



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

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THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 19, 2017


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:

**MULTI CARE HOME HEALTH
SERVICES, LLC,**

Debtor.

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**CASE NO. 17-34205-hdh
Chapter 11**

**INTERIM ORDER FOR USE OF CASH COLLATERAL PURSUANT TO
SECTION 363 OF THE BANKRUPTCY CODE AND PROVIDING ADEQUATE
PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS**

Upon the Emergency Motion for Use of Cash Collateral (the "Motion") pursuant to Sections 105, 361, 363 and 364 of Title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Federal Rule of Bankruptcy Procedure 4001, filed by Multi CARE Home Health Services, LLC ("Debtor"), subject to the terms and conditions set forth herein, including the (i) grant of mortgages, security interests, liens and claims for the benefit of the Internal Revenue Service (the "Secured Lender"), Post-petition which are co-extensive with its Pre-petition liens (to

the extent of such liens, if any) and (ii) grant of mortgages, security interests, liens and claims in order to provide adequate protection to the Secured Lender as more fully set forth herein, and upon the proceedings held before this Court and good and sufficient cause appearing therefore,

THE COURT HEREBY FINDS:

A. On November 6, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is now operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has been appointed.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 Case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. An immediate and critical need exists for the Debtor to obtain funds in order to continue the operation of its business. Without such funds, the Debtor will not be able to pay its employees and direct operating expenses and obtain goods and services needed to carry on its business during this sensitive period in a manner that will avoid irreparable harm to the Debtor’s estate. At this time, the Debtor’s ability to use Cash Collateral is vital to the confidence of the Debtor’s employees, vendors and suppliers of the goods and services, to the customers and to the preservation and maintenance of the going concern value of the Debtor’s estate.

D. Secured Lender may claim that substantially all of the Debtor’s assets are subject to the Prepetition Liens of the Secured Lender including liens on accounts receivable relevant to this Motion.

E. The Debtor has requested immediate entry of this Order pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). The permission granted herein to allow the Debtor to obtain the use of Cash Collateral financing is necessary to avoid immediate and irreparable harm to the Debtor. This Court concludes that entry of this Order is in the Debtor's best interest and its estate and creditors as its implementation will, among other things, allow for the continued operation and rehabilitation of the Debtor's existing business.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Debtor be, and hereby is, authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the protections and consideration described in this Order in the amounts and for the expenses set forth on the monthly budget attached hereto. The Debtor, without the prior written approval of the Secured Lender, should not incur expenses for any line item for an amount that exceeds the lesser of the amount for such line item in the budget and the actual expenditure for such line item. The Debtor may pay a 10% variance per line item. The Debtor is authorized to collect and receive all cash funds. The Debtor shall account each month to the Secured Lender for all funds received. For purposes of this Order, "proceeds" of any of the Secured Lender's collateral shall mean Proceeds (as defined in the Uniform Commercial Code) of such collateral security for all Cash Collateral permitted to be used hereunder by the Debtor. The Secured Lender is hereby granted valid, binding, enforceable, and perfected liens (the "Post-petition Liens") co-extensive with the Secured Lender's pre-petition liens in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds and products, including, without limitation, all accounts receivable, general intangibles, inventory, and deposit accounts coextensive with its pre-petition

liens. Nothing herein shall grant a lien on, interest in or claim on Chapter 5 causes of action. Nothing herein shall prime the liens of the taxing authorities. The Debtor is permitted to pay U.S. Trustee fees incurred during this case; it is further

ORDERED that as adequate protection for the diminution in value of the interests of the Secured Lender, the Secured Lender is hereby granted replacement liens and security interests, in accordance with Bankruptcy Code Sections 361, 363, 364(c)(2), 364(e), and 552, co-extensive with its pre-petition liens; it is further

ORDERED that the replacement liens granted to the Secured Lender in this Order are automatically perfected without the need for filing of a UCC-1 financing statement with the Secretary of State's Office or any other such act of perfection; it is further

