

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<hr/>		X
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
<hr/>		X

DEBTOR’S FIRST AMENDED EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS (I) PROHIBITING UTILITY COMPANIES FROM ALTERING, REFUSING OR DISCONTINUING SERVICE, (II) DEEMING UTILITY COMPANIES TO HAVE ADEQUATE ASSURANCE OF PAYMENT, (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE, AND (IV) GRANTING RELATED RELIEF WITH BRIEF IN SUPPORT, NOTICE OF OPPORTUNITY FOR HEARING AND NOTICE OF HEARING

NOTICE OF OPPORTUNITY FOR HEARING

Your rights may be affected. You should read this Document carefully and consult your attorney about your rights and the effect of this Document. If you do not want the Court to grant the motion, or you wish to have your views considered, you must file a written response to the motion with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than **12:00 p.m. (CDT) on October 9, 2024**. You should also serve a file-stamped copy of the response to the undersigned [and others who are required to be served] and file a certificate or affidavit of service with the Court.

**NOTICE OF HEARING
(TO BE HELD IF A RESPONSE IS FILED)**

Notice is hereby given that if a response to the Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and (II) Authorizing the Payment of Outstanding Orders is filed, the hearing on the matter will be held on **October 10, 2024, at 10:00 a.m. (CDT) in the 2nd floor courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102**. If no response is timely filed and the court grants the



requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.

Hospital for Special Surgery, LLC *dba* OneCore Health (“OneCore” or “Debtor”) hereby submits this emergency motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as Exhibit 1 (the “Interim Order”), and a final order (the “Proposed Final Order”¹), pursuant to sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and rule 9013-1 of the Local Rules for the United States Bankruptcy Court for the Western District of Oklahoma (the “Local Bankruptcy Rules”), (i) prohibiting utility companies from altering, refusing or discontinuing service, (ii) deeming utility companies to have adequate assurance of payment, (iii) establishing procedures for resolving requests for additional assurance, and (iv) granting related relief. In support of its Motion, Debtor relies upon the *Declaration of Carrie McEntire in Support of Debtor’s First Day Pleadings* (the “McEntire Declaration”) filed contemporaneously herewith and incorporated herein by reference, and respectfully states as follows:

Background

1. OneCore is a duly licensed hospital that has been specializing in orthopedic and specialty surgeries in the community of central Oklahoma for more than a decade. In late 2021, OneCore completed the construction of its present leased facility in northeast Oklahoma City and has been operating at such location since January 2022.

2. OneCore has focused on a culture of excellence in the delivery of surgical and other health care services such as radiology and orthopedic care with the goal of being one of the top performing surgical hospitals in Oklahoma. In the past four (4) years, OneCore has received many accolades for its excellence and patient care, including the following:

¹ The Proposed Final Order will follow the form of the Proposed Interim Order. Debtor will provide notice of the Proposed Final Order to parties in interest via electronic filing following entry of an Interim Order.

- Healthgrades: Knee Replacement 5-star recipient, 2023 and 2024;
- Healthgrades: Spinal Fusion Surgery 5-star recipient 2021 – 2024;
- Healthgrades: Outstanding Patient Experience 2024; and
- Press Ganey: Guardian of Excellence Award for Outstanding Patient Experience.²

3. Despite the new hospital and recognition as an esteemed hospital for patient care and focus, difficulties ensued in June of 2022, initially due to the Covid pandemic, with the implementation of a new billing system as the legacy system was sunset by the software provider. This difficult conversion caused disruptions to operations for almost two years as OneCore struggled with calibrating the software, creating appropriate interfaces and then billing/collecting claims. This created several million dollars in lost revenue and difficulty tracking patient claims and accounts receivable during the transition. Due to implementation issues, the hospital could not effectively create patient statements to collect good patient accounts receivable, rendering many of these accounts uncollectible.

4. OneCore continued to fight to resolve billing system issues, and with the help of its management company, began to regain control over the revenue cycle in early 2024. From January through August 2024, the hospital produced break-even results and was beginning to turn the corner toward a pathway to profitability with new physician recruitment.

