

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

GULF COAST HEALTH CARE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11336 (KBO)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING THE DEBTORS TO (I) MAINTAIN,
ADMINISTER, AND MODIFY THEIR REFUND PROGRAMS AND
PRACTICES, AND (II) HONOR OBLIGATIONS RELATED THERETO**

Gulf Coast Health Care, LLC (“**Gulf Coast**”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby move (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively), granting the relief described below. In support thereof, the Debtors rely upon the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

² Capitalized terms used but not otherwise defined in the Motion shall have the meanings ascribed to them in the First Day Declaration.

RELIEF REQUESTED

1. By the Motion, the Debtors respectfully request entry of the Interim Order and the Final Order authorizing the Debtors to (a) maintain, administer, and modify their Refund Programs (as defined below) and make payments to residents and Third-Party Payors (as defined below) or to otherwise honor accrued prepetition obligations owed under their Refund Programs (collectively, and as identified herein, the “**Refund Program Obligations**”) and (b) continue, replace, modify, or terminate any Refund Program in the ordinary course of business.

JURISDICTION AND VENUE

2. The Court has jurisdiction to consider the Motion 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 under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

3. The legal predicates for the relief requested herein are sections 105(a), 363, 503(b)(1), and 507(a) 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**”).

4. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

I. The Chapter 11 Cases

5. On the date hereof (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

6. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

7. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed any official committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed.

8. Additional information regarding the Debtors and the Chapter 11 Cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons for and objectives of the Chapter 11 Cases, is set forth in the First Day Declaration.

II. The Debtors’ Refund Programs

9. In the ordinary course of business, the Debtors are required to make refunds to residents and third-party payors, including healthcare insurers, private pay sources, Medicare, Medicaid, and other governmental and quasi-governmental agencies (collectively, the “**Third-Party Payors**”), when overpayments are identified. The Debtors routinely issue refunds for reimbursement of overpayments made by or on behalf of residents resulting from the interaction between the Debtors’ billing procedures, resident medical insurance deductibles, and third-party payments, including payments made in connection with extended repayment plans with the applicable federal or state agencies overseeing Medicare and Medicaid (the “**Refund Programs**”).

10. The case-by-case nature of the myriad of services provided to the residents of the Debtors' skilled nursing facilities makes the process of determining each resident's insurance coverage particularly complex. As a result, whether due to data input errors during claims processing, or overpayments arising from coordination-of-benefits issues among multiple insurers, resident accounts—once fully processed and reconciled—may contain credit balances. Once the Debtors receive payments from residents or insurers, the Debtors review accounts that have credit balances and refund any surplus to the resident or the Third-Party Payor who is due a refund based on an overpayment. Depending on the magnitude of such overpayments, the Debtors sometimes enter into an extended repayment plan with the applicable federal or state agencies overseeing Medicare and Medicaid.

11. When the Debtors discover or otherwise verify an overpayment from a resident or Third-Party Payor, the amount of the overpayment is entered into the Debtors' billing system, which then administers refunds to the resident or Third-Party Payor, as appropriate. There is typically a significant lag between when the resident is treated, when the overpayment is recognized or determined, and when the overpayment is entered into the Debtors' billing system. After the overpayment amount is entered into the billing system, the Debtors issue a check or other form of payment to the resident or Third-Party Payor in the amount of the overpayment.

12. At any given time, it is difficult to determine the amount of outstanding overpayments that have been made and identified, but for which a refund check has not yet been issued. Moreover, some refund checks issued to residents or Third-Party Payors before the Petition Date may not have been presented for payment or may not have cleared the Debtors' banking system and, accordingly, have not been honored and paid as of the Petition Date. Nonetheless, the Debtors are required, under the laws of various states, to reimburse residents

and Third-Party Payors as overpayments are identified. The Debtors therefore request authority to continue to issue and pay the Refund Program Obligations to residents and Third-Party Payors, including refunds for overpayments made prepetition or resulting from prepetition services in the ordinary course of business.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

I. Payment of the Refund Program Obligations Is Appropriate Under Bankruptcy Code Sections 363(b) and 105(a) and Under the Necessity of Payment Doctrine.

13. The Court may grant the relief requested herein pursuant to Bankruptcy Code sections 363(b) and 105(a). Section 363(b)(1) authorizes the trustee to use property of the estate other than in the ordinary course of business after notice and a hearing. *See* 11 U.S.C. § 363(b)(1). Further, pursuant to section 105(a), “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11 of the Bankruptcy Code].” 11 U.S.C. § 105(a).

14. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of certain claims); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 397 (S.D.N.Y. 1983) (relying on section 363 to allow contractor to pay prepetition claims); *In re Tropical Sportswear Int’l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (“Bankruptcy courts recognize that section 363 is a source for authority to make critical vendor payments, and section 105 is used to fill in the blanks.”).

