IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC., *et al.*,	:	**Case No. 24 – 10164 ( )**
Debtors.[1]	:	**(Joint Administration Requested)**

MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 541 AND FED. R. BANKR. P. 6003 AND 6004 FOR ENTRY OF INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTORS TO (I) MAINTAIN AND ADMINISTER PREPETITION REFUND PROGRAMS, AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS, AND (B) GRANTING RELATED RELIEF

Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases, respectfully represent as follows:

Relief Requested

1. By this motion (the "**Motion**"), pursuant to sections 105(a), 363(b) and 541 of the United States Code (the "**Bankruptcy Code**") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors request entry of interim and final orders (a) authorizing, but not directing, the Debtors to, in the ordinary course of business and consistent with prior practice, (i) maintain and administer their prepetition Refund Programs (as defined below), and (ii) pay and otherwise honor certain prepetition obligations related thereto, and (b) granting related relief.

[1] The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.kccllc.net/CanoHealth. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

2. The Debtors further request the Court (a) authorize all applicable financial institutions (collectively, the "**Banks**") to receive, process, honor, and pay all checks presented for payment and electronic payment requests relating to the foregoing to the extent directed by the Debtors in accordance with this Motion and to the extent the Debtors have sufficient funds standing to their credit with such Bank, whether such checks were presented or electronic requests were submitted before or after the Petition Date (as defined below), and (b) authorize all Banks to rely on the Debtors' designation of any particular check or electronic payment request as appropriate pursuant to this Motion, without any duty of further inquiry, and without liability for following the Debtors' instructions.

3. Proposed forms of order granting the relief requested herein on an interim basis and, pending a final hearing on the relief requested herein, on a final basis are annexed hereto as **Exhibit A** (the "**Proposed Interim Order**") and **Exhibit B** (the "**Proposed Final Order**" and, together with the Proposed Interim Order, the "**Proposed Orders**"), respectively.

Background

4. Beginning on February 4, 2024 (the "**Petition Date**"), the Debtors each commenced with the Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

5. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Bankruptcy Rule 1015(b) and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**").

6. The Debtors, together with their non-debtor affiliates, are one of the largest independent primary care physician groups in the United States. The Debtors commenced their chapter 11 cases on a prearranged basis with the support, pursuant to the terms of a restructuring support agreement (the "**Restructuring Support Agreement**"), of creditors holding approximately 86% of the Debtors' secured revolving and term loan debt and approximately 92% of the Debtors' senior unsecured notes (collectively, the "**Consenting Creditors**"). With the support of the Consenting Creditors, the Debtors are seeking to implement a comprehensive restructuring, which may be implemented through a chapter 11 plan or a sale of substantially all of the Debtors' assets. The Debtors expect to file a chapter 11 plan and disclosure statement in short order, consistent with the terms of the Restructuring Support Agreement, and to efficiently and expeditiously proceed through these cases towards emergence.

7. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Mark Kent in Support of Debtors' Chapter 11 Petitions and First Day Relief* (the "**Kent Declaration**") and the *Declaration of Clayton Gring in Support of the Debtors' First Day Relief* (the "**Gring Declaration**" and, together with the Kent Declaration, the "**First Day Declarations**"), each filed contemporaneously herewith and incorporated by reference herein.

Jurisdiction

8. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

9. Pursuant to Local Bankruptcy Rule 9013-1(f), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Refund Programs

10. In the ordinary course of their value-based healthcare and wellness businesses, the Debtors operate pursuant to numerous contracts and agreements, as well as various state and federal laws and administrative rules (such laws and rules, collectively, the "**Regulations**"), that in certain instances require the Debtors issue refunds to patients and other third parties, including health plan insurers, federal health care programs such as Medicare and Medicaid, and independent physician practices with whom the Debtors contract (collectively, the "**Refund Recipients**").[2] The Debtors may owe refunds to Refund Recipients as a result of an overpayment by such parties, as well as pursuant to the terms of the Debtors' contracts with Health Plans or Physician Affiliates (both, as defined below). In the ordinary course of business, the Debtors routinely issue refunds or, in lieu of issuing refunds, offset amounts owed to Refund Recipients resulting from the Debtors' contractual obligations, billing procedures, patient medical insurance deductibles, and third-party payments (collectively, the "**Refund Programs**"). The Debtors seek authority to continue to administer the Refund Programs described below.

