

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

In re )  
 ) Case No. 18-05665  
Curae Health, Inc., *et.al*<sup>1</sup>, ) Chapter 11  
 )  
1721 Midpark Road, Suite B200 ) Judge Walker  
Knoxville, TN 37921 )  
 ) Jointly Administered  
Debtors. )  
 ) Hearing: October 23, 2018 at 2:00 p.m.

**LIMITED OBJECTION TO DEBTORS’ EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO (I)(A) SHUT DOWN THE CLARKSDALE HOSPITAL; (B) REJECT UNEXPIRED LEASES AND CONTRACTS OF CLARKSDALE; AND (C) RECEIVE RELATED RELIEF; OR, IN THE ALTERNATIVE, (II)(A) TRANSFER OPERATIONS OF THE CLARKSDALE HOSPITAL TO A NEW OPERATOR FREE AND CLEAR OF ANY LIENS, CLAIMS, OR ENCUMBRANCES PURSUANT TO AN OPERATIONS TRANSFER AGREEMENT TO BE FILED WITH THE COURT; (B) ASSUME AND ASSIGN THE COAHOMA COUNTY LEASE, AND CERTAIN OTHER UNEXPIRED LEASES AND CONTRACTS REQUESTED BY THE NEW OPERATOR; AND (C) RECEIVE 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’ EMERGENCY MOTION FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO (I)(A) SHUT DOWN THE CLARKSDALE HOSPITAL; (B) REJECT UNEXPIRED LEASES AND CONTRACTS OF CLARKSDALE; AND (C) RECEIVE RELATED RELIEF; OR, IN THE ALTERNATIVE, (II)(A) TRANSFER OPERATIONS OF THE CLARKSDALE HOSPITAL TO A NEW OPERATOR FREE AND CLEAR OF ANY LIENS, CLAIMS, OR ENCUMBRANCES PURSUANT TO AN OPERATIONS TRANSFER

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

AGREEMENT TO BE FILED WITH THE COURT; (B) ASSUME AND ASSIGN THE COAHOMA COUNTY LEASE, AND CERTAIN OTHER UNEXPIRED LEASES AND CONTRACTS REQUESTED BY THE NEW OPERATOR; AND (C) RECEIVE RELATED RELIEF (the “Motion”), Docket No. 314:

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 November 1, 2017, the Merit Health Northwest facility, owned and operated by Clarksdale Regional 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 November 1, 2017, the Merit Health Northwest facility was added as a Licensed Site under this agreement.

3. Under date of July 7, 2015, MEDHOST Cloud Services, Inc. (f/k/a YourCareUniverse, 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. Collectively, the agreements described in numbered paragraphs 1 through 3 above shall be referred to as the “MEDHOST Agreements.” The MEDHOST Agreements are executory contracts as contemplated in 11 U.S.C. § 365. All MEDHOST Agreements include

MEDHOST and Debtor Curae Health, Inc. as counterparties. Neither of the other six (6) debtors is a party to the MEDHOST Agreements, or either of them.

5. Exhibit E-2 to the Motion is a listing of Clarksdale executory contracts that may be assumed and assigned if the Motion is granted and executory contracts are assigned to a qualified new operator of the Clarksdale Hospital. The reader of the Motion may be left with the impression that the MEDHOST Service Agreement, as described on Exhibit E-2 (at page 11 thereof) is a singular, two-party contract between Clarksdale Regional Center, Inc. and MEDHOST. That is incorrect. The MEDHOST Agreements are between MEDHOST and Curae Health, Inc. No subsidiary of Curae Health is a party to any of the MEDHOST Agreements, though some are Licensed Sites thereunder. Further, the proposed cure amount listed on Exhibit E-2 for the “MEDHOST Service Agreement” is incorrect. The actual cure amount required to cure all defaults under the MEDHOST Agreements is approximately \$3,153,129.98 (the “Cure Amount”), although it is possible to allocate said total among the MEDHOST entities based on the usage by each Debtor. The MEDHOST Agreements cannot be assumed and assigned, under 11 U.S.C. § 365, without the full Cure Amount being paid in full.

