

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
2 TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
3 **DENTONS US LLP**
601 South Figueroa Street, Suite 2500
4 Los Angeles, California 90017-5704
Telephone: (213) 623-9300
5 Facsimile: (213) 623-9924

6 JOSEPH R. LAMAGNA (Bar No. 246850)
jlamagna@health-law.com
7 DEVIN M. SENELICK (Bar No. 221478)
dsenelick@health-law.com
8 JORDAN KEARNEY (Bar No. 305483)
jkearney@health-law.com

9 **HOOPER, LUNDY & BOOKMAN, P.C.**
101 W. Broadway, Suite 1200
10 San Diego, California 92101
Telephone: (619) 744-7300
11 Facsimile: (619) 230-0987

Proposed Attorneys for the Chapter 11 Debtor and Debtor In Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re

BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit public
benefit corporation,

Debtor and Debtor in Possession.

BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit public
benefit corporation,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES,

Defendant.

Case No. 22-02384-LT11

Chapter 11 Case

Adv. Pro. No. No. 22-90056-LT

**SUPPLEMENTAL DECLARATION OF
JACOB NATHAN RUBIN, PATIENT
CARE OMBUDSMAN, IN SUPPORT OF
EMERGENCY MOTION: (I) TO
ENFORCE THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362; OR,
ALTERNATIVELY (II) FOR
TEMPORARY RESTRAINING ORDER
[Docket Nos. 3, 7]**



1 **SUPPLEMENTAL DECLARATION OF DR. JACOB N. RUBIN**

2
3 I, Dr. Jacob N. Rubin, M.D., hereby state and declare as follows:

4 1. My name is Jacob Nathan Rubin, and I am the Patient Care Ombudsman
5 (the "PCO") appointed in the above-captioned bankruptcy case (the "Case") of
6 Borrego Community Health Foundation (the "Debtor") [Bankr. Docket No. 25]
7 pursuant to 11 U.S.C. § 333(b).

8 2. As PCO, my duties include independently monitoring the quality of
9 patient care provided to patients of the debtor, to the extent necessary under the
10 circumstances, including interviewing patients and physicians and to provide reports
11 to the Court if I determine that patient care is declining significantly or is otherwise
12 being materially compromised. 11 U.S.C. §§ 333(b)(1) and (3).

13 3. I submit this Declaration in furtherance of my duties as PCO and in
14 support of the Debtor's *Emergency Motion: (I) To Enforce The Automatic Stay*
15 *Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining Order*
16 [Docket No. 3] as supplemented by that *Ex Parte Application Supplementing*
17 *Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362;*
18 *Or, Alternatively (II) For Temporary Restraining Order* [Docket No. 10] (the
19 "Application" together with Docket No. 3 and as supplemented, the "Motion"), as a
20 supplement to my *Declaration of Doctor Jacob Rubin* already filed in support of the
21 Motion [Docket No. 4], and in support of this Court entering the order attached as
22 Exhibit A to the Application as soon as possible.

23 4. In making this Declaration, I rely on my experience as a medical doctor
24 licensed by the State of California and in hospital operations and management
25 spanning 30 years.

26 //

27 //

28 //

September 27, 28 and 29 Visits and Ongoing Danger to Patients, including Pregnant Patients

5. With my consultant Dr. Tim Stacy, I visited the Debtor's facilities on September 27 and 28, 2022. During these visits, I learned that Inland Empire Health Plan has been transferring and continues to transfer patients to other provides and/or hospitals without notice to, or knowledge of, such patients.

6. Other providers and hospitals may be as far as 1.5 to 2 hours away from the patients (for example, I visited a clinic where many patients access the facilities *by foot*), and, as a result, patients, many of whom subsist on a low-income, do not have the means to obtain transport themselves to the new providers. Of particular concern are the pregnant patients that rely on the Debtor and its facilities. For example, Desert Regional Medical Center, which is the primary source for deliveries for pregnant women and in which approximately 60 deliveries occur per month (many high risk), has been changed to providers that are 1.5 to 2 hours away. These pregnant patients simply cannot make these changes without serious risk to their health and that of their unborn children. These patients are in urgent need of medication and continuity of healthcare, but are not able to receive it. I have come to this conclusion by my review of patient insurance cards and discussions with the Debtor's women's health clinic.