[2] Under a final rule issued by the Centers for Medicare and Medicaid Services ("**CMS**"), Medicare Part A and B providers and suppliers must report and return overpayments received on behalf of Medicare beneficiaries by the later of the date that is 60 days after the date an overpayment was identified, or the due date of any corresponding cost report, if applicable. *See* 42 C.F.R. §§ 401 and 402. Health care providers and suppliers are also subject to statutory requirements under the Social Security Act, and the failure to report and remit overpayments from Medicare pursuant to the final rule may give rise to False Claims Act liability, significant monetary liabilities, or exclusion from the Medicare program.

A. Patient Refunds

11. In the ordinary course of business, the Debtors bill patients and insurers for medical services provided to patients. After a patient pays the Debtors for medical services, a "credit balance" may occur when the total payments and/or adjustments exceed the gross charges on a patient account. Once this credit balance has been identified and validated by the Debtors, the patient is entitled to a credit or refund from the Debtors (the "**Patient Refunds**").

12. Patient Refunds may arise in a number of situations, including, but not limited to when: (a) a patient pays a copay on annual visits that are actually 100% covered by their health plan, (b) a patient is billed an inaccurate amount, (c) self-pay patients are overcharged for a service they did not receive, or (d) cash-pay physio patients who have paid in full, do not complete, treatment.

13. Patient Refunds are assessed on a case-by-case basis and are identified in various ways, including system-generated notifications and outreach from patients. Once a potential credit balance has been identified, it is reviewed and verified by the Debtors' Revenue Cycle employees. If the credit balance is the result of overpayment, then, after the Debtors have established and validated the credit owed to the patient, the Debtors issue a refund check to the patient. The Debtors estimate these Patient Refunds to be *de minimis*.

B. Health Plan Refunds

14. In the ordinary course of business, the Debtors are often paid by various private health plans, as well as CMS in connection with the Accountable Care Organization Realizing Equity, Access, and Community Health (ACO REACH) and Medicare Shared Savings Program (MSSP) (collectively, the "**Health Plans**"), for services provided to patients. Based upon the Debtors' contracts with the Health Plans (the "**Health Plan Agreements**"), and pursuant to

the Regulations, if a Health Plan overpays for services rendered to patients, the Debtors are obligated to refund the overpaying party for the excess amounts paid to the Debtors (such refunds, the "**Health Plan Refunds**"). Overpayments resulting in Health Plan Refunds arise in several situations, including, but not limited to: (a) duplicate payments made for the same service, (b) overpayment by a Health Plan or coinsurer, (c) instances in which a claim must be voided due to error after a Health Plan has already paid, (d) payments made by a Health Plan for services rendered after termination of coverage, (e) payments received by multiple Health Plans, and (f) errors in contracted and scheduled capitation payment runs.

15. As a value-based healthcare provider, the Debtors are at risk of underperformance on those medical expenses incurred by Health Plans, including inpatient and hospital care, specialists, and medicines, net of rebate, for which the Debtors bear risk (the "**Third Party Medical Costs**"), relative to gross revenue received for serving patients under those Health Plan Agreements. In a given month, if Third Party Medical Costs exceed the gross revenue for the Health Plan, the Debtors may find themselves in a deficit position with that Health Plan. These deficits are typically not refunded to the Health Plan; rather, they are offset with future surpluses to bring the credit account back to breakeven or a net surplus position. Thus, while a refund is not paid in cash, a Health Plan may apply a future surplus to deficits which otherwise would be paid out in cash, to offset deficit positions when they occur. Alternatively, there may be circumstances in which deficits continue and are not satisfied by future surpluses. In such scenarios, based on contractual terms, the Health Plans may demand repayment or settlement of such deficits.

16. The Debtors identify potential credit balances for the Health Plans when the Health Plans contact the Debtors' billing and coding, contracting, or finance departments. Once the Debtors have identified, quantified, and validated any credit balances associated with a Health

Plan, the Debtors either submit a request to the Health Plan that the amount of the credit balance be recouped from future payments, per the surplus/deficit dynamic described above, or issue a refund check to the Health Plan. The mechanics for issuing refunds for each Health Plan are set forth within the Health Plan Agreements.[3] The Health Plan Agreements are extremely complex, covering various different healthcare insurance programs, with varying billing cadences. Accordingly, it is difficult for the Debtors to estimate at any given time the aggregate surplus or deficit amounts owed from, or owing to, the various Health Plans.

