

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

In re:

LA VIE CARE CENTERS, LLC, *et. al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-55507 (PMB)

(Jointly Administered)

**Related to Docket No. 273**

**UNITED STATES’ LIMITED OBJECTION TO THE DEBTORS’  
COMBINED DISCLOSURE STATEMENT AND JOINT FIRST  
AMENDED CHAPTER 11 PLAN OF REORGANIZATION**

The United States of America (“United States”), on behalf of the U.S. Department of Health and Human Services (“HHS”) and its component agency, the Centers for Medicare & Medicaid Services (“CMS”), objects to the disclosure statement portion of Debtors’ Combined Disclosure Statement and Joint First Amended Chapter 11 Plan of Reorganization (“Amended Disclosure Statement”), attached as Exhibit A to the Notice of Filing (“Notice”) [Docket No. 438].

In support of its limited objection, the United States respectfully avers as follows:

**BACKGROUND**

**A. Procedural Background**

1. On June 2, 2024, each Debtor filed a petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division.

<sup>1</sup> A complete list of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/LaVie>. The Debtors’ service address for these chapter 11 cases is 1040 Crown Pointe Parkway, Suite 600, Atlanta, GA 30338.



2. Certain Debtors are parties to Medicare Provider Agreements with HHS.

3. On July 23, 2024, the Debtors filed the Debtors' Combined Disclosure Statement and Joint Chapter 11 Plan of Reorganization [Docket No. 273] (the disclosure statement portion thereof, the "Original Disclosure Statement"). The Original Disclosure Statement was silent on the Debtors' Medicare Provider Agreements.

4. On September 17, 2024, the Debtors filed the Notice, including the Amended Disclosure Statement. In the Amended Disclosure Statement, the Debtors amended the definition of "Plan Transaction" to add to the contemplated transaction the "transfer free and clear of all liens, claims and encumbrances (including any overpayments) of the Debtors' Medicare Provider Agreements and Medicare provider number." Notice, Exhibit A, Art. II, § A, 1.202.

5. The Debtors also added a section in Article VI titled "Transfer of Provider Agreements." Notice, Exhibit A, Art. VI, § N. This section states:

Entry of the Confirmation Order shall constitute the transfer, free and clear of all liens, claims and encumbrances (including any applicable overpayments) of the applicable Debtor's Medicare provider agreement and Medicare provider number to the applicable Reorganized Debtor. The Reorganized Debtors shall promptly and diligently execute and file any and all forms, notices, consents, and applications with the applicable state regulatory agencies and Centers for Medicare & Medicaid Services as may be necessary to timely obtain any Medicare provider number and assume any provider certification and agreement utilized by the applicable Debtor in connection with the operation of the applicable Facility.

*Id.*

6. The Debtors seek conditional approval of the Amended Disclosure Statement at the hearing scheduled on September 23, 2024.

**B. Medicare Program and Provider Agreements**

7. Medicare is a program under the Social Security Act operated by HHS through its component agency CMS. *See* 42 U.S.C. §§ 1395 *et seq.*

8. Medicare is a “phenomenally regulated system” that principally provides insurance to eligible elderly and disabled individuals. *See Palomar Med. Ctr. v. Sebelius*, 693 F.3d 1151, 1156 (9th Cir. 2012); *In the Matter of Visiting Nurse Ass’n of Tampa Bay, Inc.*, 121 B.R. 114, 115, 119 (Bankr. M.D. Fla. 1990); *see also Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (describing Medicare as “a massive, complex health and safety program . . . embodied in hundreds of pages of statutes and thousands of pages of often interrelated regulations . . .”).