September 28 Visit and Ongoing Danger to Hepatitis C and HIV/AIDS Patients

7. On September 29, 2022, I and Dr. Stacy visited Stonewall Medical Center, which focuses on hepatitis C and HIV/AIDS patients, and transgender health. I am informed and believe that it provides care to more than 1000 patients. In my professional opinion, there are no acceptable alternatives to the treatment provided by this clinic. Because of the notification from DHCS to the health plans whose patients are assigned to this clinic, I am informed and believe those health plans are transferring patients to remote and insufficient alternative care sites. These patients will suffer immediate and irreparable harm if DHCS does not instruct the health plans

1 to return those patients to Debtor's care immediately. This is a true emergency that
2 cannot wait a day.

3 8. I also engaged in discussions with the physician and providers yesterday
4 for this clinic, wherein I learned that the majority of the served HIV patients are
5 elderly. The burden placed on these patients to find new providers and traveling long
6 distances in hopes of getting their medication timely is unreasonable and inhumane.
7 Without timely medication, HIV viral loads increase, CD4 counts reduce that rapidly
8 increase the conversion risk to AIDS. This will lead to the transmission of the virus
9 to partners and increase in community incidence rates creating a public health hazard.

10 9. Additionally, removing access to the 340-B pharmacy (carrying
11 medicines that are not available at most commercial pharmacies such as CVS and
12 Walgreens), on the premises of the HIV clinic and only accessible to the clinic's
13 patients, may make the critical medications unobtainable. The standard regimen is
14 called HART (Highly Active Antiretroviral Therapy). The name speaks for itself.
15 Any interruption to the medical treatment, even for just a few days, can lead to drug
16 resistance given the resilience of the virus.

17 Conclusion

18 10. As the PCO, I am the "boots on the ground" and I have witnessed the
19 potential for serious, life-threatening deficiencies in the past 72 hours that will occur
20 if unchecked. **These deficiencies are the result of the health plans moving patients**
21 **based upon representations by DHCS to the health plans.** Despite the foregoing,
22 the clinics are seeing the patients who have been disenrolled because of their concern,
23 compassion and long-term relationships with the patients and their families.

24 11. In contrast, DHCS' total disregard for the patients and the providers is
25 shocking. I cannot discern why DHCS, no matter what kind of financial facts it
26 believes exist, has taken actions that are causing health plans to move patients from
27 an organization that is providing healthcare consistent with the standard of care and
28 with no reasonable alternatives for the patients.

12. I can represent that based on my visits and my three decades of experience, including as PCO in other cases, that the Debtor is currently serving the intended community when no one else can. The patients are well cared for. The providers are dedicated and compassionate. The clinics are state of the art and spotless. The consequences of a shut down or material drawback of services is devastating. To protect the patients, DHCS must direct the health plans to re-assign the patients back to the Debtor and DHCS must continue to pay the Debtor for healthcare provided by the Debtor to its patients.

Affirmation of Statements in Maizel

13. I also affirm the statements that Samuel R. Maizel attributed to me in his *Supplemental Declaration* in support of the Motion [Docket No. 10 at pp. 7-31] (the Supplemental Maizel Decl.) in paragraph 9.

I have:

[G]reat concern with regard to patient care because Inland Empire Health Plan, and possibly other plans, is reassigning patients from the Debtor to other providers, often apparently without notice to the patients, and telling the Debtor's representatives that they are doing this because of instructions from DHCS. The net result is that patients show up for appointments, and when intake tries to verify their coverage (which requires verifying that they are a patient assigned by the health plan to the Debtor) they are being told the patient is no longer assigned to the Debtor. In some cases the Doctors, unwilling to abandon longstanding patients, are treating them anyway. This is not a viable solution because (a) the Debtor will be effectively providing free care, and (b) the Doctor cannot refer the patient to a specialist, because the health plan will not accept that referral. In other cases the patients are being turned away, sometimes with no idea of where to go for medical care or having been reassigned to a doctor too far away for them to get there.

122412631\V-3

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

- 1 SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
- 2 TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
- 3 **DENTONS US LLP**
601 South Figueroa Street, Suite 2500
- 4 Los Angeles, California 90017-5704
Telephone: (213) 623-9300
- 5 Facsimile: (213) 623-9924
- 6 JOSEPH R. LAMAGNA (Bar No. 246850)
jlamagna@health-law.com
- 7 DEVIN M. SENELICK (Bar No. 221478)
dsenelick@health-law.com
- 8 JORDAN KEARNEY (Bar No. 305483)
jkearney@health-law.com
- 9 **HOOPER, LUNDY & BOOKMAN, P.C.**
101 W. Broadway, Suite 1200
- 10 San Diego, California 92101
Telephone: (619) 744-7300
- 11 Facsimile: (619) 230-0987

12 *Proposed Attorneys for the Chapter 11 Debtor and Debtor In Possession*

13 **UNITED STATES BANKRUPTCY COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 In re
16 BORREGO COMMUNITY HEALTH
17 FOUNDATION, a California nonprofit public
18 benefit corporation,
Debtor and Debtor in Possession.