5. In early September 2024, a former patient obtained a significant jury verdict against the hospital relating to care provided by a physician in 2021. OneCore maintains that the evidence shows that the patient's ongoing injuries were unrelated to the accident. Notwithstanding this evidence, the former patient obtained a judgment in the amount of 15 million dollars, which exceeds the estimated enterprise value of the hospital. OneCore timely has appealed the judgment but was

² The Press Ganey Guardian of Excellence Award® honors organizations that perform in the top 5% of healthcare providers and health plans for patient experience, employee engagement, physician experience, clinical quality performance or consumer experience in one year. Only 501 hospitals and health systems achieved this recognition out of over 10,000.

required to initiate this Chapter 11 Case to continue to operate its business, continue to employ its approximately 100 employees, and to maintain the enterprise value of Debtor's assets until a sale pursuant to section 363 of the Bankruptcy Code can be conducted.

6. As of the Petition Date, OneCore employs approximately 60 full-time and 40 contract, or part-time employees.

7. Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. Additional factual background relating to Debtor's business and the commencement of this Chapter 11 Case is set forth in detail in the McEntire Declaration.

Facts Specific to the Relief Requested

I. Utility Services and Utility Companies.

9. In connection with the operation of its businesses and management of its properties, Debtor obtains electricity, water, waste disposal, telecommunications, and other similar services (collectively, the "Utility Services") from a number of utility companies or brokers (collectively, the "Utility Companies"). A non-exclusive list of the Utility Companies and their affiliates that provide Utility Services to Debtor as of the Petition Date (the "Utility Services List") is attached hereto as Exhibit 2.³

10. The Utility Services are essential to Debtor's ongoing business operations.

³ The descriptions of the Utilities Services set forth in this Motion constitute a summary only. The actual terms of the Utilities Services and related agreements will govern in the event of any inconsistency with the description in this Motion. Debtor requests authority to honor obligations and renew all Utilities Services, as applicable, regardless of whether Debtor inadvertently fails to include a particular utilities agreement on Exhibit 2, and any such omitted utilities agreement is hereby included in the defined term "Utilities Services" as used herein and in the Order. Additionally, the listing of an entity on the Utility Services List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and Debtor reserves the right to contest any such characterization in the future.

Should any Utility Provider refuse or discontinue service, even for a brief period, Debtor's business operations and safety procedures could be severely disrupted, and such disruption could jeopardize Debtor's reorganization efforts. Accordingly, it is essential that the Utility Services continue uninterrupted during this Chapter 11 Case.

11. On average, Debtor pays approximately \$23,000 each month for third-party Utility Services. Debtor has a security deposit on account with the City of Oklahoma City totaling \$3,320.88.

12. Preserving Utility Services on an uninterrupted basis is vital to Debtor's ongoing operations. In the course of operating its business, Debtor relies on Utility Services to, *inter alia*, power its medical equipment, administer patient procedures, ensure access to, and the security of, patient health information, and safely dispose of medical waste. Any interruption in Utility Services, no matter how brief, would not only compromise Debtor's business, but, more importantly, would endanger patient safety. Such a result could harm Debtor's ability to remain in compliance with various government regulations and honor contractual commitments to private health plan counterparties, ultimately frustrating creditor recoveries and imperiling the trajectory of this Chapter 11 Case. Losing access to Utility Services would hinder Debtor's efforts to carry out its reorganization strategy and would dampen employee morale. Therefore, it is critical that Utility Companies provide Utility Services to Debtor on an uninterrupted basis.

II. Adequate Assurance.

A. The Proposed Adequate Assurance.

13. Pursuant to section 366(c)(2) of the Bankruptcy Code, a utility may alter, refuse, or discontinue a chapter 11 debtor's utility service if the utility does not receive from the debtor "adequate assurance of payment" within 30 days of the commencement of a debtor's chapter 11 case.

See 11 U.S.C. § 366(c)(2).⁴ Section 366(c)(1)(A) of the Bankruptcy Code defines the phrase “assurance of payment” to mean, among other things, a cash deposit. *See* 11 U.S.C. § 366(c)(1)(A).

