

**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.)	

**OBJECTION TO DEBTORS’ PROPOSED ASSUMPTION AND ASSIGNMENT OF
CERTAIN MEDHOST AGREEMENTS, AND TO PROPOSED CURE AMOUNTS
RELATED TO MEDHOST AGREEMENTS**

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 objection to the Debtors’ NOTICE OF: (I) DEBTORS’ INTENT TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS, UNEXPIRED LEASES OF PERSONAL PROPERTY, AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY; AND (II) CURE AMOUNT RELATED TO THE FOREGOING (the “Notice”), Docket No. 371:

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.

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).

By amendment dated July 13, 2017, the Gilmore Memorial Hospital facility, 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 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. None of the other six (6) Debtors is a party to the MEDHOST Agreements, or any of them.

5. This Objection includes objections (a) to the assumption and assignment of the MEDHOST Agreements referenced above; (b) to the cure amounts indicated by the Debtors on Exhibit 1 to the Notice; (c) to the Debtors' efforts to sever or bifurcate the MEDHOST Agreements into separate agreements per medical facility; and (d) because of the failure to provide MEDHOST with adequate assurance of future performance of all obligations under the MEDHOST Agreements.

6. Exhibit 1 to the Notice is the Debtors' listing of purported Debtor Amory Regional Medical Center, Inc.'s executory contracts that may be assumed and assigned if the Debtors' Motion (the "Sale Motion") (Docket No. 79) to authorize the sale of Gilmore Memorial Hospital is granted and executory contracts are assigned to a qualified operator of the Gilmore Memorial Hospital. The reader of the Sale Motion and the Notice may be left with the impression that the MEDHOST Agreements are two-party contracts between Debtor Amory Regional Medical Center, Inc. and MEDHOST. That is incorrect. There exists no contract between Debtor Amory Regional Medical Center, Inc. and MEDHOST. 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. The MEDHOST Agreements cannot be severed without the consent of MEDHOST, and such consent has not been given. To the extent the Notice implies otherwise, the Notice is inaccurate, and MEDHOST objects.

7. Further, the proposed cure amounts listed on Exhibit 1 for the MEDHOST Agreements are incorrect. As noted above, Debtor Amory Regional Medical Center, Inc. is not a party to the MEDHOST Agreements. In addition, the actual cure amount required to cure all defaults under the MEDHOST Agreements, pursuant to 11 U.S.C. §365(b)(1)(A), is approximately \$3,153,129.98, plus all amounts required to compensate MEDHOST, pursuant to 11 U.S.C. §365(b)(1)(B), for its actual pecuniary losses resulting from Curae Health's default under the MEDHOST Agreements (collectively, the "Cure Amount"). The MEDHOST Agreements cannot be assumed and assigned, under 11 U.S.C. § 365(b)(1), without the full Cure Amount being paid in full.

8. MEDHOST further objects to the assumption and assignment of the MEDHOST Agreements because the Debtors and the proposed purchaser of Gilmore Memorial Hospital have not complied with 11 U.S.C. § 365(b)(1)(C). The Debtors and the proposed purchaser have failed to provide MEDHOST with adequate assurance of future performance of all obligations required under the MEDHOST Agreements.

9. Separately, Debtor Amory Regional Medical 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.

WHEREFORE, for reasons stated herein, MEDHOST respectfully objects to the assumption and assignment of the MEDHOST Agreements. MEDHOST further objects to the purported cure amounts listed on Exhibit 1 to the Notice. If the successful purchaser of the Gilmore Memorial Hospital wants the benefit of the MEDHOST Agreements, the Sale Motion cannot be granted unless and until the Cure Amount is paid in full. MEDHOST further objects to the Sale Motion because of the Debtors' and the purchaser's failure to demonstrate adequate assurance of future performance of the MEDHOST Agreements. The MEDHOST Agreements cannot be assumed and assigned under these circumstances, and the Sale Motion should be denied.

Respectfully submitted this the 1st day of November, 2018.

/s/ Thomas H. Forrester
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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 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