C. Physician Affiliate Refunds

17. In the ordinary course of business, the Debtors permit independent physician practices (the "**Physician Affiliates**") to participate in value-based cost-sharing under the Health Plan Agreements. The Debtors enter into primary care physician provider agreements with Physician Affiliates (the "**Physician Affiliate Contracts)** in order to coordinate the delivery of medical services through approximately 630 affiliate provider practices. After the Debtors have (i) received payments from the Health Plans pursuant to the Health Plan Agreements, and, (ii) where applicable, refunded amounts to the Health Plans owing under the Health Plan Agreements, the Debtors pass on the contractually negotiated share of such payments to Physician Affiliates in accordance with the terms of the Physician Affiliate Contracts.

18. Occasionally, a Physician Affiliate may dispute capitation payments, bonus, or shared savings amounts remitted as described above. Under such circumstances, Physician Affiliates contact the Debtors' local director, by phone or email, with their concern. The Debtors then validate the request internally and coordinate with any associated Health Plan, as well as the

[3] With respect to the Debtors' ACO REACH and MSSP contracts, the mechanics for issuing refunds to the government as payor under Medicare or Medicaid are also governed by CMS.

Debtors' platform vendor and finance department. After the Debtors confirm any amounts owed to a Physician Affiliate, the Debtors issue that Physician Affiliate a refund check. The Debtors estimate these Physician Affiliate Refunds to be *de minimis*.

D. Refund Reimbursement Procedures

19. The Debtors maintain approval procedures for processing Patient Refunds, Health Plan Refunds, and Physician Affiliate Refunds. Documentation and details are first sent to the Revenue Cycle Management Leader for review and approval. The Debtors' accounts payable department must then separately review and approve before issuing the refund. For Health Plan Refunds and Physician Affiliate Refunds, the Debtors also notify the Health Plan and receive the Health Plan's acknowledgement and agreement to the proposed Health Plan Refund before the Health Plan Refund is issued.

20. If a refund check remains outstanding for more than six (6) months, it is the Debtors' general practice to cancel the check and contact the recipient. If the check remains uncashed and the Debtors are unable to contact the recipient, the check remains cancelled, and the Debtors accrue the liability on their balance sheet. Periodically, the Debtors turn unclaimed funds over to the applicable state treasury. However, such unclaimed fund amounts are generally *de minimis*.

E. The Debtors Require Authority to Continue the Refund Programs

21. The Debtors seek authority to continue the Refund Programs in the ordinary course consistent with past practice and to honor certain prepetition obligations under such Refund Programs. The Debtors' patients, physicians, Physician Affiliates, and Health Plans, are pivotal to the success of the Debtors' enterprise. Failure to maintain the Refund Programs could not only materially harm the trust and confidence of the Debtors' patients and other Refund Recipients

during these chapter 11 cases, but would potentially jeopardize the Debtors' ability to legally operate under the Regulations and to receive capitation payments for services rendered through agreements with the Health Plans. Absent the requested relief, the ensuing termination of Health Plan Agreements could cause significant harm to the Debtors' business to the detriment of all stakeholders and lead to potential legal challenges.

22. As discussed above, it is difficult to determine the total amount of outstanding overpayments that have been identified, but for which a refund check has not yet been issued or offsetting has not yet occurred. There is typically a significant lag between when a patient is treated, when the credit balance is identified, quantified, and validated, and when the Refund is ultimately issued to the appropriate Refund Recipient. With respect to the Health Plan Refunds, the Debtors' aggregate surplus/deficit position with respect to the Health Plans is constantly in flux and is difficult to estimate or predict at any given time in light of the complexities of the various payor agreements and the different billing terms. Moreover, some refund checks issued to Refund Recipients before the Petition Date may not have been presented for payment or may not have cleared the Debtors' banking system or accounting system prior to the Petition Date and, accordingly, have not been honored and paid as of the Petition Date. However, as set forth above the Debtors are required, under contract and the Regulations, to report and remit reimbursements to Refund Recipients as overpayments are identified. Accordingly, the Debtors seek authority to honor certain prepetition obligations related to the Refund Programs and to continue to do so, as necessary, on a postpetition basis in the ordinary course of business and consistent with prior practice.

