

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

WELLPATH HOLDINGS, INC. et al.,<sup>1</sup>

Debtors.

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Chapter 11

Case No. 24-90533 (ARP)

**OBJECTIONS OF CLAIMANTS TO DEBTORS' DISCLOSURE STATEMENT  
FOR PLAN OF REORGANIZATION**

TO THE HONORABLE JUDGE OF THE UNITED STATES BANKRUPTCY COURT  
SITTING IN THE SOUTHERN DISTRICT OF TEXAS:

Claimants Layla Capaci, as administrator for the Estate of Niki Capaci, Teesha (Ontiveros) Graham, as the personal representative (under the New Mexico Wrongful Death Act) for Frankie Jacquez, and Cary Moone, as power of attorney for her father, Jerry Moone, respectfully submits this objection to the adequacy of the Disclosure Statement filed by Wellpath, Inc. (the "Debtor") in connection with its proposed Chapter 11 Plan of Reorganization. The Disclosure Statement fails to provide adequate information as required under 11 U.S.C. § 1125 to assess the feasibility of the proposed plan as required under 11 U.S.C. § 1129(a)(11). More specifically, the Disclosure Statement fails to address how the Debtor will reduce its professional liability expenses, one of the three primary reasons for its bankruptcy.<sup>2</sup> As such, creditors and other parties in interest do not have

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/Wellpath>.

<sup>2</sup> See *In re Diocese of Rochester*, Case No. 19-20905 (Bankr. W.D.N.Y. Feb. 16, 2024) (Court declined to approve the Disclosure Statement due to several deficiencies, including inadequate information regarding insurance coverage); see also *In re United States Brass Corporation*, 194 B.R. 420 (Bankr. E.D. Tex. 1996) (Court specifically evaluated whether the Disclosure Statement sufficiently addressed the debtor's insurance coverage for future liabilities, particularly in regards to asbestos-related tort claims. The adequacy of insurance coverage was central to

the adequate information to make an informed judgment about the proposed plan.

## I. PRELIMINARY STATEMENT

Wellpath, Inc., one of the nation's largest correctional healthcare providers, filed for Chapter 11 bankruptcy in November 2024, citing a recent turn in its financial stability. Among the three reasons Wellpath provided for its bankruptcy is rising professional liability expenses driven by excessive lawsuit settlements. These settlements not only increased the Debtor's insurance costs but also created an immediate financial strain as it has been ordered to pay \$110 million in cash settlements.

Per its filings, Wellpath faces roughly 1,500 outstanding lawsuits, the vast majority related to medical malpractice.<sup>3</sup> *See* Dkt. 17 par. 1. These lawsuits allege systemic deficiencies in the provision of medical care, including cases of gross negligence and preventable deaths among incarcerated people. The large volume of past and pending lawsuits stem from operational failures, including chronic understaffing, inadequate training, harmful policies, and systemic neglect.

To further underscore the Debtor's dire and worsening state of operations, there were more than 1,250 media articles about lawsuits against Wellpath in 2024, compared to 575 articles about

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determining whether the plan was feasible and such disclosure was critical to ensure creditors could make informed decisions about the plan. The court emphasized that disclosure statements must include clear and complete information about how insurance policies would be used to handle tort liabilities, ensuring creditors could assess the risks and potential recovery, and required clarification to that end.).

<sup>3</sup> Wellpath notes that 70 percent of its settlements in 2023 stem from incidents prior to 2018, when the Debtor was formed by HIG Capital through the merger of Correct Care Solutions and Correctional Medical Group Companies. The Debtor appears to be suggesting that the operational failures that led to these lawsuits are not a present issue. However, lawsuits typically take years to go through the courts and thus it is expected that those that have already been settled stem from incidents that date further back. Most of its roughly 1,500 pending lawsuits allege medical malpractice from much more recent incidents, illustrating its continued operational failures. Staying these claims allows Wellpath to avoid accountability and having to make operational improvements to its medical services.