9. To participate in the program, healthcare providers must enter into agreements with HHS (“Medicare Provider Agreements”). The Medicare Provider Agreements comprehensively incorporate the entire body of applicable statutory and regulatory provisions. *See, e.g., In re Neumann*, 55 B.R. 702, 706 (S.D.N.Y. 1985); *In re Monsour Med. Ctr.*, 11 B.R. 1014, 1018 (W.D. Pa. 1981); *In re St. Johns Home Health Agency, Inc.*, 173 B.R. 238, 247 (Bankr. S.D. Fla. 1994); 42 U.S.C. §§ 1395cc, 1395f(a). Without a valid Medicare Provider Agreement, a healthcare provider cannot seek payments from CMS for services it renders to Medicare beneficiaries. *See* 42 U.S.C. § 1395f(a).

10. A Medicare Provider Agreement may be transferred under certain circumstances, 42 C.F.R. § 489.18, subject to regulatory approval by HHS. However, any transferee of a Medicare Provider Agreement “merely step[s] into the shoes of the prior owner.” *See Eagle Healthcare, Inc. v. Sebelius*, 969 F. Supp. 2d 38, 40 (D.D.C. 2013) (concerning the transfer of a Medicare Provider Agreement through an assignment). This maintains an essential element of the Medicare payment system: continuity. *See* 42 C.F.R. § 489.18; *Mission Hosp. Reg’l Med. Ctr. v. Burwell*, 819 F.3d 1112, 1116 (9th Cir. 2016).

11. Accordingly, a Medicare Provider Agreement is transferred *in toto*, with all of its associated rights and obligations intact and flowing to the assignee—including any responsibility

for overpayments or civil penalties. *See U.S. v. Vernon Home Health, Inc.*, 21 F.3d 693, 696 (5th Cir. 1994); *see also Deerbrook Pavilion, LLC v. Shalala*, 235 F.3d 1100, 1103-04 (8th Cir. 2000) (discussing liability for monetary penalty imposed by CMS under that Provider Agreement prior to the transfer); *Triad at Jeffersonville I v. Leavitt*, 563 F. Supp. 2d 1, 6 (D.D.C. 2008) (discussing terms applicable to assignment of Medicare Provider Agreement).

### **ARGUMENT**

12. The United States objects to the Amended Disclosure Statement because it lacks adequate information to allow creditors to make informed decisions about Debtors' plan of reorganization. A disclosure statement "must clearly and succinctly inform the average unsecured creditor what it is going to get, when it is going to get it, and what contingencies there are to getting its distribution." *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991).

13. The Amended Disclosure Statement fails in this mandate because the transfer of the Medicare Provider Agreements to the Reorganized Debtors as described in the Amended Disclosure Agreement contravenes Medicare statute and regulations. The Amended Disclosure Statement provides that the entry of the Confirmation Order will transfer the Medicare Provider Agreements to the Reorganized Debtors free and clear of any CMS claims. Notice, Exhibit A, Art. VI, § N.

14. Non-bankruptcy law defines the extent of a debtor's rights in property, and the Bankruptcy Code does not expand such rights. *See, e.g., In re Airadigm Communications, Inc.*, 519 F.3d 640, 651 (7th Cir. 2008) ("[Where] the property itself—the license—is a creature of federal law[,]. . . federal law also defines the . . . interest in that license."), *partially abrogated on other grounds by, Harrington v. Purdue Pharma*, 603 U.S. --, 144 S. Ct. 2071 (2024); *U.S. v. Consumer Health Servs. of Am., Inc.*, 108 F.3d 390, 394-95 (D.C. Cir. 1997) (finding that the

Bankruptcy Code could not modify an explicit statutory scheme defining liability for services under Medicare). If the law that creates an interest in property also contains restrictions, a debtor cannot disregard non-bankruptcy law and transfer its interest in violation of such restrictions. *See, e.g., In re Schauer*, 835 F.2d 1222, 1225 (8th Cir. 1987) (refusing to permit sale of patronage margin certificates absent statutorily required consent); *In re Farmers Markets, Inc.*, 792 F.2d 1400, 1402 (9th Cir. 1986) (holding that restrictions on the transfer of a liquor license until taxes had been paid were valid).