Case No. 22-02384-11

Chapter 11 Case

19 BORREGO COMMUNITY HEALTH
20 FOUNDATION, a California nonprofit public
21 benefit corporation,
22 Plaintiff,
23 v.
24 CALIFORNIA DEPARTMENT OF HEALTH
25 CARE SERVICES,
26 Defendant.

Adv. Pro. No. 22-90056

**DECLARATION OF JOSEPH R.
LAMAGNA IN SUPPORT OF EX PARTE
APPLICATION SUPPLEMENTING
EMERGENCY MOTION: (I) TO
ENFORCE THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362; OR,
ALTERNATIVELY (II) FOR
TEMPORARY RESTRAINING ORDER**

**Judge: Honorable Laura S. Taylor
Date: September 30, 2022
Time: 11:00 a.m. Pacific**

DECLARATION OF JOSEPH R. LAMAGNA

I, Joseph R. LaMagna, hereby state and declare as follows:

1. I am an attorney licensed to practice law in the State of California, and a partner in the law firm of Hooper, Lundy & Bookman. I have been a healthcare attorney since 2006, and I currently represent Borrego Community Health Foundation ("Debtor"), including with respect to its efforts to meet and confer with the Department of Health Care Services ("DHCS") regarding the ongoing partial payment suspension for in-house dental care and the proposed 100% payment suspension. I have been working with Debtor since 2020, including meeting and conferring with DHCS when it instituted its first 100% payment suspension and then agreed to adjust it to the partial payment suspension applicable to dental claims that remains in place today. I have had dozens of phone calls with DHCS and its representatives regarding the Debtor and its performance under the partial payment suspension and agreements with DHCS.

2. I am providing this declaration to apprise the Court of certain facts and opinions relevant to the Debtor's pending *Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining Order* (the "Motion") and its Ex Parte Application Supplementing Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining Order (the "Ex Parte Application").

3. A provider, such as Debtor, has a right to meet and confer with DHCS regarding a proposed payment suspension. The Debtor exercised that right, and the meet and confer process has been ongoing. As part of that process, I have been communicating with DHCS about materials that the Debtor has requested DHCS to consider when the Debtor asks DHCS to rescind the payment suspension notice and stay its implementation.

4. As part of that process, I have had ongoing email exchanges with DHCS's attorneys, which is attached as Exhibit A.

5. The most recent communication in the email chain requests DHCS to review its notices to plans regarding the proposed 100% payment suspension and to correct the confusion that they have created.

1 6. I have reviewed DHCS's September 28, 2022 notice to health plans regarding the
2 stay of its proposed 100% payment suspension for the Debtor.

3 7. The notice directs plans to a DHCS All Plan Letter ("APL"), "APL 21-003". APLs
4 inform plans of DHCS's position on various matters.

5 8. APL 21-003 does not apply to payment suspensions, because there is no requirement
6 for plans to terminate providers under a payment suspension. Rather, APL 21-003 applies only to
7 situations where plans terminate contracts with providers, including those involving terminations of
8 providers when a provider has been suspended from Medi-Cal. APL 21-003 directs plans on what
9 they are to do when the plans terminate a provider contract, and particularly when the contracts are
10 terminated due to DHCS suspending a provider. Thus DHCS's reference to APL 21-003 with regard
11 to the Debtor's situation is gratuitous, confusing and misleading.

12 9. For the payment suspension at issue here, DHCS would allow Debtor's to remain
13 Medi-Cal providers, but would withhold payment and expect plans to withhold payment from
14 providers with the NPI numbers identified in the notices. A payment suspension is thus very
15 different than a suspension.

16 10. The only part of APL 21-003 that would apply to a payment suspension would be
17 footnote 2, which states, "MCPs are not obligated to terminate contracts with Network Providers
18 and Subcontractors placed under a payment suspension. MCPs may continue the contractual
19 relationship; however, MCPs may not pay the Network Provider/Subcontractor until the suspension
20 is lifted." In other words, the only applicable part of APL 21-003 to the Debtor's situation is the
21 footnote that explains APL 21-003 does not apply to payment suspensions; i.e., it doesn't apply to
22 the Debtor's situation.