15. Courts also have authorized payment of prepetition obligations under the doctrine of necessity when payment of certain creditors’ prepetition claims is necessary or appropriate to

preserve or enhance the value of a debtor's estate for the benefit of all creditors. *See In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of the pre-petition claim in aid of preservation or enhancement of the estate"); *Mich. Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279 (S.D.N.Y. 1987) (approving lower court order authorizing debtor prior to plan stage of case to pay pre-petition wages, salaries, business expenses, and benefits).

16. Although the "necessity of payment" doctrine has not been codified in the Bankruptcy Code, "courts have used their equitable power under section 105(a) of the Code to authorize the payment of pre-petition claims when such payment is deemed necessary to the survival of a debtor in a chapter 11 reorganization." *In re Just for Feet*, 242 B.R. 821, 824 (Bankr. D. Del. 1994); *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts have approved orders that allow payment of prepetition debt when necessary for the debtors to reorganize, restructure their debts and maximize the value of the bankruptcy estate).

17. Furthermore, courts have long recognized that paying some categories of prepetition obligations outside a plan of reorganization is often necessary to realize the paramount purpose of chapter 11, which is to prevent the forced liquidation of the debtor and preserve its potential for financial rehabilitation. *See In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtor's continued operation); *In re CoServ*, 273 B.R. at 497 (applying a form of the doctrine of necessity in noting that payment of unsecured prepetition claims is appropriate where such payment is the "only means to effect a substantial

enhancement of the estate”). As one court noted, “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” *In re Structurlite Plastics Corp.*, 86 B.R. 922, 932 (Bankr. S.D. Ohio 1988).

18. The Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh and New England Railway Co.* 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until its pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

19. The Debtors have a strong business purpose for paying the Refund Program Obligations. If the Refund Program Obligations are not honored, the Debtors may face legal sanctions or be liable for fines in the jurisdictions in which they operate. For instance, in 2010, the Patient Protection and Affordable Care Act (“ACA”) enacted new rules governing overpayments made by Medicare and Medicaid. Pursuant to the ACA, a person has “60 days after the date on which the overpayment was identified” to report and return such overpayment. 42 U.S.C. § 18001. Under the ACA, any overpayment retained after the 60-day deadline is an

“obligation” subject to liability under the False Claims Act (“FCA”). *Id.* The FCA states in relevant part that “any person who . . . knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government . . . is liable to the United States Government for a civil penalty . . . ***plus 3 times the amount of damages which Government sustains because of the act of that person.***” 31 U.S.C. § 3729 (a)(1)(G) (emphasis added); *see also* 31 U.S.C. § 3279(b)(3) (the term “obligation” means an “established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment”). Accordingly, if the Debtors fail to obtain the relief sought by the Motion, and are unable to “report and return” any overpayments by the 60-day deadline set forth by the ACA, the Debtors may be subject to penalties and treble damages under the FCA.

20. The necessity of the Refund Programs in the healthcare services industry cannot be overstated. In addition to the incurrence of penalties and treble damages described above, failure to honor the Refund Program Obligations likely would cause the Debtors to lose payors and residents, which would damage the Debtors’ business and interfere with the objectives of these cases. Third-Party Payors also may seek to exercise their setoff or recoupment rights to offset future amounts they would owe the Debtors, leading to undue accounting reconciliations or wasteful litigation. Thus, the Refund Programs are necessary for the Debtors to preserve their business and maintain their resident base at this critical juncture.

21. Courts in this District have routinely granted the same or similar relief to other chapter 11 debtors. *See, e.g., In re CMC II, LLC*, Case No. 21-10461 (JTD) (Bank. D. Del. Apr. 1, 2021) (authorizing debtors to continue to maintain and administer refund program for

overpayments in healthcare context); *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. Mar. 1, 2020) (same); *In re Cedar Haven Acquisition, LLC*, Case No. 19-11736 (CSS) (Bankr. D. Del. Sept. 9, 2019) (same).

II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

22. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to the Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

23. The Court may grant the relief requested in the Motion immediately if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). In the context of preliminary injunctions, the Third Circuit has interpreted the language "immediate and irreparable harm" to refer to a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages are inadequate. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App'x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). The harm also must be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). The

Debtors submit that, for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

24. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[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 described above, the relief that the Debtors seek in the Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief. Moreover, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a).