15. Contrary to Article VI of the Amended Disclosure Statement, the Medicare Provider Agreements cannot be transferred through the entry of confirmation order, nor can they be transferred free and clear of all liens, claims, and encumbrances (including any applicable overpayments). Rather, non-bankruptcy law requires that transfers of Medicare Provider Agreements comply with the Medicare regulatory process and be approved by HHS. *See, e.g.*, 42 C.F.R. § 489.18(d); *United States v. Vernon Home Health, Inc.*, 21 F.3d 693, 696 (5th Cir. 1994); *Delco, Inc. v. Corp. Mgmt., Inc.*, No. 2:11-CV-90-KS-MTP, 2012 WL 3154969, at \*4 (S.D. Miss. Aug. 2, 2012) (quoting *Sunrest Healthcare Ctr. LLC v. Omega Healthcare Investors, Inc. (In re Raintree Healthcare Corp.)*, 431 F.3d 685, 688 (9th Cir. 2005)).

16. First, the Medicare Provider Agreements cannot be transferred by confirmation order because the jurisdiction of the courts over Medicare is limited to judicial review of final agency decisions. *See* 42 U.S.C. § 405(g) (incorporated into the Medicare statute). Section 405(g) is “the exclusive source of federal court jurisdiction” over Social Security Act and Medicare programs. *Jackson v. Astrue*, 506 F.3d 1349, 1353 (11th Cir. 2007). Section 405(h) of title 42 (also incorporated into the Medicare statute) bars all other actions. Bankruptcy court jurisdiction does

not alter or affect the Medicare jurisdictional requirements and limitations of 42 U.S.C. §§ 405(g), 405(h). See *In re Bayou Shores SNF, LLC*, 828 F.3d 1297, 1314 (11th Cir. 2016).

17. Second, the Medicare Provider Agreements cannot be transferred “free and clear” of “all liens, claims and encumbrances (including any applicable overpayments)” or penalties because any transfer is “subject to all applicable statutes and regulations and to the terms and conditions under which [the agreement] was originally issued.” 42 C.F.R. § 489.18(d). It is well-settled that transfer of a Medicare Provider Agreement requires the transferee to assume all existing obligations and liabilities under the agreement. See *Deerbrook Pavilion, LLC v. Shalala*, 235 F.3d 1100, 1103-04 (8th Cir 2000); *Eagle Healthcare Inc. v. Sebelius*, 969 F. Supp. 2d 38, 40 (D.D.C. 2013) (“An assigned Provider Agreement is subject to all of the terms and conditions under which it was originally issued.”).

18. The Amended Disclosure Statement fails to inform creditors that the plan’s mechanism to transfer the Medicare Provider Agreements is infirm. Because future Medicare payments will supply revenue to the Reorganized Debtors and the purported transfer free and clear may impact creditor recoveries, a disclosure that CMS disagrees that the Debtors can transfer their Medicare Provider Agreement through the confirmation order free and clear of any liabilities and that the purported transfer does not comply with Medicare law is necessary for creditors to make informed voting decisions. Thus, the Amended Disclosure Statement does not adequately provide information regarding how the Medicare Provider Agreements are to be treated under any proposed plan.

### **CONCLUSION**

For the forgoing reasons, the United States respectfully requests that the Court deny conditional approval of the Amended Disclosure Statement to the extent that it fails to disclose

that the purported transfer of the Medicare Provider Agreements as described in the plan does not comport with the Medicare statute and regulations and/or that CMS disagrees that the Debtors can transfer the Medicare Provider Agreements as described. The United States reserves all rights to object to final approval of the Amended Disclosure Statement and to confirmation of the plan of reorganization, on these issues and any other issues. By filing this limited objection, the United States does not waive any other rights, claims, actions, defenses, setoffs, or recoupments to which it is entitled, and all rights, claims, actions, defenses, setoffs, and recoupments are expressly preserved.

Dated: September 20, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September 2024 I caused copies of the foregoing document to be served by electronic mail on all parties on the Court's ECF system.

/s/ Louisa A. Soulard

Louisa A. Soulard