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. 518, 519, 520**

OBJECTION OF CIGNA TO DISCLOSURE STATEMENT FOR THE JOINT CHAPTER 11 PLAN OF VYAIRE MEDICAL, INC. AND ITS DEBTOR AFFILIATES

Cigna Health and Life Insurance Company ("CHLIC") and Cigna Behavioral Health, Inc. ("CBH," and jointly with CHLIC, "Cigna") hereby object to approval of the *Disclosure Statement for the Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. 519] ("Disclosure Statement"), 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.

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

3. The Employee Benefits Agreements have neither been assumed nor rejected.

[1] Subject to the Stop Loss Policy.

[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.

4. On September 11, 2024, the Debtors filed the Disclosure Statement and the *Joint Chapter 11 Plan of Liquidation of Vyaire Medical, Inc. and Its Debtor Affiliates Debtors* [Docket No. 518] ("Plan").

5. Under the Plan, all executory contracts will be deemed rejected as of the Effective Date of the Plan, unless they are designated on the Schedule of Assumed Executory Contracts and Unexpired Leases[3] (Assumption Schedule") to be filed with the Plan Supplement. Disclosure Statement, Article IV.C.1. Under the Plan, the Debtors and the Wind Down Debtors may "alter, amend, modify, or supplement" the Assumption Schedule at any time up to 90 days after the Effective Date of the Plan. Plan, Article V.A.; Disclosure Statement, Article IV.C.1. No process or procedure for providing notice of such modifications is proposed by the Plan or Disclosure Statement.

6. Should the Debtors reject or otherwise terminate the ASO Agreement, Employee Healthcare Claims that were incurred, but not submitted, processed and paid ("Run-Out Claims") prior to the effective date of rejection/termination ("Termination Date") will be processed and paid only if the Debtors so elect, and only if the Debtors meet all of their contractual obligations during the twelve (12) months following the Termination Date ("Run-Out Period"), including the obligation to fund the payment of Run-Out Claims throughout the Run-Out Period ("Run-Out Claims Obligations").

7. Upon information and belief, the Debtors' current and former employees who have incurred and will incur healthcare claims prior to any Termination Date expect that those Employee Healthcare Claims will continue to be funded after the Termination Date. However, if the Debtors

[3] Capitalized terms not defined herein have the meaning ascribed to them in the Plan.

do not elect Run-Out Claims coverage, or do not meet their Run-Out Claims Obligations, Employee Healthcare Claims incurred prior to the Termination Date may not be paid.

8. The Plan and Disclosure Statement do not disclose an election as to Run-Out Claims processing, do not propose any funding for Run-Out Claims, and do not otherwise discuss Run-Out Claims.

OBJECTION

9. For this Court to approve the Disclosure Statement, the Disclosure Statement must contain information adequate to permit Cigna, as a creditor and party-in-interest, to make an informed judgment about the Plan. 11 U.S.C. § 1125(b). "The primary purpose of a disclosure statement is to give the creditors information they need to decide whether to accept the plan." *See*, *In re: Monnier Bros.*, 775 F.2d 1336, 1342 (8th Cir. 1985); s*ee also Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. GMC*, 337 F.3d 314, 321 (3d Cir. 2003) (The term adequate information is that which would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the Plan). As set forth below, the Plan and Disclosure Statement fail to provide such information.

10. Under the Plan, all executory contracts will be rejected as of the Effective Date, unless such executory contracts are listed on the Assumption Schedule. However, the Assumption Schedule is subject to modification through and beyond the Effective Date. Thus, as of the deadline to vote upon and object to the Plan, Cigna will not know the Plan's proposed treatment of the Employee Benefits Agreements. Further, as of the hearing where approval of the Plan will be sought, including approval of the assumption and rejection of contracts, the Debtors will have provided neither the Court nor contract counterparties with notice of the ultimate proposed disposition of their executory contracts.

11. Contrary to its apparent purpose, the Assumption Schedule will provide no meaningful notice because it may be modified in whole or in part even after the entry of a confirmation order approving the assumptions proposed thereby, and after the Effective Date. The Debtors propose that the order confirming the Plan authorize the assumption and rejection of subsets of contracts that will not be defined for the Court or the contract counterparties. The Disclosure Statement does not, therefore, provide Cigna with adequate information regarding the treatment of the Employee Benefits Agreements to make an informed decision about the Plan.[4]

12. The Plan and Disclosure Statement also fail to disclose the proposed treatment of the Employee Healthcare Claims incurred prior to the Plan Effective Date in the event that the Employee Benefits Agreements are rejected or otherwise terminated under the Plan. Specifically, the Plan and Disclosure Statement fail to disclose whether and how Run-Out Claims – employee healthcare claims incurred prior to any Termination Date – will be funded after the Effective Date of the Plan. If the Run-Out Claims Obligations will be fully funded through the end of the Run-Out Period, the Disclosure Statement and Plan must so state unequivocally, and must disclose the source(s) of Run-Out Claims funding.

13. Alternatively, if the Debtors do not propose to fully satisfy the Run-Out Claims Obligations, the Plan (and any Plan confirmation order) must require the Debtors to provide: (i) fair and adequate notice of the proposed discontinuation of funding of Run-Out Claims to Cigna and current and former employees of the Debtors; (ii) irrevocable direction to Cigna to

[4] The Plan also provides that "insurance contracts" will not be rejected, but does not define that term. Plan, Article V.D.; Disclosure Statement, Article IV.C.4. While the Stop Loss Policy may be deemed an insurance contract, the ASO Agreement is not an insurance contract. The ASO Agreement and the Stop Loss Policy are interdependent and function as an integrated arrangement. Cigna objects to any assumption of one without the assumption of the other, and requests that the Debtors define the scope of "insurance contracts" as used in the Disclosure Statement and the Plan.

discontinue processing Run-Out Claims, in advance of such proposed discontinuation; and (iii) Cigna with the name and contact information of a representative of the Debtors or their successor to whom Cigna can direct inquiries from former employees whose Employee Healthcare Claims will not be paid.

14. The Disclosure Statement does not provide Cigna with adequate information to make an informed decision about the Plan. Cigna cannot evaluate or object to assumption/rejection-related issues, without knowing the proposed treatment of the Employee Benefits Agreements, and the proposed treatment of Run-Out Claims.

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

Dated: September 24, 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

#05832416

Counsel for Cigna Health and Life Insurance Company and Cigna Behavioral Health, Inc.