

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

In re:

STEWARD HEALTH CARE SYSTEM LLC,
et al.,¹

Debtors.

Chapter 11

Case No. 24-90213 (CML)

(Jointly Administered)

**OMNIBUS RESPONSE OF THE COMMONWEALTH OF MASSACHUSETTS
TO CERTAIN OF THE DEBTORS' EMERGENCY FIRST-DAY MOTIONS**

The Executive Office of Health and Human Services of the Commonwealth of Massachusetts and the Attorney General of the Commonwealth of Massachusetts (collectively, "Massachusetts" or the "Commonwealth"), by and through its undersigned counsel, responds to the Debtors' Emergency First Day Motions, and, in support thereof, state as follows:

PRELIMINARY STATEMENT

Massachusetts has been given less than 24 hours to digest and respond to numerous Emergency Motions, many of which may impact Massachusetts and the 8 hospitals owned and operated by Steward in Massachusetts. Massachusetts believes that the Court should only grant the minimal relief needed to prevent any harm to patients, employees and the Debtors' operations on an interim basis. Any such interim relief should be subject to *de novo* review at any subsequent or final hearing on the Debtors' First Day Motions, and be subject to being undone if appropriate.

Massachusetts' responses below to the Debtors' Emergency First Day Motions have a singular purpose – to make sure that hospitals in Massachusetts get the full benefit of the

¹ 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://restructuring.ra.kroll.com/Steward>. The Debtors' service address for these chapter 11 cases is 1900 N. Pearl Street, Suite 2400, Dallas, Texas 75201.

Commonwealth's payments for services or of other funds advanced and are adequately and fairly funded to provide healthcare while the process of aligning on a plan for these hospitals with the Debtors and their constituents is developed and implemented (hopefully quickly). Massachusetts incorporates its *Informational Brief of the Commonwealth of Massachusetts in Support of Responses to the Debtors' Emergency Motions* filed contemporaneously herewith (the "Brief")² in support of this Omnibus Response.

BACKGROUND

On May 6, 2024 (the "Petition Date"), Steward Health Care System LLC and its debtor affiliates (collectively, "Steward") filed voluntary petitions for relief under chapter 11 of the U.S. Bankruptcy Code. Steward is operating its businesses and managing its properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Steward provides health care services to citizens of Massachusetts through its current operation of eight (8) acute care hospitals in Massachusetts (collectively, the "Steward Massachusetts Hospitals"). The Steward Massachusetts Hospitals represent approximately 25% of all of Steward's hospitals nationwide. The Steward Massachusetts Hospitals have been at risk of under staffing, equipment shortages, and delayed maintenance of the physical premises. This situation is further exacerbated by Steward's stated intent to "transition" the Steward Massachusetts Hospitals, which could result in departures in the absence of a clear "transition" plan, and appears contrary to Steward's other public statements that it intends to operate its hospitals without disruption.

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Brief.

RESPONSES TO MOTIONS

Massachusetts only addresses those First Day Motions of particular concern to it, reserving its right to address any other First Day Motion at the hearing on May 7, 2024, or any subsequent or further hearing on a First Day Motion.

I. Critical Vendor Motion

Massachusetts supports the relief sought in the *Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Pay (A) Critical Vendor Claims, (B) Lien Claims, and (C) 503(b)(9) Claims; and (II) Granting Related Relief* [ECF No. 13] (the “Critical Vendor Motion”). As set forth in the Brief, Steward has failed to pay numerous critical vendors, which has negatively impacted patient care and safety in the Steward Massachusetts Hospitals and has resulted in at least one documented fatality. Medical staff require access to medical supplies and equipment to care for patients and address emergency situations.