23 11. There was no need to refer to APL 21-003 at all in the notice regarding the delay in
24 imposing the total payment suspension and thereby create any confusion. DHCS could have avoided
25 the problem by just updating the plans that the payment suspension is being stayed until October 6,
26 2021 and request that plans maintain the status quo until then.

27 12. Plans and providers routinely comply with DHCS's directions and requirements,
28 even if not legally obligated to do so. A reasonable plan reviewing DHCS's notice would likely be

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 confused about the type of suspension at issue and the applicability of APL 21-003 and what DHCS
2 wanted the plans to do.

3 13. Plans will typically take a path that is most likely to avoid dispute with DHCS or
4 even try to take action that would appease DHCS. Plans and providers do not want to be the focus
5 of allegations that a plan has not complied with an APL or the law. Such motivation is exacerbated
6 when there is ambiguity. The confusing nature of the terminology of a suspension and a payment
7 suspension, the differences of which are not always clear even to participants in Medi-Cal and their
8 advisors, coupled with a statement from DHCS referencing ambiguous terms creates pressure on
9 plans to try to interpret what DHCS wants.

10 14. Thus, the DHCS notice and its general reference to APL 21-003, which does not
11 apply to payment suspensions, is likely a contributing cause to plans providing notice of non-
12 payment, termination, and reassignment of patient lives, which would apply to suspensions as
13 referenced in the APL.

14 15. Moreover, DHCS telling plans that they do not have to terminate provider contracts
15 is hollow and would likely be interpreted to have an implicit message that DHCS welcomes non-
16 mandatory termination of the contracts. Indeed, the plans know that DHCS is trying to suspend
17 payments to Debtor, and when DHCS tells the plans they do not have to terminate the Debtor, a plan
18 can reasonably interpret that message as one implicitly requesting plans exercise their discretion to
19 terminate the provider, especially when DHCS did not tell the plans not to terminate Debtor either.

20 16. A request from DHCS is likely to be respected by plans, as rational participants in
21 Medi-Cal do not want to receive unnecessary scrutiny by DHCS, if it can be avoided.

22 17. Thus, any clarification from DHCS about its notice and reference to APL 21-003,
23 which includes a request from DHCS to stop reassigning lives of patients who have not requested
24 reassignment, will be respected by plans.

25 18. Plans would similarly follow DHCS's direction to reassign lives that the plans should
26 not have moved after DHCS's notice.

27 19. I have reviewed the Declaration of Dana Durham, the Chief of the Managed Care
28 Quality and Monitoring Division of DHCS [Adv. Pro. Docket No. 17]. In paragraph 11 of her

1 declaration, she explains that in the correspondence dated September 28, 2022, DHCS referenced
2 APL 21-003, which is titled "Medi-Cal Network Provider and Subcontractor Terminations",
3 apparently for the sole purpose of referring to a footnote that said that APL 21-003 didn't apply to
4 payment suspensions. I note that she does not explain why DHCS had never cited this APL in any
5 prior correspondence related to the renewed total payment suspension nor does she explain why
6 they cited it at all, given their concession that it didn't apply.

7 Executed this 30th day of September 2022, San Diego, California.

8
9 
10 _____
11 Joseph R. LaMagna

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

TENTATIVE RULING

ISSUED BY JUDGE LAURA S. TAYLOR

Adversary Case Name: BORREGO COMMUNITY HEALTH FOUNDATION, v.
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

Adversary Number: 22-90056

Case Number: 22-02384-LT11

Hearing: 11:00 AM Friday, September 30, 2022

Motion: HEARING SET BY COURT RE: EX PARTE APPLICATION
SUPPLEMENTING EMERGENCY MOTION: (I) TO ENFORCE THE
AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362; OR, IN THE
ALTERNATIVELY (II) FOR TEMPORARY RESTRAINING ORDER FILED ON
BEHALF OF BORREGO COMMUNITY HEALTH FOUNDATION

HEAR.

On September 27, 2022, the Court held an initial hearing on Debtor's emergency motion seeking in general terms: (1) a statement regarding the applicability of the automatic stay in relation to the actions of the California Department of Health Care Services (the "State") seeking to terminate certain payments/reimbursements and enforcing or failing to rescind a prepetition order requiring block patient transfers; or (2) issuance of a temporary protective order providing an equivalent stay. The Debtor documented tremendous harm, beginning if not concluding on September 29, 2022, if this matter was not decided on an emergency basis including not only catastrophic economic harm to Debtor but also serious harm to its patients.