ORDERED that all cash accounts of Debtor and all accounts receivable collections by Debtor post-petition shall be deposited in a separate cash collateral account, being Debtor's debtor-in-possession accounts; it is further

ORDERED that:

(a) As adequate protection of the IRS's interest in the cash collateral, the IRS shall be granted replacement liens on post-petition cash collateral and property of the Debtor, including inventory, accounts receivable, cash, cash equivalents, intangibles, and all other post-petition property of the Debtor, including proceeds and products thereof, but only to the same extent, validity and priority that each creditors' liens existed pre-petition. These replacement liens shall be in addition to the liens that the IRS had in the assets of the Debtor as of the petition date. To the extent a lien is created in accounts receivable, and assets received, accruing, or becoming the Debtor's property on a post-petition basis, such replacement lien shall extend only to protect the IRS for the amounts of cash collateral used on a post-petition basis. To the extent that any

applicable non-bankruptcy law would restrict the granting, enforceability, or attachment of the liens and security interests authorized or created by this paragraph, of otherwise would impose filing registration requirements with respect to such replacement liens, such law is preempted to the maximum extent permitted by the Bankruptcy Code, other applicable federal law, and the judicial power of the United States Bankruptcy Court. The granting of the continuing replacement liens in post-petition property of the estate shall have no effect on any challenge or objection to the nature, extent, validity, and/or enforceability as to any of the pre-petition liens held by the IRS. Additionally, nothing herein constitutes an admission or an order with respect to the validity, priority and/or extent of the lien(s) purportedly held by the IRS.

(b) As further adequate protection, the Debtor shall make the following adequate protection payment: a monthly payment to the IRS in the amount of \$2,500.00 to be applied on the secured pre-petition tax debt. The Debtor shall make said payment to the United States of America, Attn: Donna Webb, Burnett Plaza, Suite 1700, 801 Cherry Street, Unit No. 4, Fort Worth, Texas, 76102-6882. This payment is due on December 5, 2017, with succeeding payments due on the 5th day of each month until further order of the Court. The Debtor shall be entitled to utilize the asserted Cash Collateral of the IRS and to utilize the property in which the IRS has asserted a secured interest subject to the provisions of this Agreed Order under the following terms and conditions:

(1) The Debtor shall file all past due tax returns, if any, (including, but not limited to, income, excise, employment, and unemployment returns) within 60 days of the entry of this Order and shall file such return with Leo Carey, Bankruptcy Specialist, IRS, Insolvency Group II, Stop: MC5026DAL, 1100 Commerce St., Dallas, Texas 75242. This deadline may be extended with the approval of Leo Carey for cause shown without need for further order of the court.

(2) The Debtor shall file all post-petition federal tax returns on or before the due date, and shall pay any balance due upon filing of the return. Copies of these returns,

during the pendency of this case, shall be sent to: IRS, Insolvency Group II, Stop: MC5026DAL, 1100 Commerce St., Dallas, Texas 75242, telephone (214) 413-5204.

(3) The Debtor shall, during the pendency of this bankruptcy case, provide proof of deposit of all federal trust fund taxes within seven (7) days from the date on which they are deposited. Proof of said deposit shall be sent to the IRS at: IRS, Insolvency Group II, Stop: MC5026DAL, 1100 Commerce St., Dallas, Texas 75242, telephone (214) 413-5204, facsimile (888) 851-1227.

(4) Upon reasonable notice, the Debtor will, during the pendency of this case, permit the IRS to inspect, review, and copy any financial records of the Debtor.