14. Debtor intends to pay all postpetition obligations owed to the Utility Companies⁵ in a timely manner and anticipates having sufficient funds to do so. Moreover, prepetition, Debtor entered into ACH agreements (collectively, the “ACH Agreements”) with most of the Utility Companies, pursuant to which, the Utility Companies are authorized to and, in fact, do draw directly from Debtor’s bank account to satisfy invoices for Utility Services. Debtor anticipates that the Utility Companies would, with this Court’s permission, continue to make such draws pursuant to the ACH Agreements postpetition and respectfully submits that such Agreements constitute a form of adequate assurance of payment. Notwithstanding the foregoing, to provide the Utility Companies who don’t have ACH Agreements (“Non-ACH Utilities”) with adequate assurance pursuant to sections 366(b) and 366(c) of the Bankruptcy Code, Debtor proposes to deposit into the Adequate Assurance Deposit Account (defined below) for the benefit of each of the Non-ACH Utilities (the “Utility Deposit”) an amount equal to the cost of one month’s Utility Services, calculated using the historical average for such payments during the past 12 months (the “Adequate Assurance Deposit”, the “Utility Deposit”,

⁴ Subsections (b) and (c) of section 366 of the Bankruptcy Code exist in some tension with each other by setting forth different time periods during which a utility is prohibited from altering, refusing or discontinuing utility service. Section 366(b) of the Bankruptcy Code allows a utility to alter, refuse or discontinue service “if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment.” Meanwhile, section 366(c)(2) of the Bankruptcy Code allows a utility in “a case filed under chapter 11” to alter, refuse or discontinue service to a chapter 11 debtor “if during the 30- day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service. ” Because specific language controls over general when construing statutes, and because Debtor is a chapter 11 debtor, section 366(c)(2) controls. *See* 3 Collier on Bankruptcy § 366.03 [2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (“It is unclear how the 30-day period [in section 366(c)(2) of the Bankruptcy Code] meshes with the normal 20-day period in section 366(b). The better view is that, because section 366(c) is more specifically applicable to chapter 11 cases, the 30-day period, rather than the 20-day period in section 366(b), should apply.”).

⁵ Including any amounts billed postpetition which arise out of Utility Services provided prepetition.

and together with Debtor's ability to pay for prepetition and postpetition Utility Services in the ordinary course, the "Proposed Adequate Assurance"). Based on the foregoing, Debtor estimates that the total amount of the Adequate Assurance Deposit or Utility Deposit will be approximately \$23,000.

15. The Adequate Assurance Deposit may be increased or decreased by Debtor if Debtor terminates any of the Utility Services provided by a Utility Provider, makes other arrangements with certain Utility Companies for adequate assurance of payment, determines that an entity listed on the Utility Services List is not a utility company as defined by section 366 of the Bankruptcy Code or supplements the Utility Services List to include additional Utility Companies. Within seven (7) days after the entry of the Final Order, Debtor will deposit the Adequate Assurance Deposit into a newly created, segregated account of Debtor that is at a bank that is party to a Uniform Depository Agreement with the Office of the U.S. Trustee (the "Adequate Assurance Deposit Account") under Debtor's control for the benefit of any Utility Provider, unless any such Utility Provider agrees in writing to a lesser amount. No creditor of Debtor shall have any interest in or lien on the Adequate Assurance Deposit or the Adequate Assurance Deposit Account. Currently, the City of Oklahoma City holds a security deposit of \$3,320.88.

16. Debtor proposes that the Adequate Assurance Deposit Account be maintained until the earlier of (i) the closing of any sale of substantially all of Debtor's assets, (ii) the effective date of any chapter 11 plan for Debtor or (iii) entry of an order of the Court authorizing or directing the return of the Adequate Assurance Deposit to Debtor. In addition, Debtor seeks authority to reduce the Adequate Assurance Deposit to the extent that it includes an amount on account of a Utility Provider that Debtor subsequently determines should be removed from the Utility Services List.

17. Debtor submits that the Adequate Assurance Deposit, together with Debtor's ability to pay for future Utility Services during this Chapter 11 Case in the ordinary course of business

(collectively, the “Proposed Adequate Assurance”), constitutes adequate assurance of payment to the Utility Companies for purposes of section 366 of the Bankruptcy Code.

