all receipts received and disbursements made by the Debtors in the week ending the prior Friday compared to the Budget and detailing any variances of more than 10% from the disbursements and receipts in the Budget. The Debtors, and their professionals and consultants, shall be available weekly (subject to reasonable scheduling conflicts) for a telephonic conference call with ServisFirst and/or its professionals to discuss the status of the Bankruptcy Cases, the results of operations and other matters pertaining to the Debtors’ facilities, including any sale or restructuring efforts. ServisFirst shall have independent access to the Debtors’ financial advisors to discuss matters relating to the Debtors, including any contemplated sale or restructuring of the Debtors. The Debtors shall provide to ServisFirst such other reports and information as ServisFirst may reasonably request from time to time.

6. Adequate Protection; Replacement Liens. ServisFirst is entitled, pursuant to Bankruptcy Code sections 361 and 363(e), to adequate protection of its interests in the Collateral, including, but not limited to, the Cash Collateral, for any diminution in value of their interests in the Collateral, including, without limitation, any such diminution resulting from the Debtors' use of Cash Collateral and any other Collateral and the imposition of the automatic stay pursuant to Bankruptcy Code section 362. As security for and solely to the extent of any diminution in the value of Collateral from and after the Petition Date, calculated in accordance with Bankruptcy Code section 506(a) (a "**Diminution in Value**"), ServisFirst is hereby granted senior priority replacement liens upon all assets and property of the Debtors and their estates of any kind or nature whatsoever, now existing or hereafter acquired, including, without limitation, the Collateral (the "**Replacement Liens**"), but excluding all claims and causes of action, and the products and proceeds thereof, arising under or permitted by Bankruptcy Code sections 502(d), 506(c), 510, 542, 544, 545, 547, 548, 549, 553 and 550 and any other avoidance claims and causes of action arising under state or federal law; provided, however, that the Replacement Liens shall be subject and subordinate to the Carve-Out (as defined below). The Replacement Liens so granted are in addition to all security interests, liens, and rights of setoff existing in favor of ServisFirst on the Petition Date, and are and shall be valid, perfected, enforceable, and effective as of the date hereof without any further action of the Debtors or ServisFirst and without the necessity of the execution, filing or recording of any financing statements, security agreements, deeds of trust, or other documents, or of obtaining control agreements over bank accounts. Notwithstanding the foregoing, ServisFirst is hereby authorized, but not required, to file or record any financing statements, security agreements, deeds of trust, or other documents

in any jurisdiction or take any other action in order to validate and perfect the Replacement Liens granted hereunder.

7. Adequate Protection; 507(b) Priority Claim. ServisFirst is hereby granted an administrative claim with a priority equivalent to a claim under Bankruptcy Code sections 364(c)(1), 503(b), and 507(b), on a dollar-for-dollar basis for and solely to the extent of any Diminution in Value, which administrative claim shall, among other things, have priority over all other costs and expenses of the kind specified in, or ordered pursuant to, Bankruptcy Code sections 105, 328, 330, 331, 503(a), 503(b) 507(a), 507(b), 546(c), 1113, and 1114 (the “**Superpriority Administrative Claim**”), except for expenditures constituting the Carve-Out.

8. Carve-Out. The Replacement Liens and Superpriority Administrative Claim granted hereunder shall be junior and subordinate to the following fees and expenses (the “**Carve-Out**”): (a) all budgeted accrued but unpaid fees and expenses (the “**Professional Fees and Expenses**”) of the attorneys, accountants, or other professionals retained by the Debtors, health care ombudsman and any statutory committee of unsecured creditors appointed in these Chapter 11 Cases under Bankruptcy Code sections 327 or 1103(a) (the “**Committee**”, and collectively, the “**Professionals**”) incurred until the earlier of (1) May 10, 2019, (2) the effective date of any chapter 11 plan of liquidation in these Chapter 11 Cases, or (3) termination of this Order following issuance of a Termination Notice as set forth in Paragraph 9 below; (b) Professional Fees and Expenses in the maximum amount of \$150,000 incurred after delivery of a Termination Notice; and (c) the payment of fees pursuant to 28 U.S.C. § 1930, provided that all such fees and expenses (other than the fees referenced in (c) herein), shall be subject to approval by a final order of the Court pursuant to Bankruptcy Code sections 326, 328, 330, 331, or 363.