lawsuits against Wellpath’s predecessors Correct Care Solutions and Correctional Medical Group Companies in 2017.<sup>4</sup> One article covered the case of our claimant’s decedent, Niki Capaci, a mother of seven, who died just last year in a New York county jail served by Wellpath after being given medication she was intolerant to while she went through severe withdrawal from opioids. The New York State Commission of Correction released a report that agreed that Ms. Capaci received inadequate care.<sup>5</sup>

Government audits routinely confirm Wellpath’s operational failures. A June 2024 audit by the Alameda County Sheriff’s Office reported that *Wellpath was zero percent compliant* with their essential “access to care” standard, which requires that “the patient is seen by a qualified health care professional, is rendered an appropriate clinical judgment, and receives care that is ordered.” Wellpath was more than 50 percent compliant in just one out ten of the audit’s standards.<sup>6</sup>

Wellpath has a history of attempting to evade responsibility for its operational failures, going as far as to destroy or manufacture evidence in active cases. In Oregon, for example, a judge found that Wellpath executives intentionally deleted emails connected to wrongful death allegations.<sup>7</sup> But when caught, Wellpath has at times admitted its failures. In 2023, a court ordered Wellpath to meet certain standards in California’s Monterey County Jail after years of providing dangerously inadequate care. More than a year later, court-appointed auditors found that Wellpath failed to meet 43 of the 44 standards the court had set. Wellpath hired its own auditors, who determined the corporation was in full compliance. However, Wellpath later admitted its non-

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<sup>4</sup> Meltwater.com media search ran January 13, 2025.

<sup>5</sup> Diaz, Jaelyn, “A health care provider that faced dozens of prisoner lawsuits is filing for bankruptcy,” NPR, December 27, 2024.

<sup>6</sup> Forvis Mazars, Medical Quality Assurance Monthly Results Report, Alameda County Sheriff’s Office, June 2024.

<sup>7</sup> Wilson, Conrad, “Oregon jail health care provider destroyed evidence and tried to cover it up, judge finds,” OPB, October 3, 2024.

compliance after it was revealed that its auditors never even visited the jail.<sup>8</sup>

Further, Wellpath staff have given accounts of ways in which their ability to provide quality care has been hindered by the policies and practices of the Debtor. For example, one unionized Wellpath employee described waiting for their supervisor to leave before calling an ambulance because doing so was discouraged by the Debtor due to its high cost. This is supported by a lawsuit in Michigan in which the state is suing Wellpath for breach of contract after the Debtor skipped out on \$6 million it owed to an ambulance service provider.<sup>9</sup>

These failures have caused Wellpath to garner scrutiny all the way from Congress. In 2023, a group of Congressmembers led by Senator Elizabeth Warren launched an investigation into Wellpath concerned about chronic understaffing and cost cutting that put the lives of incarcerated people at risk.<sup>10</sup> These concerns have been echoed in recent years across the country's courts, government agencies, media, and impacted communities. Their salience and prevalence undoubtedly have rightfully threatened Wellpath's ability to secure third-party professional liability insurance and created substantial professional liability expenses for the Debtor, and there is no indication that this will change following the proposed restructuring, putting creditors at risk of further reorganization and bankruptcy in the future. Therefore, without detailed information about how Wellpath will sufficiently address these concerns to improve its provision of healthcare, secure third-party professional liability insurance, and lower its professional liability expenses the Debtor's plan is unconfirmable.

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<sup>8</sup> Calkins, Royal, "Wellpath admits failures at Monterey County Jail," Voice of Monterey Bay, November 14, 2024.

<sup>9</sup> LeBlanc, Beth, "Michigan sues prison health care provider, alleges it shorted subcontractors \$35M," The Detroit News, September 18, 2024.

<sup>10</sup> Ellis, Blake and Hicken, Melanie, "Senators raise alarm about nation's largest prison health care provider," CNN, December 19, 2023.