Relief Requested Should Be Granted

A. The Debtors Should Be Authorized to Honor Refund Programs

1. Certain Overpayments Attributable to the Refunds May Not Be Property of the Debtors' Estates

23. Section 541 of the Bankruptcy Code generally provides that all property in which a debtor has a legal or equitable interest, including any interest in property that a debtor acquires postpetition, becomes property of the estate upon the commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1), (a)(7). Importantly, section 541 of the Bankruptcy Code does not by itself create new legal or equitable interests in property; instead, "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (noting that "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"). Congress was clear that section 541(a)(1) of the Bankruptcy Code "is not intended to expand the debtor's rights against others more than they existed at the commencement of the case." H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 367–68 (1977); *see also Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) (holding that the "rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less"). Thus, if a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor's estate under section 541 of the Bankruptcy Code and the debtor is prohibited from distributing such property to its creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) ("The Bankruptcy Act simply does not authorize a [debtor] to distribute other people's property among a bankrupt's creditors . . . [S]uch property rights existing before bankruptcy in persons other than the bankrupt must be recognized and respected in bankruptcy.").

24. Courts have interpreted section 541(d) of the Bankruptcy Code to provide "expressly" that "property in which a debtor holds only bare legal title is not property of the estate." *Golden v. Guardian (In re Lenox Healthcare, Inc.)*, 343 B.R. 96, 100 (Bankr. D. Del. 2006). When a debtor holds legal title to, but does not have equitable interest in, certain property, the debtor must turn such property over to the holders with such equitable interest in the property. *See MCZ, Inc. v. Andrus Res., Inc. (In re MCZ, Inc.)*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) ("Where Debtor merely holds bare legal title to property as agent or bailee for another, Debtor's bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner."). A debtor who holds proceeds attributable to property owned by another holds only bare legal title to such property, and thus must turnover such proceeds to the interest holder of such property. *See, e.g.*, *In re Columbia Pac. Mortg., Inc.*, 20 B.R. 259, 262–64 (Bankr. W.D. Wash. 1981) (awarding holder of participation ownership interest proceeds of a property sale because holder was beneficial owner, and debtor only held legal title to the proceeds).

25. The Debtors may not have equitable title to the identified, quantified, and validated overpayments held for the benefit of the Refund Recipients because holding such amounts may be akin to the Debtors holding funds in trust. The Supreme Court has held that property held by debtors for a third party (such as funds held on account of a resulting trust) is not property of the estate. *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990) ("Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.'"); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) (noting that "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition" from the bankruptcy estate). Other courts have held that property over which the debtor is merely exercising some "power . . . solely for the benefit of an entity other

than the debtor" is not property of the estate. *In re S.W. Bach & Co.*, 435 B.R. 866, 878 (Bankr. S.D.N.Y. 2010). Thus, any property held by the Debtors on account of the Refund Programs may be not property of the Debtors' estates.

26. Because the Debtors may not have legal or equitable interest in the overpayments, the Debtors should be permitted to honor their obligations under the Refund Programs. Since such identified, quantified, and validated amounts are the property of the Refund Recipients and not property of the Debtors' estates, the relief requested in this motion will not prejudice creditors or other parties in interest.

2. Payment is Authorized by Sections 363(b) and 105(a) of the Bankruptcy Code

27. Courts in this jurisdiction and others have recognized that it is appropriate to authorize the payment of prepetition obligations on a postpetition basis where necessary to protect and preserve the estate, provided that such payments are supported by sound business purposes or necessary for an effective reorganization. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages where such payments are vital to the continued operation of the debtor); *see also In re Meridian Auto. Sys.-Composites Operations, Inc.*, 372 B.R. 710, 714 (Bankr. D. Del. 2007) (authorizing payment of prepetition claims to suppliers where payments were provided in return for favorable trade terms). These courts acknowledge that various legal approaches rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

28. A bankruptcy court may authorize a debtor to pay certain prepetition obligations pursuant to section 363(b) of the Bankruptcy Code. 11 U.S.C. § 363(b)(1). Section 363(b) of the Bankruptcy Code provides, in relevant part, that "[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate

. . . ." 11 U.S.C. § 363(b)(1). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor "show that a sound business purpose justifies such actions." *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if "the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task").

29. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a); *see In re Ionosphere Clubs*, 98 B.R. at 174-75 (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor's employees). Section 1107(a) of the Bankruptcy Code "contains an implied duty of the debtor-in-possession" to act as a fiduciary to "protect and preserve the estate, including an operating business' going-concern value," on behalf of a debtor's creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004)

(quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee."). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See, e.g.*, *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus.").

30. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor's business. *See, e.g.*, *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that "[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11."); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

31. The relief requested herein is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Failing to honor obligations to the Refund Recipients would have debilitating effects on the Debtors'

business and adversely impact patients. Pursuant to the Regulations and certain contracts, the Debtors are required to repay Refund Recipients for overpayments as they arise or risk, among other things, losing CMS certification and, consequentially, being excluded from the Medicare, Medicaid, or other Federal Health Care programs on which the Debtors crucially rely for patient enrollment and, by extension, capitation fees. And, the Debtors may suffer irreversible reputational consequences by virtue of not remitting Patient Refunds, Health Plan Refunds, and Physician Affiliate Refunds. This in turn affects the Debtors' ability to engage with new patient populations or Physician Affiliates, or maintain key relationships with the Health Plans and existing Physician Affiliate counterparties, adversely impacting the estate and, by extension, reducing recoveries to creditors. Accordingly, the Court should authorize the Debtors to honor their obligations under the Refund Programs in the ordinary course and, consistent with prior practice, during these chapter 11 cases.

B. Cause Exists to Authorize the Debtors' Applicable Financial Institutions to Receive, Process, Honor, and Pay Checks Issued and Transfers Requested to Pay Obligations Related to the Refund Programs

32. The Debtors further request that the Court authorize the Banks to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic fund transfers requested, or to be requested by or on behalf of the Debtors relating to the Refund Programs, to the extent that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payment. The Debtors represent that these checks and requested electronic fund transfers are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of obligations related to the Refund Programs. Accordingly, the Debtors believe that checks or electronic fund transfers other than those relating to authorized payments will not be honored inadvertently. Any such financial

institution may rely on the representations of such Debtors as to which checks are issued or electronic fund transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry. The Debtors also seek authority, but not direction, to issue new postpetition checks or affect new postpetition electronic funds transfers in replacement of any checks or funds transfer requests on account of obligations related to the Refund Programs that are dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

33. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting "a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition" prior to 21 days after the Petition Date. Fed. R. Bankr. P. 6003(b). As explained above and in the Gring Declaration, failing to reimburse the Refund Recipients would jeopardize the Debtors' ability to continue to legally operate and irreparably harm key relationships with the Health Plans and Physician Affiliates. These consequences are not only massively disruptive the Debtors' operations, but also compromise the value of the estate at a critical juncture in the chapter 11 case. Accordingly, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. The Debtors, therefore, submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Request for Bankruptcy Rule 6004(a) and (h) Waivers

34. To implement the foregoing successfully, the Debtors seek waivers of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing

the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the Gring Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

Reservation of Rights

35. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an implication or admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of the obligation of any party in interest to file a proof of claim. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

Notice

36. Notice of this Motion will be provided to the following parties (each as defined in the First Day Declarations): (a) the Office of the United States Trustee for the District of Delaware (Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov) and Jon

Lipshie, Esq. (Jon.Lipshie@usdoj.gov)); (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the Internal Revenue Service; (d) the U.S. Securities and Exchange Commission; (e) the United States Attorney's Office for the District of Delaware; (f) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166 (Attn: Scott J. Greenberg, Esq. (SGreenberg@gibsondunn.com), Michael J. Cohen, Esq. (MCohen@gibsondunn.com) and Christina M. Brown, Esq. (christina.brown@gibsondunn.com)) and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street #1700, Wilmington, DE 19801 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and James O'Neill, Esq. (joneill@pszjlaw.com)), as counsel to the Ad Hoc First Lien Group; (g) ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 (Attn: Jeffrey R. Gleit, Esq. (jeffrey.gleit@afslaw.com)), as counsel to the DIP Agent; (h) Freshfields Bruckhaus Deringer US LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Mark F. Liscio, Esq. (mark.liscio@freshfields.com) and Scott D Talmadge, Esq. (scott.talmadge@freshfields.com)), as counsel to the Agent under the CS Credit Agreement; (i) Proskauer Rose LLP, 70 West Madison, Suite 3800, Chicago, IL 60602 (Attn: Evan Palenschat, Esq. (EPalenschat@proskauer.com)), as counsel to the Agent under the Side-Car Credit Agreement; (j) U.S. Bank National Association, West Side Flats 60 Livingston Ave. EP-MN-WS3C, Saint Paul, MN 55107 (Attn: Global Corporate Trust Services), the Indenture Trustee under the Senior Note Indenture; (k) the Banks; and (l) any party that is entitled to notice pursuant to Local Bankruptcy Rule 9013–1(m) (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Bankruptcy Rule 9013-1(m).