9. Events of Default. Each of the following shall constitute an event of default (“**Event of Default**”) with respect to the Debtors’ authorization to use Cash Collateral hereunder, unless otherwise waived in writing by ServisFirst:

- a. entry of an order converting any of these Chapter 11 cases to a case under Chapter 7 of the Bankruptcy Code;
- b. entry of an order dismissing any of these Chapter 11 cases;
- c. entry of an order appointing or directing the election of a trustee or an examiner with expanded powers for any of the Debtors under Bankruptcy Code sections 1104 or 1106(b);
- d. without the prior written consent of ServisFirst, the entry of any order (or other judicial action which has the effect of) amending, reversing, supplementing, staying the effectiveness of, vacating, or otherwise modifying this Order;
- e. any of the Debtors uses Cash Collateral for any purpose or in a manner other than as permitted in this Order and in the Budget or otherwise fails to comply with any term of this Order;
- f. entry of an order by the Bankruptcy Court authorizing relief from stay by any person (other than ServisFirst) on or with respect to all or any portion of the Collateral with a value in excess of \$50,000;
- g. the filing by any of the Debtors of any debtor-in-possession financing pleadings or any documents pertaining to a debtor-in-possession financing not acceptable to and supported by ServisFirst;
- h. the filing by any of the Debtors of any bid procedure and/or sale documents relating to the sale of the Collateral, postpetition collateral subject to the Replacement Lien, and/or Cash Collateral not acceptable to and supported by ServisFirst;
- i. any of the Debtors voluntarily or involuntarily dissolves or is dissolved, liquidates or is liquidated or ceases the operation of any material portion of its business; or
- j. the failure of the Debtors to confirm the Plan within forty-five (45) days of the date of this Order.

10. Termination Notice. Immediately upon the occurrence or existence of an Event of Default, ServisFirst shall be authorized to issue a notice (a “**Termination Notice**”) thereof which

will be filed with the Court with copies to the Debtors, their counsel, counsel to any Committee and the U.S. Trustee, which Termination Notice may be delivered by electronic mail. The Court will consider such Termination Notice on an expedited basis.

11. Failure of Adequate Protection. Nothing herein shall constitute a waiver, release or modification of the rights of ServisFirst to assert a claim under Bankruptcy Code sections 364(c) and 507(b).

12. Automatic Stay. The automatic stay under Bankruptcy Code section 362(a) shall be, and it hereby is, vacated and modified to the extent necessary to permit (i) ServisFirst to receive and apply payments made pursuant to this Order in accordance with the terms and provisions of this Order and the Budget, and (ii) to permit ServisFirst to send the Termination Notice (as defined herein) and to exercise any rights and remedies or other action authorized or contemplated by this Order, subject to the terms and conditions contained herein.

13. Deemed Request for Stay Relief. This Order shall be deemed to constitute a request by ServisFirst for relief from the automatic stay with respect to the Collateral (but solely to the extent provided by this Order), for adequate protection for the use of Cash Collateral as of the Petition Date, and shall suffice for all purposes of Bankruptcy Code section 507(b).

14. No Duty to Monitor Compliance. ServisFirst may assume that the Debtors will comply with all terms and conditions of this Order and the Budget and shall not (a) be obligated to ensure or monitor the Debtors' compliance with any financial covenants, formulae or other terms and conditions of this Order or the Credit Facility Documents, (b) be obligated to pay (directly or indirectly from Cash Collateral or otherwise) any expenses incurred or authorized to be incurred pursuant to this Order or in connection with the operation of the Debtors' businesses, or (c) be obligated to ensure or monitor that Cash Collateral exists to pay such expenses.

15. No Waiver. The failure of ServisFirst to seek relief or otherwise exercise their rights and remedies under this Order shall not constitute a waiver of any of ServisFirst's rights hereunder, thereunder or otherwise.

16. No Third Party Rights. Except as explicitly provided for herein, this Order does not create any rights for the benefit of any third party, creditor, equity holders or any direct, indirect or incidental beneficiary.

17. Section 552(b). In light of their agreement to subordinate their liens and superpriority claims to the Carve-Out, the Debtors and ServisFirst intend that the Final Order shall provide that ServisFirst shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b), and the "equities of the case" exception under Bankruptcy Code section 552(b) shall not apply to ServisFirst with respect to products and proceeds of any of the Collateral.

18. Effect of Order. This Order shall be effective upon its entry and not subject to any stay (notwithstanding anything to the contrary contained in the Bankruptcy Rules, including Bankruptcy Rule 4001(a)(3)). The provisions of this Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered (a) confirming any plan of reorganization; (b) dismissing any one of these Chapter 11 cases; (c) converting any one of these Chapter 11 cases to any other chapter under the Bankruptcy Code; (d) withdrawing of the reference of any one of these Chapter 11 cases from the Court; and (e) providing for abstention from handling or retaining of jurisdiction of any one of these Chapter 11 cases in the Court.

19. Amendments and Waivers. Any amendment, modification, supplement or waiver of any provision in this Order shall be in writing, signed by the Debtors and ServisFirst, and approved by the Court on appropriate notice by the Debtors.

20. ServisFirst Not in Control of Debtors' Operations. With respect to the Debtors' use of Cash Collateral pursuant to this Order, or any actions reasonably related to this Order or the Motion, neither ServisFirst, nor its respective agents, employees, attorneys or representatives, shall have any liability to any third party (including creditors of the Debtors) and shall not be deemed to be in control of the Debtors' operations or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

21. Order Governs. In the event of any inconsistency between the provisions of this Order and the Motion, the provisions of this Order shall govern.

THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS INDICATED AT THE TOP OF THE FIRST PAGE

APPROVED FOR ENTRY:

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EXHIBIT 1

The Budget

Curae Health

Consolidated

Cash Flow Forecast - Through May 10, 2019

	Week Ending 3/8/2019	Week Ending 3/15/2019	Week Ending 3/22/2019	Week Ending 3/29/2019	Week Ending 4/5/2019	Week Ending 4/12/2019	Week Ending 4/19/2019	Week Ending 4/26/2019	Week Ending 5/3/2019	Week Ending 5/10/2019
Expected Receipts	\$ 565,000	\$ 515,000	\$ 640,000	\$ 400,000	\$ 400,000	\$ 300,000	\$ 250,000	\$ 250,000	\$ 225,000	\$ 225,000
Disbursements										
Salaries, CL and Benefits	\$ 85,000	\$ -	\$ 74,000	\$ 175,000	\$ 85,000	\$ 65,000	\$ 40,000	\$ 10,000	\$ 50,000	\$ 56,612
Physician Services	-	-	-	-	-	-	-	-	-	-
Contract Services	-	-	35,697	40,000	40,030	22,500	45,000	22,500	22,500	22,500
Supplies and Other	-	-	102,000	126,000	51,000	91,000	51,000	26,000	26,000	51,000
Repairs and Maintenance	-	-	-	-	-	-	-	-	-	-
Rents and Leases	-	-	21,499	3,513	10,250	-	-	-	10,250	3,500
Telephone & utilities	-	-	10,000	-	-	4,000	6,000	-	-	10,000
Insurance	-	-	-	22,714	-	-	-	-	22,417	-
Taxes & Assessments	-	-	230	-	-	-	-	-	-	-
Other Operating	-	-	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000
Medhost - A/R Collection Fees	-	-	-	46,800	48,600	31,500	-	29,250	15,570	21,375
Debtor's Fees	-	-	165,000	-	-	-	165,000	-	-	247,500
Creditors Committee Fees	-	-	100,000	-	-	-	100,000	-	-	150,000
Ombudsman / Great American	-	-	15,000	-	-	-	15,000	-	-	21,322
Trustee and Prof Fee Estimates	-	-	-	-	-	150,000	-	-	-	42,500
Total Disbursements	\$ 85,000	\$ -	\$ 525,426	\$ 416,027	\$ 236,880	\$ 366,000	\$ 424,000	\$ 89,750	\$ 148,737	\$ 628,309
Lender Payments										
ServisFirst AP	\$ -	\$ -	\$ -	\$ -	\$ 98,000	\$ -	\$ -	\$ -	\$ -	\$ 98,000
Midcap	-	-	-	-	-	-	-	-	-	-
Total Disbursements	\$ 85,000	\$ -	\$ 525,426	\$ 416,027	\$ 334,880	\$ 366,000	\$ 424,000	\$ 89,750	\$ 148,737	\$ 726,309
Net Cash Flow	\$ 480,000	\$ 515,000	\$ 114,574	\$ (16,027)	\$ 65,120	\$ (66,000)	\$ (174,000)	\$ 160,250	\$ 76,263	\$ (501,309)
Cumulative	\$ 480,000	\$ 995,000	\$ 1,109,574	\$ 1,093,547	\$ 1,158,667	\$ 1,092,667	\$ 918,667	\$ 1,078,917	\$ 1,155,180	\$ 653,871

Previously Approved 2/28 Runoff

Corporate
 Batesville
 Previously Approved 2/28 Runoff
 Additional request
 Total disbursements for the period

A/R Rollforward - Borrowing Base

Total A/R (a)(b)	\$ 4,462,963	\$ 3,897,963	\$ 3,382,963	\$ 2,742,963	\$ 2,342,963	\$ 1,942,963	\$ 1,642,963	\$ 1,392,963	\$ 1,142,963	\$ 917,963
Less: Collections	\$ (565,000)	\$ (515,000)	\$ (640,000)	\$ (400,000)	\$ (400,000)	\$ (300,000)	\$ (250,000)	\$ (250,000)	\$ (225,000)	\$ (225,000)
Plus: New A/R										
	\$ 3,897,963	\$ 3,382,963	\$ 2,742,963	\$ 2,342,963	\$ 1,942,963	\$ 1,642,963	\$ 1,392,963	\$ 1,142,963	\$ 917,963	\$ 692,963
Ending Cash										

- (a) Total A/R is the pre-reserve net A/R per the Midcap loan borrowing base
- (b) As of 2/28 we estimate the Net Book A/R at \$10,273,019
- (c) This cash flow does not include the cash receipts or payments due to CHS related to Clarksdale facility
- (d) Batesville receipts includes \$150,000 deposit from buyer
- (e) 5/10 payment of professional fees includes April payment and 1/2 of May

This Order has been electronically signed. The Judge's signature and Court's seal appear at the top of the first page.
 United States Bankruptcy Court.