18. Accordingly, Debtor believes that no other or further assurance of payment is necessary. If a Utility Provider believes that additional or alternative assurance of payment is necessary, however, Debtor submits that the Utility Provider must request such additional or alternative assurance of payment by the procedures described below (the “Adequate Assurance Procedures”):

- (a) If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve a request (an “Additional Assurance Request”) upon (i) Debtor, [insert Debtor address], Attn: Kyle Pewitt; and (ii) proposed counsel to Debtor (a) Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Suite 100, Oklahoma City, OK 73102, Attn: William H. Hoch (will.hoch@crowedunlevy.com) and Craig M. Regens (craig.regens@crowedunlevy.com) (b) McEntire Advisory, PLLC, 13701 S. Santa Fe Ave., Suite B, Attn: Carrie McEntire (carrie@mcentireadvisory.com) and Carol E. Cox (ccox@ycst.com) (collectively, the “Notice Parties”);
- (b) Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of Debtor’s payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code;
- (c) Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (a) above, Debtor shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- (d) If Debtor determines that a timely received Additional Assurance Request is not reasonable and is unable to reach an alternative resolution with the applicable Utility Provider (each, an “Adequate Assurance Dispute”), Debtor shall, upon reasonable notice, schedule the matter for hearing to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (a “Determination Hearing”);

- (e) Pending resolution of any such Adequate Assurance Dispute, any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to Debtor on account of unpaid charges for prepetition services, the filing of the Chapter 11 Case or any objection to the adequacy of the Proposed Adequate Assurance;
- (f) Debtor may, in its discretion, resolve any Adequate Assurance Dispute by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party-in-interest and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other form of security, without further order of the Court to the extent Debtor believes that such additional assurance is reasonable in the exercise of its business judgment and Debtor may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense; and
- (g) The portion of the Adequate Assurance Deposit attributable to each Utility Provider may be returned to Debtor, without further order of the Court, on the earlier of (i) the reconciliation and payment by Debtor of the Utility Provider's final invoice following Debtor's termination of Utility Services from such Utility Provider, provided that such Utility Provider does not dispute that it has been paid in full for postpetition services and (ii) the effective date of any chapter 11 plan in this Chapter 11 Case.

19. In addition to establishing the Adequate Assurance Procedures, Debtor requests a Final Hearing on this Motion to be held within 30 days of the Petition Date to ensure that, if a Utility Provider asserts it can unilaterally refuse service to Debtor on the 31st day after the Petition Date, Debtor will have the opportunity, to the extent necessary, to request that the Court make such modifications to the Adequate Assurance Procedures in time to avoid any potential termination of the Utility Services.

B. Prohibition on Altering, Refusing or Discontinuing Services

20. Pending the entry of the Proposed Orders and a resolution of any Additional Assurance Request, objection, or Determination Hearing, if any, Debtor requests that the Utility Companies and any Additional Utility Companies (as may be identified), be prohibited from (a)

discriminating against Debtor, (b) altering, refusing, or discontinuing service to Debtor, or (c) requiring payment of a deposit or receipt or any other security for continued service other than the Adequate Assurance Deposit, as a result of Debtor's bankruptcy filings or any outstanding prepetition invoices.

Jurisdiction

21. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and rule 81.4(a) of the Local Civil Rules of the United States District Court for the Western District of Oklahoma. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code. Debtor consents to the entry of a final order or judgment by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Relief Requested

22. By this Motion, Debtor seeks entry of the Proposed Interim and Final Orders (i) prohibiting Utility Companies from altering, refusing or discontinuing service, (ii) deeming Utility Companies to have adequate assurance of payment, (iii) establishing procedures for resolving requests for additional assurance, and (iv) granting related relief.

Basis for Relief

I. The Bankruptcy Code Permits the Court to Authorize Debtor to Pay Utility Companies Where Such Payments Are Necessary to Protect and Preserve the Estate.

