

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

In re:	)	Chapter 11
	)	Case No. 18-05665
Curae Health, Inc., <i>et al.</i> ,	)	Judge Walker
	)	Hearing Date: 09/25/18 at 11:00 a.m.
Debtors.	)	Re: D.I. No. 79

**OBJECTION OF CIGNA HEALTH AND LIFE INSURANCE COMPANY  
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 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 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**

Cigna Health and Life Insurance Company (“Cigna”) hereby objects to the Sale Procedures (defined below) proposed by 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) 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 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* [D.I. 79] (“Sale Motion”), and in support thereof, respectfully states as follows:

## BACKGROUND

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

- *Hospital Services Agreement* between Debtor Armory Regional Medical Center, Inc. and Cigna, effective August 1, 2017, including all amendments, addendums, exhibits, schedules, etc. related thereto (“HSA”).
- *Provider Group Service Agreement* between Debtor Armory Regional Physicians, LLC and Cigna, effective August 1, 2017, including all amendments, addendums, exhibits, schedules, etc. related thereto (“PSA and, jointly with the HSA, the “Cigna Provider Agreements”).

The HSA may be terminated without cause only upon six (6) months advance written notice.

The PSA may be terminated without cause only upon sixty (60) days advance written notice.

Neither of the Cigna Provider Agreements may be assigned without written consent from Cigna.

2. Pursuant to the Sale Motion, Debtors initially propose procedures (“Sale Procedures”) for the sale of substantially all of their assets related to the Hospital (“Sale”) to a to-be-determined purchaser (“Purchaser”) as of the effective date of the Sale (“Effective Date”) pursuant to a stalking horse Asset Purchase Agreement with North Mississippi Health Services, Inc. (“APA”). The Sale Procedures include procedures for 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 Schedules to the APA, no such Schedules are attached to the filed version of the APA.

4. The proposed Sale Procedures provide for the service of an Assumption Notice upon counterparties to executory contracts (“Contract Counterparties”) on October 29, 2018. However, under the proposed Sale Procedures, the Assumption Notice will not be a final list of executory contracts to be assumed and assigned as part of the Sale, and the proposed Sale Procedures do not provide for the creation or service of a “final list.” Further, the APA purports to give Purchaser the right to add or remove contracts from the list of Assumed Contracts up until the Closing Date. APA, § 2.3(c). Most significantly, the text of the proposed Assumption Notice expressly gives the Purchaser the right to delete Assumed Contracts from the list at any time up to 30 days following Closing, or such other date as may be agreed upon by Debtors and Purchaser. Sale Motion, Ex. E. Thus, although the Sale Motion neither expressly requests nor justifies such relief, there is no limitation on the time during which a contract may be removed from the list of Assumed Contracts.

5. Under the Sale Motion, the Debtors seek to have *carte blanche* authority to modify the list of Assumed Contracts at any time, even after the Closing Date, without adequate (if any) notice to Contract Counterparties. Thus, the proposed Sale Procedures provide no guidance or certainty to Contract Counterparties with regard to the proposed disposition of their respective contracts in the context of the Sale.

6. The proposed Sale Procedures also fail to provide Contract Counterparties with any adequate assurance of any proposed assignee’s future performance ability (“Adequate Assurance Information”) in advance of the Sale Hearing. Rather than assuring Contract Counterparties that they will have a meaningful opportunity to review and evaluate any Adequate Assurance Information, the proposed Sale Procedures are silent on this issue.

## OBJECTION

7. Cigna objects to the proposed Sale Procedures because, *inter alia*, (i) the Sale Motion does not provide for adequate and definitive notice of the proposed disposition of the Cigna Provider Agreements; and (ii) the Sale Motion does not provide for any provision of Adequate Assurance Information to Cigna.

A. Disposition Of The Provider Agreements.

8. The disposition of the Cigna Provider Agreements could significantly impact the Hospital's communities, patients and healthcare providers. The proposed Sale Procedures fail to provide adequate, definitive notice of that disposition, putting those communities, patients and healthcare providers at risk.

9. Because the Debtors are proposing to sell all of their Hospital operations, any failure to assume and assign the Cigna Provider Agreements as part of the Sale will sever the Cigna Provider Agreements from the Hospital, and thus immediately (as of the Effective Date) 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 Debtor 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 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.

10. Adequate, advance notice of any severance of the Hospital from the Cigna Provider Network must be provided in order to ensure that patients, covered individuals in the community and healthcare providers are smoothly transitioned from the Hospital and are not economically prejudiced through no fault of their own. Accordingly, for the benefit of the local communities and the Hospital's patients and physicians, unequivocal, irrevocable notice of Debtors' decision as to whether the Cigna Provider Agreements will be assumed and assigned as part of the Sale must be provided at least sixty (60) days prior to the Effective Date of the Sale.<sup>1</sup>

B. Adequate Assurance.

11. To the extent that the Debtors seek to assume and assign the Cigna Provider Agreements, they must provide to Cigna with Adequate Assurance of any proposed assignee's future performance thereunder. 11 U.S.C. § 365(b)(1)(C) The Sale Motion proposes no provision of Adequate Assurance Information to Contract Counterparties prior to the Sale Hearing, or ever.

12. Adequate Assurance Information 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. Thus, Cigna will need adequate time to complete this review and evaluation. Accordingly, Adequate Assurance Information for any proposed assignee of the Cigna Provider Agreements must be provided to Cigna and its undersigned counsel at least ten

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<sup>1</sup> The proposed Effective Date of any assumption and assignment is unclear. Typically, the effective date of an assignment pursuant to a sale would be the closing of that sale. However, under the APA, the "Effective Time" of Closing is the first day of the month following the Closing Date. APA, § 3.1. However, under the proposed Assumption Notice, the "Assumption Effective Date" of an Assumed Contract is the later of the date of entry of the order authorizing such assignment, or the date following the expiration of the deadline to object to assumption and assignment of no objection is filed. The Sale Motion itself is silent on this issue, and thus fails to resolve this ambiguity.

(10) days prior to any hearing on proposed assumption and assignment of the Cigna Provider Agreements, unless Cigna agrees otherwise.

C. Protective Cure Objection.

13. Amounts due and owing to Cigna under the Cigna Provider Agreements accrue and are satisfied on a rolling basis. Thus, 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.

14. 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”). 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).

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) denies the Sale Motion except as consistent with the foregoing; and (ii) grants Cigna such additional relief as this Court deems just and equitable.

Dated: September 18, 2018

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Counsel to Cigna Health and Life Insurance Company

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 18, 2018, 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