RESERVATION OF RIGHTS

25. Nothing in the Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors’ ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

NOTICE

26. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the Securities and Exchange Commission; (d) the United States Attorney for the District of Delaware; (e) the Centers for Medicare & Medicaid Services; (f) the

parties included on the Debtors' consolidated list of their 40 largest unsecured creditors;
(g) counsel for Omega Healthcare Investors, Inc.; (h) counsel for New Ark Capital, LLC;
(i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners
LLC (f/k/a BM Eagle Holdings); and (k) all parties entitled to notice pursuant to Local Rules
2002-1(b) and 9013-1(m). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

27. No previous request for the relief sought herein has been made to this or any other
court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
October 14, 2021

MCDERMOTT WILL & EMERY LLP

/s/ David R. Hurst

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- and -

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*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	Chapter 11
In re:)	
)	Case No. 21-11336 (KBO)
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , ¹)	
)	Jointly Administered
Debtors.)	
)	Related to Docket No. ____
)	

INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN, ADMINISTER, AND MODIFY THEIR REFUND PROGRAMS AND PRACTICES, AND (II) HONOR OBLIGATIONS RELATED THERETO

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Order**”) and a Final Order authorizing the Debtors to (a) maintain, administer, and modify their Refund Programs and make payments to residents and Third-Party Payors or to otherwise honor accrued prepetition obligations owed under their Refund Programs and (b) continue, replace, modify, or terminate any Refund Program in the ordinary course of business, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over 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; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to issue and pay the Refund Program Obligations to residents and Third-Party Payors, including refunds for overpayments made prepetition or resulting from prepetition services in the ordinary course of business, in an amount not to exceed \$70,000 on an interim basis. The Debtors are further authorized to modify any Refund Program in their business judgement without further application to the Court; *provided, however*, that the issuance and payment of Refund Program Obligations shall not exceed \$70,000 under the Refund Programs in the aggregate (whether such Programs are modified or not) on an interim basis.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized pursuant to this Order.

5. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

6. Nothing in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, continuation, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

7. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm.

8. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

9. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

10. The final hearing (the “**Final Hearing**”) on the Motion shall be held on November 12, 2021, at 10:00 a.m. (prevailing Eastern Time). Any objections or responses to the entry of the proposed Final Order shall be filed with the Court and served on the following no later 4:00 p.m. (prevailing Eastern Time) on November 5, 2021: (a) Gulf Coast Health Care, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (b) proposed counsel to the Debtors, McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Daniel M. Simon and Emily C. Keil), and 1007 North Orange Street, 10th Floor, Wilmington, DE 19801 (Attn: David R. Hurst); (c) counsel for Omega Healthcare Investors, Inc., Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Robert Lemons), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken); (d) counsel for New Ark Capital, LLC, DLA Piper LLP (US), 1900 N. Pearl Street, Suite 2200, Dallas, TX 75201 (Attn: James Muenker); (e) counsel for Barrow Street Capital, LLC and its affiliates, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Kelley Cornish and Alice Eaton); (f) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings), Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 (Attn: George Angelich and Michael Blass), and Fenigstein & Kaufman, APC, 1900 Avenue of the Stars, Suite 2300, Los Angeles, CA 90067 (Attn: S. Jack Fenigstein); and (g) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Joseph J. McMahon, Jr.). If no objections to entry of the Final

Order are filed and served, the Court may enter such Final Order without further notice or hearing.

11. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
)
)
GULF COAST HEALTH CARE, LLC, *et al.*,¹) Case No. 21-11336 (KBO)
)
) Jointly Administered
Debtors.)
) **Related to Docket No. ____**
)

FINAL ORDER AUTHORIZING THE DEBTORS TO (I) MAINTAIN, ADMINISTER, AND MODIFY THEIR REFUND PROGRAMS AND PRACTICES, AND (II) HONOR OBLIGATIONS RELATED THERETO

Upon the motion (the “**Motion**”)² of the Debtors for entry of an Interim Order and a final order (this “**Order**”) authorizing the Debtors to (a) maintain, administer, and modify their Refund Programs and make payments to residents and Third-Party Payors or to otherwise honor accrued prepetition obligations owed under their Refund Programs and (b) continue, replace, modify, or terminate any Refund Program in the ordinary course of business, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Interim Order entered on October ___, 2021; and the Court having jurisdiction over 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; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue to issue and pay the Refund Program Obligations to residents and Third-Party Payors, including refunds for overpayments made prepetition or resulting from prepetition services in the ordinary course of business, in an amount not to exceed \$300,000. The Debtors are further authorized to modify any Refund Program in their business judgement without further application to the Court; *provided, however*, that the issuance and payment of Refund Program Obligations shall not exceed \$300,000 under the Refund Programs in the aggregate (whether such Programs are modified or not).
3. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized pursuant to this Order.

5. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

6. Nothing in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, continuation, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

7. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

8. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

9. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.