23. The maintenance of current Utility Services is essential to Debtor's ability to continue its operations and maximize value, for the benefit of all stakeholders. Unanticipated delays in Debtor's ability to operate and meet its operational needs would result in substantial and irreparable

harm to Debtor and would impair its efforts to preserve and maximize the value of its estate during this Chapter 11 Case. It is, therefore, critical that the Utility Services continue uninterrupted so as to allow Debtor to continue its operations, preserve its go-forward business, and generate maximum value for the estate.

24. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date. *See* 11 U.S.C. § 366. Section 366(c) of the Bankruptcy Code requires the debtor to provide “adequate assurance” of payment for postpetition services in a form “satisfactory” to the utility provider within thirty days of the petition date, or the utility provider may alter, refuse, or discontinue service. 11 U.S.C. § 366(c)(2). Section 366(c)(1) of the Bankruptcy Code enumerates what constitutes “assurance of payment.” 11 U.S.C. § 366(c)(1). Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtor’s ability to pay. *See, e.g., In re Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at *5 (Bankr. S.D.N.Y. Nov. 14, 2011) (“Courts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment[] but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . adequate assurance of payment. The statute does not require an absolute guarantee of payment.”) (internal quotations and citations omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997). A utility does not have greater rights simply because a debtor filed a bankruptcy case. *See In re Begley*, 41 B.R. 402, 406 (E.D. Pa. 1984), *aff’d sub nom. Begley v. Phila. Elec. Co.*, 760 F.2d 46 (3d Cir. 1985).

25. When considering whether a given assurance of payment is “adequate,” the Court should examine the totality of the circumstances to determine whether the Utility Provider will be subject to an unreasonable risk of nonpayment. *See Mass. Elec. Co. v. Keydata Corp. (In re Keydata Corp.)*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (*citing In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va.

1979)); *In re Adelpia Bus. Sols., Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002). Courts have recognized that, in determining the requisite level of adequate assurance, bankruptcy courts must “focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” *Va. Elec. & Power Co.*, 117 F.3d at 650 (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits likely would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”); *see also In re White Star Petroleum Holdings, LLC*, No. 19-12521 (Bankr. W.D. Okla., May 29, 2019) (Dkt. No. 29) (approving adequate assurance in the form of one-time supplemental prepayment to each utility company equal to prorated amount of two weeks’ charges). Accordingly, demands by a utility provider for a guarantee of payment should be refused when the debtor’s specific circumstances already afford adequate assurance of payment.

26. Here, the Utility Companies are adequately assured against the risk of nonpayment for future services. The Adequate Assurance Deposit and Debtor’s ongoing ability to meet obligations as they come due in the ordinary course provides assurance of Debtor’s payment of its future obligations. Moreover, termination of any Utility Services could result in Debtor’s inability to operate its business to the detriment of its stakeholders. *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service, the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

27. Courts are permitted to fashion reasonable procedures, such as Debtor’s proposed Adequate Assurance Procedures, to implement the protections afforded under section

366 of the Bankruptcy Code. *See, e.g., In re Circuit City Stores Inc.*, 2009 WL 484553, at *5 (Bankr. E.D. Va. Jan. 14, 2009) (“The plain language of § 366 of the Bankruptcy Code allows the court to adopt the Procedures set forth in the Utility Order.”). Such procedures are important because, without them, Debtor “could be forced to address numerous requests by utility companies in a disorganized manner at a critical period in their efforts to reorganize.” *Id.* Here, notwithstanding a determination that Debtor’s Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Companies believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures. *See id.* at *5–6. The Utility Companies still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance. *See id.* at *6. However, the Adequate Assurance Procedures will avoid a disorganized process whereby each Utility Provider could make a last-minute demand for adequate assurance that would force Debtor to pay under the threat of losing critical Utility Services. *See id.* at *5.

28. Without the protections afforded by the Adequate Assurance Procedures, Debtor could be forced to address ad hoc requests by Utility Companies in a disorganized manner in the initial, critical stages of their restructuring process, when its efforts should be focused on stabilizing its operations and maximizing value for all of its stakeholders. The orderly process contemplated by the Adequate Assurance Procedures is necessary for a smooth transition by Debtor into chapter 11 and will aid in its restructuring efforts. Moreover, the Adequate Assurance Procedures will establish a fair process that will ensure all parties act in good faith.