The State wished to oppose, but given the documented harm, the Court could not provide its requested time for written opposition. Thus, the State was given two options: (1) file written opposition by noon on September 28, 2022, with the Court deciding the matter on the papers; or (2) refrain from withholding payment and otherwise take steps to ensure status quo maintenance in order to allow for its requested time for response and a hearing slightly more than a week later. The attorney for the State reasonably requested an opportunity to consult with his client, but, by the next morning, the Court was advised that the State elected the second option. Its papers are now due Monday; the hearing is on Thursday, October 6, 2022.

On September 29, 2022, however, the Debtor filed a supplemental

emergency request indicating that some third parties were, nonetheless, withholding payments and terminating contracts. The motion suggested lack of action by the State. The state promptly responded, advising that it sent appropriate notices and was not responsible for these actions.

The Court is strongly inclined resolve this interim dispute through an order that documents the State's agreement and advises third parties that:

(1) Declaration by this Court is not required for the automatic stay to come into effect. And the automatic stay arises in this case unless the Court finds that an exception to the stay exists. The Court is currently considering the matter and parties act at their own risk if they violate the stay while this decision is pending.

(2) Acts taken in violation of the automatic stay are void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

(3) Actions taken in violation of the stay may subject the violator to compensatory or coercive sanctions including reimbursement of Debtor's, no doubt reasonably large, attorneys' fees. *In re Pace*, 67 F.3d 187, 193 (9th Cir. 1995) (stating that courts have discretion under § 105(a) to sanction stay violators by awarding attorney's fees and costs to non-individuals, including bankruptcy trustees and corporate debtors, who do not qualify for an award of sanctions under § 362(h)).

(4) Given the notices provided by the State and the issuance of this order, violators cannot avoid sanction in reliance on the prepetition actions of the State.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1 SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
2 TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
3 **DENTONS US LLP**
601 South Figueroa Street, Suite 2500
4 Los Angeles, California 90017-5704
Telephone: (213) 623-9300
5 Facsimile: (213) 623-9924
6 JOSEPH R. LAMAGNA (Bar No. 246850)
jlamagna@health-law.com
7 DEVIN M. SENELICK (Bar No. 221478)
dsenelick@health-law.com
8 JORDAN KEARNEY (Bar No. 305483)
jkearney@health-law.com
9 **HOOPER, LUNDY & BOOKMAN, P.C.**
10 101 W. Broadway, Suite 1200
San Diego, California 92101
Telephone: (619) 744-7300
11 Facsimile: (619) 230-0987

12 *Proposed Attorneys for the Chapter 11*
13 *Debtor and Debtor In Possession*

14 **UNITED STATES BANKRUPTCY COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 In re
17 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
18 public benefit corporation,
19 Debtor and Debtor in Possession.

Case No. 22-02384-LT11
Chapter 11 Case

20 BORREGO COMMUNITY HEALTH
21 FOUNDATION, a California nonprofit
public benefit corporation,

Adv. Pro. No. 22-90056

**NOTICE OF HEARING AND BRIEFING
DEADLINES ON EMERGENCY MOTION: (I)
TO ENFORCE THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362; OR,
ALTERNATIVELY (II) FOR TEMPORARY
RESTRAINING ORDER**

22 Plaintiff,
23 v.
24 CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
25 through its Director, Michelle Baass,
26 Defendant.

Judge: Honorable Laura S. Taylor
Date: October 6, 2022
Time: 2:00 p.m.
Place: Jacob Weinberger U.S. Courthouse
Department 3 -- Room 129
325 West F. St.
San Diego, CA 92101

**NOTICE OF HEARING AND DEADLINES IN THE
ADVERSARY PROCEEDING**

PLEASE TAKE NOTICE that, on October 6, 2022 at 2:00 p.m., the Court will hear the *Emergency Motion (I) To Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively, (II) For a Temporary Restraining Order* (the "Motion") [Docket No. 3] at the address set forth above.

PLEASE TAKE FURTHER NOTICE that any written opposition to the Motion (the "Opposition") from the California Department of Health Care Services must be filed by **October 3, 2022**.

PLEASE TAKE FURTHER NOTICE that the deadline for the Debtor to file a reply to any Opposition is **October 4, 2022**.

PLEASE TAKE FURTHER NOTICE that any parties seeking to obtain additional copies of the Motion and other papers filed in support of the Motion may do so by accessing <http://www.kccllc.net/BorregoHealth> or by contacting proposed counsel to the Debtors whose contact information is as follows: Dentons US, LLP, Attn: Tania Moyron, Esq., Email: tania.moyron@dentons.com, Tel: (213) 243-6101; Fax: (213) 623-9924, Address: 601 S. Figueroa St., Suite 2500, Los Angeles, CA 90017.