37. The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: February 5, 2024
Wilmington, Delaware

/s/ Amanda R. Steele

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Proposed Attorneys for the Debtors
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Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC., *et al.*,	:	**Case No. 24–10164 ( )**
Debtors.[1]	:	**(Jointly Administered)**

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 541 AND FED. R. BANKR. P. 6003 AND 6004 (A) AUTHORIZING DEBTORS TO (I) MAINTAIN AND ADMINISTER PREPETITION REFUND PROGRAMS, AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS, AND (B) GRANTING RELATED RELIEF

Upon the motion, dated February 5, 2024 (the "**Motion**")[2] of Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases, pursuant to sections 105(a), 363(b) and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for entry of interim and final orders (a) authorizing, but not directing, the Debtors to, in the ordinary course of business and consistent with prior practice, (i) maintain and administer their prepetition Refund Programs, and (ii) pay and honor related prepetition obligations, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and §1334, and the *Amended Standing Order of*

[1] The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.kccllc.net/CanoHealth. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the "**Hearing**"); and upon the First Day Declarations and the record of the Hearing; and all objections to the relief requested in the Motion on an interim basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth herein.

2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Refund Programs and pay and honor related prepetition obligations under the Refund Programs, consistent with prior practice and in the ordinary course of business, as necessary and appropriate in the Debtors' business judgement.

3. The Debtors shall maintain a matrix/schedule of Health Plan Refunds made pursuant to this Interim Order, including the following information: (a) the names of the payee;

(b) the nature, date and amount of the refund; and (c) the Debtor or Debtors that made the refund. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and counsel to the Ad Hoc First Lien Group every 30 days beginning upon entry of this Interim Order.

4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the obligations related to the Refund Programs are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, electronic funds or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, electronic funds or automated clearing house transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

5. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds or automated clearing house transfers, and to replace any prepetition checks or electronic fund or automated clearing house transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim Order.

6. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, authorizing or approving any post-petition debtor-in-possession financing or use of cash collateral for the Debtors (such orders, the "**DIP Order**") and any budget in connection with any such post-petition debtor-in-possession

financing or use of cash collateral authorized herein. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

7. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an implication or admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a waiver of the obligation of any party in interest to file a proof of claim. Any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

8. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

10. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Bankruptcy Rule 9013-1(m).

11. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

12. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis, if necessary, shall be held on _____, 2024, at _____ (Eastern Time) and any objections or responses to the Motion shall be in writing, filed with the Court, and served by no later than **4:00 p.m. (Eastern Time) on _____, 2024** on the following:

a. proposed attorneys for the Debtors: (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq. (gary.holtzer@weil.com), Jessica Liou, Esq. (jessica.liou@weil.com), Matthew P. Goren, Esq. (matthew.goren@weil.com), and Rachael Foust, Esq. (rachael.foust@weil.com)); and (ii) proposed co-counsel for the Debtors: Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, DE, 19801 (Attn: Michael J. Merchant, Esq. (merchant@rlf.com) and Amanda R. Steele, Esq. (steele@rlf.com);

b. counsel to the DIP Agent: ArentFox Schiff LLP, 1301 Avenue of the Americas, 42nd Floor, New York NY 10019 (Attn: Jeffrey R. Gleit, Esq. (jeffrey.gleit@afslaw.com));

c. counsel to the Ad Hoc First Lien Group: (i) Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166 (Attn: Scott J. Greenberg, Esq. (SGreenberg@gibsondunn.com), Michael J. Cohen, Esq. (MCohen@gibsondunn.com) and Christina M. Brown, Esq.) (christina.brown@gibsondunn.com); and Pachulski, Stang, Ziehl & Jones LLP, 919 North Market Street #1700, Wilmington, DE 19801 (Attn: Laura Davis Jones, Esq. (ljones@pszjlaw.com) and James O'Neill, Esq. (joneill@pszjlaw.com));