29. The Court also possesses the power, under section 105(a) of the Bankruptcy Code, 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). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code,

particularly section 366. Accordingly, Debtor submits that the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

30. Debtor further submits that the relief requested herein has routinely been granted by courts in this district to chapter 11 debtors. *See, e.g., In re White Star Petroleum Holdings, LLC*, No. 19- 12521 (Bankr. W.D. Okla., May 29, 2019) (ECF No. 29); *In re GMX Resources, Inc.*, Case No. 13-11456 (Bankr. W.D. Okla., April 3, 2013) (ECF No. 75); *In re Paul Transportation, Inc.*, Case No. 10-13022 (Bankr. W.D. Okla., May 21, 2010) (ECF No. 41); *In re Roma Foods of Oklahoma, Inc.*, Case No. 09-12488 (Bankr. W.D. Okla., May 12, 2009) (ECF No. 27); *In re Harold's Stores, Inc.*, Case No. 08-15027 (Bankr. W.D. Okla., November 10, 2008) (ECF No. 47); *In re Rocor Int'l, Inc.*, Case No. 02-17658 (Bankr. W.D. Okla., August 7, 2002) (ECF No. 45).

31. Accordingly, for all the foregoing reasons, Debtor submits that cause exists for granting the relief requested herein.

Reservation of Rights

32. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against Debtor under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of Debtor's, or any other party in interest's, right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to 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 Debtor's estate; (g) a waiver or limitation of Debtor's, or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by Debtor that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of Debtor's, or any other party in interest's, rights to subsequently dispute such claim.

Satisfaction of Bankruptcy Rule 6003(b)

33. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires Debtor to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." Debtor believes that, among other things, the success of its chapter 11 efforts will require it to remain in good standing with the Utilities Providers, and that any unanticipated disruption in its business operations, and any distractions caused by attending to any issues related to any failure to pay the Utilities Providers on account of the Utilities Services, would substantially diminish or impair Debtor's efforts to preserve and maximize estate value. Thus, if the relief requested herein is not granted, Debtor's failure to satisfy payments to the Utilities Providers would cause Debtor's estate immediate and irreparable harm by detracting from, and potentially derailing, Debtor's chapter 11 efforts.

34. For this reason and those set forth above, Debtor respectfully submits that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to Debtor and its estate.

Waiver of Stay Under Bankruptcy Rule 6004(h)

35. Debtor seeks a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above and in the McEntire Declaration, the relief requested herein is essential to prevent immediate and irreparable damage to Debtor’s operations, going-concern value and its efforts to pursue a resolution to this Chapter 11 Case. To implement the foregoing successfully, Debtor requests that the Proposed Interim Order and Proposed Final Order each include a finding that Debtor has established cause to exclude such relief from the fourteen-day stay period under Bankruptcy Rule 6004(h).

Notice

36. No creditors’ committee, trustee, or examiner has been appointed in this Chapter 11 Case. Notice of this Motion shall be provided to: (a) the United States Trustee for the Western District of Oklahoma (the “U.S. Trustee”); (b) the United States Attorney’s Office for the Western District of Oklahoma; (c) the Internal Revenue Service; (d) counsel to BOKF, N.A.; (e) the parties identified on Debtor’s list of 20 largest unsecured creditors; (f) the Utility Companies; and (g) any other party that has requested notice pursuant to Bankruptcy Rule 2002. Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

Conclusion

WHEREFORE, Debtor respectfully requests that the Court enter the Proposed Orders granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 7, 2024

Respectfully submitted,

ONECORE

/s/Craig M. Regens

William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

Kaleigh Ewing, OBA #35598

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

Braniff Building

324 N. Robinson Ave., Suite 100

Oklahoma City, OK 73102-8273

(405) 235-7700

will.hoch@crowedunlevy.com

craig.regens@crowedunlevy.com

mark.craige@crowedunlevy.com

kaleigh.ewing@crowedunlevy.com

Proposed Counsel to Debtor

Exhibit 1

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<hr/>		X
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
<hr/>		X