Dated: September 30, 2022

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By: /s/ Tania M. Moyron

Proposed Attorneys for the Chapter 11
Debtor and Debtor In Possession

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
Minute Order

Hearing Information:

ADV: 22-90056

**BORREGO COMMUNITY HEALTH FOUNDATION, VS CALIFORNIA DEPARTMENT OF
HEALTH CARE SER**

Debtor: BORREGO COMMUNITY HEALTH FOUNDATION,

Case Number: 22-02384-LT11 **Chapter:** 11

Date / Time / Room: FRIDAY, SEPTEMBER 30, 2022 11:00 AM DEPARTMENT 3

Bankruptcy Judge: LAURA S. TAYLOR

Courtroom Clerk: RUSSELL PALUSO

Reporter / ECR: SUE ROSS

Matter:

HEARING SET BY COURT RE: EX PARTE APPLICATION SUPPLEMENTING EMERGENCY MOTION:
(I) TO ENFORCE THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362; OR, IN THE
ALTERNATIVELY (II) FOR TEMPORARY RESTRAINING ORDER FILED ON BEHALF OF BORREGO
COMMUNITY HEALTH FOUNDATION (ON SHORTENED TIME)

Appearances:

TANIA M. MOYRON, ATTORNEY FOR BORREGO COMMUNITY HEALTH FOUNDATION
(video)

SAMUEL MAIZEL, ATTORNEY FOR BORREGO COMMUNITY HEALTH FOUNDATION (video)

JOSEPH LAMAGNA, ATTORNEY FOR BORREGO COMMUNITY HEALTH FOUNDATION
(video)

KENNETH WANG, ATTORNEY FOR CALIFORNIA DEPARTMENT OF HEALTH CARE
SERVICES (video)

DAVID GOLUBCHIK, ATTORNEY FOR JACOB N. RUBIN, PATIENT CARE OMBUDSMAN
(video)

JACOB N. RUBIN, PATIENT CARE OMBUDSMAN, PRESENT (video)

JEFFREY GARFINKLE, SPECIAL APPEARANCE FOR MCKESSON CORPORATION,
OFFICIAL COMMITTEE OF UNSECURED CREDITORS (video)

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Minute Order

(continue).. 22-02384-LT11

FRIDAY, SEPTEMBER 30, 2022 11:00 AM

Disposition:

Granted pursuant to the Court's Tentative Ruling and as set forth on the record.

DHCS is to file a clarifying letter regarding the Health Plan entities by the close of business today as set forth on the record.

Debtor is to serve the approved clarifying letter to the Health Plan entities by the close of business today as set forth on the record.

Order to come from the Court.

The Court granted the Debtor's motion for extension of time to file schedules and statements, in the main bankruptcy case, as stated on the record. Debtor is to file those schedules and statements by 10/10/22 as stated on the record. Debtor is to file a statement of position with U.S. Trustee's office using the correct email address as stated on the record.

Order to be submitted by Debtor.



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re:

BORREGO COMMUNITY HEALTH
FOUNDATION, A CALIFORNIA NONPROFIT PUBLIC
BENEFIT CORPORATION

Debtor.

BANKRUPTCY NO. 22-02384-LT11

BORREGO COMMUNITY HEALTH
FOUNDATION, A CALIFORNIA NONPROFIT PUBLIC
Plaintiff.

ADVERSARY NO. 22-90056-LT

v.

CALIFORNIA DEPARTMENT OF HEALTH CARE
SERVICES, BY AND THROUGH ITS DIRECTOR, MICHELLE BAAS
Defendant.

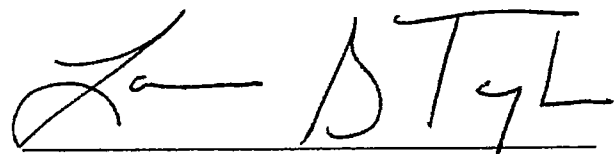
Date of Hearing: September 30, 2022
Time of Hearing: 11:00 a.m.
Name of Judge: Laura S. Taylor

**ORDER RE THE ISSUANCE OF A CLARIFYING LETTER BY THE CALIFORNIA DEPARTMENT
OF HEALTH CARE SERVICES TO HEALTH PLANS CONTRACTING WITH DEBTOR AS OF
PETITION DATE**

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2)
through three (3).