To assure that critical vendor authority is being properly and fairly applied, and given Steward’s prior mismanagement of its vendor obligations, Massachusetts requests that the Court require Steward to (i) produce to Massachusetts a full list of all vendors that supply or service equipment or supplies at the Steward Massachusetts Hospitals along with all amounts that are owed to each vendor as of the Petition Date, (ii) produce to Massachusetts a list of all of the amounts that Steward is proposing to pay to each vendor under the Critical Vendor Motion, (iii) send to Massachusetts a monthly statement setting forth the status of each vendor’s account with Steward (*i.e.*, amounts owed and amounts paid); and (iv) provide to Massachusetts a list of each vendor that enters into a trade agreement, substantially in the form annexed to the Critical Vendor Motion. Massachusetts, as Steward’s regulator, requires this information as part of its monitoring of patient health and safety. Massachusetts also should receive the matrix of payments

with respect to payments made to all vendors that supply or service equipment or supplies at the Steward Massachusetts Hospitals, which Steward will provide to the United States Trustee, the ABL Lenders, the FILO Lenders, the DIP Lender, and any statutory committee appointed in these cases.

II. Patient Confidentiality Motion

Massachusetts supports the relief sought in *Emergency Motion of Debtors for Entry of an Order (I) Authorizing the Implementation of Procedures to Protect Confidential Patient Information and (II) Granting Related Relief* [ECF No. 10]. Massachusetts believes it is imperative for Steward to implement certain privacy procedures to protect patient, employee, and affiliated medical group confidentiality.

III. Refund Program Motion

Massachusetts supports the relief sought in the *Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain, Administer, Modify, and Renew Their Existing Refund Programs and Pay or Otherwise Honor Prepetition Obligations Related Thereto, and (B) Honor Prepetition Health Plan Administration Obligations; and (II) Granting Related Relief* [ECF No. 7]. Massachusetts believes it is critical for Steward to honor and process refunds, setoffs, and recoupments to preserve goodwill and confidence in its business and avoid the imposition of legal sanctions and fines, which will further pull assets away from the estates. It is particularly important for Steward to pay any refunds due on account of states' supplemental Medicaid reimbursement because such payments help fund care for patients who need, but cannot otherwise afford, treatment.

To the extent Massachusetts or its agencies, offices, or departments are owed any refunds or are entitled to offsets or recoupments, Massachusetts requests that those amounts be promptly paid, offset, or recouped.

Massachusetts also should receive the matrix of payments with respect to refunds made Massachusetts and any of its agencies, offices, or departments, which Steward will provide to the United States Trustee, the ABL Lenders, the FILO Lenders, the DIP Lender, and any statutory committee appointed in these cases.

IV. Insurance Motion

Massachusetts supports the relief sought in the *Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Insurance Policies, Surety Bonds, and Letters of Credit and (B) Satisfy Obligations Related Thereto; (II) Modifying the Automatic Stay to Permit Employees to Proceed with Workers' Compensation Claims; and (III) Granting Related Relief* [ECF No. 6]. Massachusetts agrees with Steward that the continuation of current insurance coverage and permission to enter into new policies is critical to Steward's ongoing operations because it will preserve and protect Steward's business, properties, and assets.

Massachusetts also should receive the matrix of payments with respect to any insurance policies, surety bonds, or letters of credit for which Massachusetts or any of its agencies, departments, or offices are beneficiaries, which Steward will provide to the United States Trustee and any statutory committee appointed in these cases.

V. Wages Motion

Massachusetts supports the relief sought in the *Emergency Motion of Debtors for Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Employee Benefits, Expenses, and Other Compensation, (B) Maintain Employee Benefits Programs, and (C) Continue to Pay*

Workforce Obligations; and (II) Granting Related Relief [ECF No. 15]. Massachusetts believes it is imperative for Steward to pay wages, benefits, and other payments to Steward's thousands of employees, independent contractors, and other workers, as their skills, knowledge, and understanding of Steward's business are invaluable to Steward's continued operations and patient care. These payments will also reduce employee turnover and any instability stemming from employee turnover.