## II. ARGUMENTS AND AUTHORITIES

### A. Wellpath's Disclosure Statement does not have "adequate information" to determine the feasibility of the plan.

For the Court to confirm the Debtor's proposed plan of reorganization, the plan must be feasible under 11 U.S.C. § 1129(a)(11) in that it is "not likely to be followed by liquidation, or the need for further reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." To help the Court, creditors, and other parties in interest assess feasibility, the Debtor must release a Disclosure Statement under 11 U.S.C. § 1125. For the Court to approve the Disclosure Statement, it must find that the Disclosure Statement contains "adequate information," defined by 11 U.S.C. § 1125(a)(1) as:

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information...

Wellpath's Disclosure Statement does not contain adequate information as it fails to sufficiently address how the Debtor will cure one of the key contributors to its current bankruptcy: high professional liability expenses. Wellpath must expound on what led to high professional liability expenses in the past and how it will avoid such expenses in the future, which must include how the Debtor will both obtain affordable third-party professional liability insurance and sufficiently prevent litigation in the future such that settlement obligations do not threaten its financial health. It is not enough to give conclusory and summary statements. More specifically,

The Disclosure Statement lacks adequate information as it omits:

- A detailed explanation of the mitigation efforts the Debtor will undertake to improve the quality of its healthcare services and reduce malpractice liability, including but not limited to changes to corporate policies and provider trainings;
- Assurances from insurance carriers, including quotes, that such mitigation efforts will allow them to provide affordable third-party professional liability insurance that transfers risk exposure,<sup>11</sup> and
- A financial analysis that demonstrates that the expected cost of third-party professional liability insurance after such mitigation efforts is financially viable, considering the cost of these mitigation efforts and the other reasons for the Debtor's bankruptcy.

Wellpath's operational failures are ongoing and well documented, explaining its struggles with securing third-party professional liability insurance and rising professional liability expenses and underscoring the insufficiency of its discussion of the matter in its Disclosure Statement. Wellpath fails to provide sufficient evidence that it can obtain third-party professional liability insurance and keep related expenses down enough to feasibly continue operations.

Without insurance, Wellpath cannot maintain compliance with its contractual obligations. Insurance providers evaluate risk based on litigation history, financial stability, and operational performance. Given Wellpath's extensive and ever-growing litigation slate, ongoing financial instability, and operational failures, it is unlikely that it can secure affordable or adequate third-

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<sup>11</sup> We highlight that Wellpath must demonstrate that it can secure *third-party* professional liability insurance. For years it appears that Wellpath has claimed to have insurance, but in fact, has largely self-insured without the resources and cautious business practices that would warrant doing so. Wellpath has admitted in this case that it must pay for expenses that other providers would have covered by third-party insurance coverage. *See* Dkt. 828 par. 9 ("Accordingly, with respect to general liability and professional liability, the Debtors must retain risk for claims made in each coverage period.").

party professional liability insurance coverage and keep related expenses down unless it can provide a plan for *significant* operational improvements to the quality of healthcare being provided inside its contracted correctional facilities. Yet creditors cannot simply trust that Wellpath will undertake the necessary reforms to secure third-party professional liability insurance because it previously decided instead to pursue a questionable insurance scheme, dependent entirely on self-insurance, that left the Debtor, and all its creditors, exceptionally exposed and which led to this moment.

This fundamental issue around professional liability undermines the feasibility of the proposed plan of reorganization and thus necessitates further discussion in the Disclosure Statement before it can meet the standard set under 11 U.S.C. § 1125(a)(1).

**B. Wellpath’s proposed plan of reorganization is unconfirmable.**

The Court can determine feasibility at the disclosure statement stage. “[A] bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable.” *Am. Capital*, 688 F.3d at 154. A feasible plan must “present reasonable assurance of success” and “may not be speculative or based on unreasonable assumptions.” *In re Cantu*, 398 Fed. Appx. 76, 78 (5th Cir. 2010).