Related Motion/Order Docket Entry No. 3, 10

DATED: September 30, 2022


Judge, United States Bankruptcy Court

Page 2 | ORDER RE THE ISSUANCE OF A CLARIFYING LETTER BY THE CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES TO HEALTH PLANS

Debtor: BORREGO COMMUNITY HEALTH FOUNDATION
BORREGO COMMUNITY HEALTH FOUNDATION v. CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES

Bankruptcy No. 22-02384-LT11
Adversary No. 22-90056-LT

On September 30, 2022, the Court held an emergency hearing on the Debtor's Emergency Motion and Supplement relating to the California Department of Health Care Services' (the "Department") intention to affect a suspension of Medi-Cal payments to Debtor and the potential resulting block transfer of patients by health plans out of Debtor. Generally, in the Emergency Motion, Debtor sought: (1) a statement regarding the applicability of the automatic stay in relation to the actions of the Department seeking to terminate certain payments/reimbursements and enforcing or failing to rescind a prepetition letter encouraging block patient transfers; or (2) issuance of a temporary protective order providing an equivalent stay. Appearances at the emergency hearing were made as stated on the record.

The September 30 adversary proceeding hearing followed a September 27, 2022, bankruptcy proceeding hearing at which the Court discussed with the parties the scheduling for Debtor's Emergency Motion. At that hearing, the Court provided the Department with two options: (1) file written opposition by noon on September 28, 2022, with the Court deciding the matter on the papers; or (2) refrain from withholding payment and otherwise take steps to ensure status quo maintenance in order to allow for its requested time for response and a hearing slightly more than a week later. The Department elected the second option. Its papers are due on October 3, 2022; the hearing is scheduled for October 6, 2022.

The parties disputed what was required to maintain the status quo. The Court set this hearing based on that dispute and the tremendous potential for harm documented by the Patient Care Ombudsman and Debtor if this matter was not decided on an emergency basis. The harm includes not only catastrophic economic harm to Debtor but also serious harm to its patients. At the hearing, the Department made clear its position that it had not required health plans to terminate their contracts with and transfer patients out of Debtor. Debtor believes the Department should have taken steps to prevent the health plans from doing so given its prior communication with the health plans.

The Court determines that relief is appropriate given that decisions by health plans to unilaterally block transfer Debtor's patients have the potential to endanger health and life. The Court hereby ORDERS the Department to file and serve a clarifying letter on all health plans that were contracted with Debtor as of the petition date, September 12, 2022, which must explain:

- (1) Declaration by this Court is not required for the automatic stay to come into effect. The automatic stay arises in this case unless the Court finds that an exception to the stay exists. The Court is currently considering whether an exception applies that would permit the Department to suspend Medi-Cal payments, which will be heard on October 6.
- (2) One exception to the automatic stay, 11 U.S.C. § 362(b)(4), excepts actions by governmental units to enforce their police or regulatory power. Even the Court were to find that exception applicable to the Department, it would not be available to health

Page 3 | ORDER RE THE ISSUANCE OF A CLARIFYING LETTER BY THE CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES TO HEALTH PLANS

Debtor: BORREGO COMMUNITY HEALTH FOUNDATION
BORREGO COMMUNITY HEALTH FOUNDATION v. CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES

Bankruptcy No. 22-02384-LT11
Adversary No. 22-90056-LT

plans.

- (3) Acts taken in violation of the automatic stay are void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).
- (4) Actions taken in violation of the stay may subject the violator to compensatory or coercive sanctions including reimbursement of Debtor's, no doubt reasonably large, attorneys' fees. *In re Pace*, 67 F.3d 187, 193 (9th Cir. 1995) (stating that courts have discretion under § 105(a) to sanction stay violators by awarding attorney's fees and costs to non-individuals, including bankruptcy trustees and corporate debtors, who do not qualify for an award of sanctions under § 362(h).).
- (5) Given the notices provided by the Department and the issuance of the Court's order, violators cannot avoid sanction in reliance on the prepetition actions of the Department.

IT IS SO ORDERED.

From: DHCS MCQMD <MCQMD@dhcs.ca.gov>
Sent: Friday, September 30, 2022 4:48 PM
To: DHCS MCQMD; Erika Oduro; complianceregulatoryaffairs@iehpc.org
Cc: Jarrod McNaughton; jlopez@lhpc.org; Linnea Koopmans
Subject: RE: --URGENT – Action Needed: Borrego 100-Percent Payment Suspension – Extension of Effective Date to 10/6/22

Dear Plan Partner:

The Department of Health Care Services (“DHCS”) today participated in a hearing (the “Hearing”) in case entitled *Borrego Community Health Foundation v. California Department of Health Care Services, Adversary Proceeding 22-90056* (the “Adversary Proceeding”) in the United States Bankruptcy Court for the Southern District of California (the “Bankruptcy Court”).