d. counsel to the Agent under the CS Credit Agreement: Freshfields Brukhaus Deringer US LLP, 601 Lexington Avenue, New York, NY 10022 (Attn: Mark F. Liscio, Esq. (mark.liscio@freshfields.com) and Scott D. Talmadge, Esq. (scott.talmadge@freshfields.com));

e. counsel to the Agent under the Side-Car Credit Agreement: Proskauer Rose LLP, 70 West Madison, Suite 3800, Chicago IL 60602 (Attn: Evan Palenschat, Esq. (EPalenschat@proskauer.com));

f. Indenture Trustee under the Senior Note Indenture: U.S. Bank National Association, West Side Flats 60 Livingston Ave. EP-MN-WS3C, Saint Paul, MN 55107 (Attn: Global Corporate Trust Services); and

g. the Office of the United States Trustee for the District of Delaware: 844 King Street, Suite 2207, Lockbox 35, Wilmington Delaware 19801 (Attn: Benjamin A. Hackman, Esq. (Benjamin.A.Hackman@usdoj.gov) and Jon Lipshie, Esq. (Jon.Lipshie@usdoj.gov)).

13. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Interim Order.

14. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Exhibit B

Proposed Final Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	:	**Chapter 11**
CANO HEALTH, INC., *et al.*,	:	**Case No. 24–10164 ( )**
Debtors.[1]	:	**(Jointly Administered)**

FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 541 AND FED. R. BANKR. P. 6003 AND 6004 (A) AUTHORIZING THE DEBTORS TO (I) MAINTAIN AND ADMINISTER THEIR PREPETITION REFUND PROGRAMS, AND (II) PAY AND HONOR RELATED PREPETITION OBLIGATIONS, AND (B) GRANTING RELATED RELIEF

Upon the motion, dated February 5, 2024 (the "**Motion**")[2] of Cano Health, Inc. and certain of its subsidiaries, as debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases, pursuant to sections105(a), 363 and 541 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), for entry of orders (a) authorizing, but not directing, the Debtors to, in the ordinary course of business and consistent with prior practice (i) maintain and administer their prepetition Refund Programs, and (ii) pay and honor related prepetition obligations, and (b) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and §1334, and the *Amended Standing Order of Reference* from the

[1] The last four digits of Cano Health, Inc.'s tax identification number are 4224. A complete list of the Debtors in the chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at https://www.kccllc.net/CanoHealth. The Debtors' mailing address is 9725 NW 117th Avenue, Miami, Florida 33178.

[2] Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim (the "**Interim Hearing**") and, if necessary, final basis (the "**Final Hearing**"); and the Court having entered an order granting the relief requested in the Motion on an interim basis; and upon the First Day Declarations, the record of the Interim Hearing, the Final Hearing, if any, and all of the proceedings had before the Court; and all objections to the relief requested in the Motion on a final basis, if any, having been withdrawn, resolved, or overruled; and the Court having determined the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth herein.

2. The Debtors are authorized, but not directed, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to maintain and administer the Refund Programs and pay and honor related prepetition obligations under the Refund Programs, consistent with prior practice and in the ordinary course of business, as necessary and appropriate in the Debtors' business judgement.

3. The Debtors shall maintain a matrix/schedule of Health Plan Refunds made pursuant to this Interim Order, including the following information: (a) the names of the payee; (b) the nature, date and amount of the refund; and (c) the Debtor or Debtors that made the refund. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and counsel to the Ad Hoc First Lien Group every 30 days beginning upon entry of this Interim Order.

4. Each of the Banks at which the Debtors maintain their accounts relating to the payment of the obligations related to the Refund Programs are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all funds transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, electronic funds or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, electronic funds or automated clearing house transfers are dated before, on, or after the Petition Date, without any duty to inquire otherwise.

5. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds or automated clearing house transfers, and to replace any prepetition checks or electronic fund or automated clearing house transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Final Order.

6. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, authorizing or approving any post-petition debtor-in-possession financing or use of cash collateral for the Debtors (such orders, the

"**DIP Order**") and any budget in connection with any such post-petition debtor-in-possession financing or use of cash collateral. To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

7. Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any party in interest's rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law; (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) as a waiver of the obligation of any party in interest to file a proof of claim. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any other claim or a waiver of the Debtors' rights to subsequently dispute such other claim.

8. Notwithstanding entry of this Final Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

9. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

10. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted in this Final Order.

12. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.