If the Debtor defaults on any of the requirements of this Order for adequate protection payments to the IRS, the IRS shall provide the Debtor and Debtor's counsel with written notice of such default. If the default has not been cured within ten (10) days after notice of default is mailed and/or transmitted by facsimile, the IRS may file a declaration with the Court as evidence of the default by the Debtor, and upon the filing of such declaration the authority to use cash collateral shall terminate. It is further

ORDERED that from and after the Petition Date, the proceeds of the Pre-petition Collateral and the Post-petition Collateral shall not, directly or indirectly, be used to pay expenses of the Debtor or otherwise disbursed except for those expenses and/or disbursements that are expressly permitted herein and as shown on the Debtor's Budget attached hereto as **Exhibit "1"** plus 10% per line item. During the pendency of this order, the Debtor will maintain insurance on the Secured Lender's collateral and pay taxes when due. The automatic stay under Section 362(a) of the Bankruptcy Code shall be, and it hereby is, modified to the extent necessary to permit the Secured Lender to retrieve, collect and apply payments and proceeds in respect of the Pre-petition Collateral and Post-petition Collateral in accordance with the terms and provisions of this Order. The Debtor shall execute and deliver to the Secured Lender all such agreements, financing statements, instruments and other documents as the Secured Lender may reasonably request to

evidence, confirm, validate or perfect the liens granted pursuant hereto. The Debtor shall deliver a copy of its Monthly Operating Report to the Secured Lender's counsel by the 20th day of each month for the prior month; it is further

ORDERED that the provisions of this Order shall be binding upon and inure to the benefit of the Secured Lender and the Debtor. However, nothing herein shall prevent the Secured Lender from seeking any form of relief under the Bankruptcy Code. The Debtor shall, on or before December 20, 2017, serve by U.S. mail, first class postage prepaid, copies of the Motion, this Order, the proposed Final Order and a notice of the hearing (the "Final Hearing Notice") to be held on **January 17, 2018, at 2:00 p.m.** before the Honorable Harlin D. Hale, United States Bankruptcy Court, 1100 Commerce Street, 14th Floor, Dallas, Texas 75242 to consider entry of the proposed Final Order on, (a) the Office of the U. S. Trustee; (b) counsel to the Internal Revenue Service; (c) all creditors in this case on the Matrix and (d) all parties requesting notice in this case. Copies of the Motion, this Order and the proposed Final Order and the Final Hearing Notice shall be served upon all persons requesting service of papers pursuant to Bankruptcy Rule 2002 by U.S. mail, first class postage prepaid, within one business day following the receipt of such request. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections no later than 4:00 p.m., January 12, 2018, which objections shall be served so that the same are received on or before such date by Joyce W. Lindauer, Joyce W. Lindauer Attorney, PLLC, 12720 Hillcrest Road, Suite 625, Dallas, Texas 75230.

END OF ORDER

AGREED:

/s/ Donna K. Webb
Donna K. Webb on behalf of Creditor
United States Of America -Internal Revenue Service

/s/ Joyce W. Lindauer
Joyce W. Lindauer on behalf of Debtor
Multi CARE Home Health Services, LLC

Submitted by:
Joyce W. Lindauer
State Bar No. 21555700
Joyce W. Lindauer Attorney, PLLC
12720 Hillcrest Road, Suite 625
Dallas, Texas 75230
Proposed Attorneys for Debtor

Multi CARE Home Health Services, LLC
One-Month Budget

INCOME	\$44,319.00
EXPENSES:	
Payroll	\$24,526.22
Telephone	\$400.00
Cell Phone	\$336.00
BCBS Health Insurance	\$2,602.23
Liability Insurance	\$560.00
Fuel	\$300.00
Ink - Printers & Fax	\$446.00
Copier Repair	\$168.50
Supplies	\$667.11
Meals for Patients	\$158.00
Copier Lease	\$400.00
Rent	\$1,400.00
Software Lease	\$2,100.50
Office Phone & Internet	\$725.00
Car Insurance	\$250.00
Answering Service	\$101.00
LYM Therapy	\$1,630.00
TOTAL EXPENSES:	<u>\$36,770.56</u>
NET INCOME:	\$7,548.44

EXHIBIT "1"