Based on rulings from the Bankruptcy Court, DHCS has been instructed to:

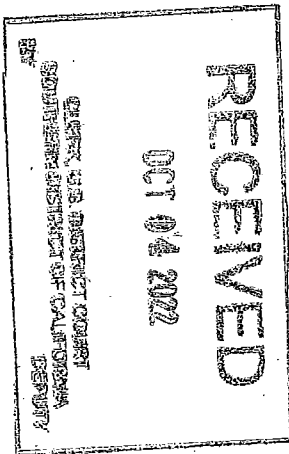
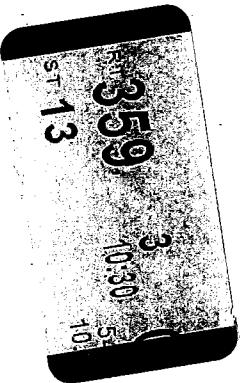
- Extend the effective date of the 100% temporary payment suspension issued to Borrego Community Health Foundation (“Borrego”), pending entry of a further order from the Bankruptcy Court;
- Direct that Medi-Cal enrollees that have been reassigned, on or after September 12, 2022, by Managed Care Plans (“MCP”) having provider contracts with Borrego for reasons related to the issuance of the temporary payment suspension should be reassigned to Borrego,
- Direct that MCPs having provider contracts with Borrego not (i) assign Medi-Cal enrollees to other providers, (ii) refuse to assign Medi-Cal enrollees to Borrego, (iii) terminate contracts with Borrego, or (iv) stop payments (other than for dental claims, which remain subject to a payment suspension) with regard to Borrego, unless the actions were taken for reasons unrelated to the issuance of the payment suspension;
- To the extent any Medi-Cal enrollees have been assigned to another provider for reasons unrelated to the payment suspension, immediate notice should be provided to the patient in the language that the patient can understand that reassignment is reversed and the patient may return to Borrego facilities for treatment; and
- Reiterate that Borrego remains an active Medi-Cal provider.

At the Hearing, the Bankruptcy Court expressed concerns that MCP that have “transferred lives” or taken other actions adverse to Borrego may have violated the automatic stay imposed by the Bankruptcy Code and may subject the MCP to sanctions, including attorneys’ fees incurred by Borrego’s estate. Plans should consult with appropriate advisors regarding their actions related to Borrego.

Please direct any questions regarding these actions to MCQMD@dhcs.ca.gov.

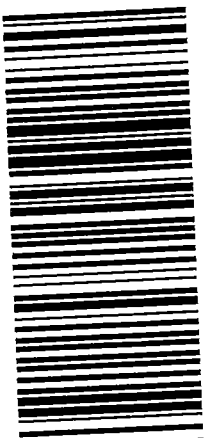
Thank you,
Managed Care Quality Monitoring Division
Department of Health Care Services

FedEx



RECEIVED
OCT 04 2022
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
RECEIVED

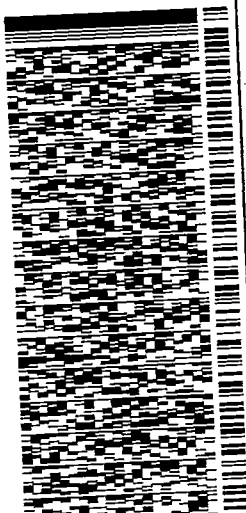
Part # 156698-435 RRDB EXP 09/23



XW SDMA

TRK# 5338 5367 5407

TUE -
PRIOR



SAN DIEGO CA 92101
(310) 823-9000
DEPT: BORRERO COMMUNITY HEALTH
REF: BORRERO 125997-1

**TO SOUTHERN DISTRICT OF CA
UNITED STATES DISTRICT COURT
333 WEST BROADWAY STE 420**

ORIGIN ID: NGA (310) 823-9000	SHIP DATE
SHIPPING DEPT: KURTZMAN CARSON CONSULTANTS	ACTWGT: 1
222 N PACIFIC COAST HWY STE 300	CAD: 085
EL SEGUNDO, CA 90245	BILL SENT
UNITED STATES US	

Align top of FedEx Express® shipp