IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	Case No. 24-11217 (BLS)
Vyaire Medical, Inc., *et al.*,	)	Jointly Administered
	)	
Debtors.	)	**Re: Docket No. 16, 249, 256**

OBJECTION OF CIGNA TO FIRST NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Cigna Health and Life Insurance Company ("CHLIC") and Cigna Behavioral Health, Inc. ("CBH," and jointly with CHLIC, "Cigna") hereby object to the Sale Procedures (defined below) proposed by the *First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [Docket No. 256] ("Cure Notice"), and in support thereof, respectfully state as follows:

BACKGROUND

1. CHLIC and the Debtors are parties to an Administrative Services Only Agreement and a Stop Loss Policy (jointly, the "ASO Agreement") that allow the Debtors to be self-insured[1] for their employee healthcare benefits, with Cigna performing administrative functions. Under the Employee Benefits Agreements, Cigna processes medical and pharmaceutical claims of Debtors' employees ("Employee Healthcare Claims") and the Debtors fund employee healthcare and pharmaceutical claim payments to healthcare providers through a segregated bank account owned by the Debtors ("Plan Bank Account").

[1] Subject to the Stop Loss Policy.

2. CBH and the Debtors are parties to an Agreement for Employee Assistance Program ("EAP Agreement," and collectively with the ASO Agreement, the "Employee Benefits Agreements").[2]

3. On June 10, 2024, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof; (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. 16] ("Sale Motion"). Through the Sale Motion, Debtors seek this Court's approval of the sale of substantially all of their assets to one or more to-be-determined purchasers ("Purchaser").

4. On July 11, 2024, this Court entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof; (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. 249] ("Sale Procedures Order").

5. On July 11, 2024, pursuant to the Sale Procedures Order, the Debtors filed the Cure Notice. The Cure Notice includes the following Cigna listings ("Cigna Listings"):

[2] The Employee Benefits Agreements referenced herein include all amendments, riders, schedules, exhibits, certificates, renewal caveats and disclosures, addendums, letters of intent, and banking agreements related thereto.

1427 Cigna Behavioral Health, Inc.	Vyaire Medical, Inc.	Cigna 2016-10-18 Service EAP (US)	0.00
1428 Cigna Behavioral Health, Inc.	Vyaire Medical Payroll LLC	Cigna & Tufts 2016-10-01 Service (US)	$0.00

The Cigna Listings propose cure amounts of $0.

6. One or both of the Cigna Listings may be intended to designate the EAP Agreement. The Cure Notice does not list the ASO Agreement.

OBJECTION

7. Cigna objects to the Cure Notice because, *inter alia*, the Cure Notice does not clearly and specifically identify any of the Employee Benefits Agreements, and does not propose to satisfy Debtors' cure obligations consistent with section 365(b)(1) of the Bankruptcy Code.

A. Notice of Disposition.

8. To the extent that the Debtors seek to assume and assign any or all of the Employee Benefits Agreements, they must correctly identify and designate such contracts. Pending such identification and designation, Cigna reserves all rights and objections, including its right to object to the proposed disposition of any of the Employee Benefits Agreements to the extent that the Debtors do not comply with paragraph 35 of the Sale Procedures Order.

B. Cure.

9. 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." *In re Entertainment, Inc.*, 223 B.R. 141, 151 (Bankr. N.D. Ill. 1998). Accordingly, to the extent that the Debtors seek to assume and assign any of the Employee Benefits Agreements, the Debtors must pay the full cure amounts based upon the actual amounts that are due on the date that any of the Employee Benefits Agreements are assumed and assigned by the Debtors ("Effective Date"). See 11 U.S.C. § 365(b)(1).

10. Amounts due under the Employee Benefits Agreements vary, and are subject to reconciliation based upon, among other things, eligibility reports submitted by the Debtors. Cure amounts must be based on the amount due on the effective date of any assignment, rendering the proposed cure amounts set forth in the Cure Notice stale.

11. Cigna expressly objects to the proposed cure amounts of $0 set forth in the Cure Notice. Amounts have accrued post-Petition under the Employee Benefits Agreements, and will continue to become due and owing to Cigna on and after the date of any deadline to object to a proposed cure amount. Thus, no cure amount can be fixed prior to the Effective Date.

12. Additionally, to satisfy Debtors' cure obligations, and as a condition precedent to any assignment of the ASO Agreement, any proposed Purchaser must: (i) provide for the proper use, cross-account linkage, and disposition of the Plan Bank Account through which Employee Healthcare Claims are funded; (ii) maintain any required imprest balance in the Plan Bank Account; and (iii) fund all amounts necessary to process and pay all eligible Employee Healthcare Claims incurred by eligible employees and their eligible dependents prior to the Effective Date, that have not been submitted, processed and paid (check issued and cleared) as of the Effective Date.

13. Any order permitting the assumption and assignment of any of the Employee Benefits Agreements must direct that the Debtors fully pay all amounts due to Cigna under those agreements as of the Effective Date, as a condition precedent to such assumption and assignment.

C. No Shared Coverage (Reservation).

14. Cigna objects to any proposed disposition of the Employee Benefits Agreements that would require Cigna to simultaneously provide benefits to eligible employees of both

Debtors and any Purchaser under a single contract. Thus, to the extent that the Debtors or Purchaser propose to maintain employee benefits under any of the Employee Benefits Agreements for employees of both the Debtors and the Purchaser, Cigna objects.

WHEREFORE, Cigna respectfully requests that this Court enter an order that: (i) approves assumption and assignment of the Employee Benefits Agreements only as consistent with the foregoing; and (ii) grants Cigna such additional relief as this Court deems just and equitable.

Dated: July 23, 2024

CONNOLLY GALLAGHER LLP

/s/ Jeffrey C. Wisler
Jeffrey C. Wisler (#2795)
1201 North Market Street, 20th Floor
Wilmington, DE 19801
Telephone: (302) 757-7300
Facsimile: (302) 658-0380
Email: jwisler@connollygallagher.com

Counsel for Cigna

#05820290