6. MEDHOST does not oppose the Motion insofar as the Motion seeks authority to shut down the Clarksdale Hospital. However, Mississippi law requires Mississippi hospitals to retain medical records for up to ten (10) years (*see* Miss. Code Ann. §41-9-69), and HIPAA requires covered entities and health care providers to provide access to medical records retained by such entities (*see* 45 CFR §164.524). MEDHOST is not a covered entity or health care provider. MEDHOST hosts the Hospital’s electronic health record system, which includes both its financial applications and its advanced clinical applications. By virtue of this arrangement, MEDHOST’s servers are in possession of patient electronic protected health information, which

has been entered into the system by Clarksdale personnel. The Court has appointed a Health Care Ombudsman to oversee the interests of patients. Before the Clarksdale Hospital can be shuttered, MEDHOST must be provided appropriate instructions concerning Clarksdale's patient information and the entity that will be charged with retaining and providing such protected health information. If requested, MEDHOST is willing to continue providing hosting and other services, so long as appropriate arrangements for paying for such services are made.

7. MEDHOST may not oppose the assumption and the assignment of the MEDHOST Agreements to a qualified new operator. However, MEDHOST objects to the Motion to the extent it suggests that the MEDHOST Agreements are stand-alone, two-party agreements between MEDHOST and Debtor Clarksdale Regional Center, Inc. As noted above, the MEDHOST Agreements are with Curae Health, Inc. As such, before the MEDHOST Agreements can be assumed and assigned to any assignee, all defaults under the MEDHOST Agreements must be cured and the full Cure Amount referenced above must be paid in full. To the extent the Motion or any order resolving the Motion reflects to the contrary, MEDHOST objects. In addition, the Debtors must demonstrate adequate assurance of future performance before any assignment of the MEDHOST Agreements to a qualified new operator can be approved.

8. Separately, Debtor Clarksdale Regional Center, Inc. may be liable for some or all amounts due and owing to MEDHOST under the MEDHOST Agreements. MEDHOST respectfully reserves this issue for future determination.

9. As noted, MEDHOST's position is that the MEDHOST Agreements are not severable by hospital facility. There exists one consolidated agreement – with Curae Health, Inc. – and one Cure Amount (described above), for the MEDHOST Agreements. Nevertheless, in an

effort to keep the facilities operating, MEDHOST is willing to consider entering into a new agreement with a Court-approved, credit worthy and appropriately-licensed buyer or operator of one or more of Curae Health's hospital subsidiaries (or their assets), to provide without interruption substantially the same services as are presently being provided by MEDHOST to said hospitals, provided, any such new agreement shall have a term of not less than sixty (60) months in duration. MEDHOST's willingness to consider severing the hosting and other agreements per facility includes a willingness to consider an allocation of the cure obligations among the facilities based on each facility's usage. To facilitate this possibility, MEDHOST will make available for review by potential qualified purchasers its standard form agreements for software licensing, hosting, cloud-based services, master products and services, and HIPAA business associate requirements.

WHEREFORE, MEDHOST respectfully submits this limited objection to the Motion, and suggests that such Motion be denied unless and until: (A) If the Clarksdale Hospital is to be shut down, MEDHOST is provided satisfactory instructions – from the Court and/or the Health Care Ombudsman – on facilitating the transition of MEDHOST's hosting and related services to the entity that will be charged with retaining and providing protected health information; or (B) If a new operator surfaces and is assigned the MEDHOST Agreements, all obligations under the MEDHOST Agreements are assumed and assigned by Curae Health to a new operator, all defaults under the MEDHOST Agreements are cured, and the Cure Amount is paid in full. MEDHOST respectfully requests that it be granted such other and further general relief to which it may be entitled.

This the 19<sup>th</sup> day of October, 2018.

/s/ Thomas H. Forrester

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*Attorneys for MEDHOST of Tennessee, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 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