Wellpath’s proposed plan is not feasible as the Disclosure Statement includes only speculative claims and unreasonable assumptions. Wellpath briefly asserts that it has taken “a series of mitigation efforts” that it “believe[s] will result in reduced professional liability insurance expense exposure.” Dkt. 566 p. 54. Wellpath does not explain the series of mitigation efforts and instead offers two vague examples: the cancellation of 65 underperforming contracts for which it struggled to secure third-party professional liability insurance and increased provider training and awareness. Cancelling underperforming contracts does not address its broad operational failures in

providing adequate healthcare that have led to the lawsuits that it explicitly noted are undermining its ability to secure third-party professional liability insurance. And while increasing provider training may be a promising start, the statement is far too general to inspire confidence without specific details of the type of training and how it will be implemented and followed by staff to ensure the quality of care improves. Accordingly, it is incognizable that these efforts will reduce its professional liability expenses to the extent necessary for its proposed plan of reorganization to succeed. Without confirmation, or even an attempted explanation to that end, this assertion is plainly speculative and grossly inadequate.

**C. Wellpath’s proposed plan of reorganization was not filed in good faith.**

A proposed plan of reorganization must be filed in good faith as required under 11 U.S.C. § 1129(a)(3), meaning it must be proposed “with the legitimate and honest purpose to reorganize and [have] a reasonable hope of success” in order to satisfy the good faith requirement. *Matter of T-H New Orleans Ltd. Partnership*, 116 F.3d 790, 802 (5th Cir. 1997).

Wellpath is turning to the bankruptcy system to evade responsibility for deficiencies in its healthcare services and avoid the need to improve any of its operational practices. Tort liabilities, insurance premiums, and government audits have all been insufficient in pressuring Wellpath to address the way it cares for its incarcerated patients. Now, it seeks to wipe its slate clean and continue business as usual, pocketing taxpayer dollars for services it fails to render, which undoubtedly will lead all parties to bankruptcy court again. Wellpath has not proposed a plan that it, in good faith, believes will succeed, but rather one that its management can profit from in the short-term before history repeats itself.

Additionally, it must be noted that the financial strain that Wellpath is facing as a result of increased professional liability expenses is of its own doing and was entirely foreseeable, further



questioning the good faith of its bankruptcy filing and its plan of reorganization. Struggling to secure third-party professional liability insurance, Wellpath decided that instead of remedying this issue by improving its provision of healthcare, the most obvious solution, it would maintain status quo in its operations and create a legally-questionable self-insurance scheme<sup>12</sup> knowing that it would not be able to cover the settlement payouts for its growing number of lawsuits. As the number of cases grew and the issue worsened, Wellpath simply continued to expand its self-insurance exposure so that it could continue to add government contracts. That decision, made by the few who stood to benefit, unfairly exposed all external stakeholders, including creditors, contracting agencies, and people in Wellpath's care, and casts a shadow on this proceeding.

### III. CONCLUSION

The insufficiency of the Disclosure Statement renders Wellpath's proposed plan of reorganization unconfirmable. The Disclosure Statement fails to outline specific actions Wellpath will take to convincingly address the systemic issues that led to its bankruptcy, making it likely that the Debtor will face the same issues in the future and need to pursue a subsequent bankruptcy filing. More specifically, the Disclosure Statement is inadequate as it fails to adequately address how Wellpath will secure necessary insurance coverage, calling into serious question the feasibility of the proposed plan under 11 U.S.C. § 1129(a)(11). Accordingly, the Claimants here respectfully request that the Court deny approval of the Disclosure Statement.

Respectfully submitted,

By: /s/ Drew Willey  
Drew Willey

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<sup>12</sup> See Dkt. 828.

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PURPOSE OF OBJECTING TO THE DISCLOSURE  
STATEMENT

**CERTIFICATE OF SERVICE**

I, Drew Willey, certify by my signature below that the foregoing document was electronically filed with this Court on January 17, 2025, which constitutes service on Filing Users.

/s/ Drew Willey