**INTERIM ORDER GRANTING DEBTOR’S EMERGENCY MOTION FOR INTERIM
AND FINAL ORDERS (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING OR DISCONTINUING SERVICE, (II) DEEMING UTILITY COMPANIES
TO HAVE ADEQUATE ASSURANCE OF PAYMENT, (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE,
AND
(IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)⁶ of Hospital for Special Surgery, LLC *dba* OneCore Health (“OneCore” or “Debtor”) for entry of an interim order (this “Interim Order”) and a final order pursuant to sections 105(a) and 366 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*

⁶ Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

(the “Bankruptcy Code”), and rule 9013-1 of the Local Rules for the United States Bankruptcy Court for the Western District of Oklahoma (the “Local Bankruptcy Rules”), (i) prohibiting utility companies from altering, refusing or discontinuing service, (ii) deeming utility companies to have adequate assurance of payment, (iii) establishing procedures for resolving requests for additional assurance, and (iv) granting related relief; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and rule 81.4 of the Local Civil Rules of the United States District Court for the Western District of Oklahoma; and venue of this chapter 11 case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Motion was filed on October 7, 2024, and served on or before October 7, 2024 and that the interim response deadline to the Motion expired on October 9, 2024; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of Oklahoma, and that, except as otherwise ordered herein, no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.

2. Debtor is authorized to pay on a timely basis, in accordance with its prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to Debtor after the Petition Date.

3. Subject to the Adequate Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, Debtor on the basis of the commencement of this Chapter 11 Case or on account of outstanding prepetition invoices, or (b) require additional assurance of payment, other than the Adequate Assurance Deposit, as a condition to Debtor receiving such Utility Services; *provided* that no Utility Company will be bound by the terms of this Interim Order until such Utility Company receives notice of this Interim Order.

4. The existence of ACH Agreements is found to be adequate assurance of future payment as required by section 366 of the Bankruptcy Code with respect to such Utility Companies as to which Debtor has executed ACH Agreements.

5. As to non-ACH Utilities, Debtor's the Adequate Assurance Deposit into the Adequate Assurance Deposit Account for the benefit of each of the Non-ACH Utilities in an amount equal to the cost of one month's Utility Services, calculated using the historical average for such payments during the past 12 months in the estimated amount of \$23,000 shall constitute adequate assurance of future payment of the Non-ACH Utilities as required by section 366 of the Bankruptcy Code.

6. No liens shall attach to the Adequate Assurance Deposit Account, except as to any reversionary interest of Debtor.

7. The following Adequate Assurance Procedures are hereby approved on an interim basis:

- (a) If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve a request (an “Additional Assurance Request”) upon (i) Debtor, [insert Debtor address], Attn: Kyle Pewitt; and (ii) proposed counsel to Debtor (a) Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Suite 100, Oklahoma City, OK 73102, Attn: William H. Hoch (will.hoch@crowedunlevy.com) and Craig M. Regens (craig.regens@crowedunlevy.com) (b) McEntire Advisory, PLLC, 13701 S. Santa Fe Ave., Suite B, Attn: Carrie McEntire (carrie@mcentireadvisory.com) and Carol E. Cox (ccox@ycst.com) (collectively, the “Notice Parties”);
- (b) Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of Debtor’s payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Provider; and (v) identify and explain the basis of the Utility Provider’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code;
- (c) Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (a) above, Debtor shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request;
- (d) If Debtor determines that a timely received Additional Assurance Request is not reasonable and is unable to reach an alternative resolution with the applicable Utility Provider (each, an “Adequate Assurance Dispute”), Debtor shall, upon reasonable notice, schedule the matter for hearing to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (a “Determination Hearing”);
- (e) Pending resolution of any such Adequate Assurance Dispute, any such Utility Provider shall be prohibited from altering, refusing, or discontinuing service to Debtor on account of unpaid charges for prepetition services, the filing of the Chapter 11 Case or any objection to the adequacy of the Proposed Adequate Assurance;
- (f) Debtor may, in its discretion, resolve any Adequate Assurance Dispute by mutual agreement with the requesting Utility Provider without further notice to the Court or any other party-in-interest and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other form of security, without further order of the Court to the extent Debtor believes that such additional assurance is reasonable in the exercise of its business judgment

and Debtor may, by mutual agreement with the objecting Utility Provider and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Provider's estimated two-week utility expense; and

- (g) The portion of the Adequate Assurance Deposit attributable to each Utility Provider may be returned to Debtor, without further order of the Court, on the earlier of (i) the reconciliation and payment by Debtor of the Utility Provider's final invoice following Debtor's termination of Utility Services from such Utility Provider, provided that such Utility Provider does not dispute that it has been paid in full for postpetition services and (ii) the effective date of any chapter 11 plan in this Chapter 11 Case.

8. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against Debtor under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of Debtor's or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to 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 Debtor's estate; (g) a waiver or limitation of Debtor's, or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (h) a concession by Debtor that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

9. The final hearing (the “Final Hearing”) on the Motion shall be held on _____, 2024, at __:___.m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before __:___.m., prevailing Central Time on _____, 2024. Objections must be filed and served on: (i) proposed counsel to Debtor, Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Suite 100, Oklahoma City, OK 73102, Attn: William H. Hoch (will.hoch@crowedunlevy.com) and Craig M. Regens (craig.regens@crowedunlevy.com); (ii) the Office of the United States Trustee for the Western District of Oklahoma, 215 Dean A. McGee Ave., Room 408, Oklahoma City, OK 73102, Attn: Marjorie Creasey (Marjorie.Creasey@usdoj.gov) and Jeff Tate (Jeff.Tate@usdoj.gov); (iii) counsel to BOKF, Frederic Dorwart, Lawyers PLLC, [insert mailing address], Attn: Samuel S. Ory (Sory@fdlaw.com); and (iv) counsel to any statutory committee appointed in this Chapter 11 Case. If no objections are filed to the Motion, the Court may enter a Final Order without further notice or a hearing.

10. Notwithstanding the relief granted in this Interim Order, any payment made or to be made by Debtor pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget and in accordance with the Interim Cash Collateral Order.

11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief request set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the estate.

12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim order are immediately effective upon its entry.

13. Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

15. Findings of fact are based on representations of counsel.

16. Debtor shall serve this Order on parties in interest appearing on the Distribution Service List in accordance with, and as such term is defined in, the *Order Authorizing Limited Notice and Establishing Notice Procedures* [Dkt. No. 9].

IT IS SO ORDERED.

###

Approved for Entry:

ONECORE

/s/ Craig M. Regens

William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

Kaleigh Ewing, OBA #35598

-Of the Firm-

CROWE & DUNLEVY

A Professional Corporation

Braniff Building

324 N. Robinson Ave., Suite 100

Oklahoma City, OK 73102-8273

(405) 235-7700

will.hoch@crowedunlevy.com

craig.regens@crowedunlevy.com

mark.craige@crowedunlevy.com

kaleigh.ewing@crowedunlevy.com

Proposed Counsel to Debtor

Exhibit 2

Utility Service List

Exhibit 2**Utility Service List**

Provider Name	Provider Address	Service(s) Provided	Account Number(s)	Average Monthly Spend (\$)	Proposed Adequate Assurance (\$)
OG&E	PO Box 24990, Oklahoma City, OK 73124-0990	Electricity	132148719-9 132034183-5	\$12,500.00	\$12,500.00
Oklahoma Natural Gas Company	PO Box 219296, Kansas City, MO 64121-9296	Natural Gas	213729095 2628680 00 213697210 2629930 27	\$4,000.00	\$4,000.00
WM Corporate Services, Inc.	PO Box 660345, Dallas, TX 75266-0345	Waste Disposal	25-70780- 63003	\$1,500.00	\$1,500.00
Capital Waste Solutions	PO Box 701768, Tulsa, OK 74170	Biohazard Waste Processing & Disposal	Acws3819HO	\$1,000.00	\$1,000.00
City of Oklahoma City	2300 General Pershing Blvd, Oklahoma City, OK 73107	Water, Trash and Sewer	250102198029 2501022120701	\$2,000.00	\$2,000.00
Cox Communications	PO Box 650963, Dallas, TX 75265-0963	Telephone and Internet	001 6110 078581501 001 6110 078604301 001 6110 81827901	\$2,000.00	\$2,000.00