Massachusetts requests that any unpaid wages and benefits are promptly paid and current wage and benefits payments will be made timely. Massachusetts also requests that all contributions to pension plans continue to be made for any Massachusetts workers and that Steward continues to remit pursuant to collective bargaining agreements with Massachusetts workers.

Massachusetts also should receive the matrix of payments with respect to payments made to any Massachusetts-based workers, which Steward will provide to the United States Trustee, the ABL Lenders, the FILO Lenders, the DIP Lender, and any statutory committee.

VI. *Taxes Motion*

Massachusetts supports the relief sought in the *Emergency Motion of Debtors for an Order (I) Authorizing Debtors to Pay Certain Prepetition Taxes and Fees and (II) Granting Related Relief* [ECF No. 12]. The motion identifies various Massachusetts taxing and regulatory authorities to whom income and related, sales and use, and other taxes and regulatory assessments are owed.

Any order on the motion should make clear that any unpaid Massachusetts hospital assessments are taxes entitled to priority treatment under section 507(a)(8) of the Bankruptcy Code, payable in accordance with applicable law, which will be paid pursuant to this motion. Such relief

is consistent with 101 CMR 514.00, which governs the collection of the hospital assessment established under M.G.L. c. 118E, §67. Under 101 CMR 514.05, in-state acute and non-acute hospitals must pay a monthly assessment to EOHHS equal to a certain percentage of its total annual assessment. These assessments reimburse hospitals and community health centers for care provided to low-income, uninsured, and under-insured patients. Payment of hospital assessments is critical to ensuring that vulnerable Massachusetts citizens receive the treatment they need but could not otherwise afford.

Massachusetts also should receive the matrix of payments made or to be made to Massachusetts on account of any taxes or assessments, which Steward will be obligated to provide to the United States Trustee, the ABL Lenders, the FILO Lenders, the DIP Lender, and any statutory committee appointed in these cases.

VII. Cash Management Motion

Massachusetts has a limited objection to the relief sought in the *Emergency Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to (A) Continue Their Existing Cash Management System, (B) Maintain Existing Business Forms, and Intercompany Arrangements, (C) Continue Intercompany Transactions, and (D) Continue Employee Credit Card Program; (II) Extending Time to Comply with Requirements of 11 U.S.C. § 345(b); and (III) Granting Related Relief* [ECF No. 5]

As set forth in more detail in the Brief, for years, Steward engaged in the systematic extraction of funds and other value from the Steward Massachusetts Hospitals and diverted of those funds away from health care operations in the Commonwealth. Steward used that value to pay substantial dividends to investors and expand its network in other states. This systematic

extraction of value has threatened to impact quality of care, staffing levels, and access to services in the Commonwealth.

Although Massachusetts understands that Steward needs certain “first day” relief to facilitate a smooth transition into chapter 11, that relief should not prejudice the rights of parties to object to that relief later. Massachusetts is concerned that continuation of the Cash Management System throughout these cases will result in further funds being siphoned off from these hospitals and used for other purposes, leaving the hospitals with insufficient cash and putting patient care at risk.

As both a payor and regulator of health care providers in the state, Massachusetts is focused on ensuring quality health care for its citizens. Therefore, Massachusetts will engage with Steward between now and the final hearing on the Cash Management Motion to address Massachusetts concerns that all funds paid by it to the Steward Massachusetts Hospitals for health care services remain in those respective hospitals’ operating accounts notwithstanding the centralized nature of Steward’s Cash Management System. If these operating accounts remain part of the Cash Management System and funds are swept via Intercompany Transactions, Steward should be required to account to Massachusetts and show the amounts swept from and the amounts returned to the Steward Massachusetts Hospitals. Any negative difference—that is more has been swept than returned—should result in Massachusetts being granted a super-priority administrative expense claim as it effectively will be an involuntary DIP Lender to Steward.

Dated: May 6, 2024
New York, New York

Respectfully submitted,
COMMONWEALTH OF MASSACHUSETTS,
By its attorney,

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Certificate of Service

I certify that on May 6, 2024, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Andrew M. Troop