

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

In re:  
  
MODIVCARE, INC., *et al.*,  
  
Debtors.

Chapter 11  
  
Case No. 25-90309 (ARP)  
  
(Jointly Administered)

**OBJECTION OF HEALTHSPRING, INC., TO DEBTORS’ MOTION FOR ENTRY OF AN  
ORDER AUTHORIZING THE DEBTORS TO REJECT CERTAIN  
EXECUTORY CONTRACTS FILED AT DOCKET NO. 1133**

TO THE HONORABLE ALFREDO R. PEREZ,  
UNITED STATES BANKRUPTCY JUDGE:

HealthSpring, Inc. hereby files this *Objection of HealthSpring, Inc. to Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts* (“Objection”) and respectfully states the following:

**I. SUMMARY OF DISPUTE/ISSUES PRESENTED**

Debtors’ Motion summarily asks this Court to approve the rejection of what it styles as an “ordinary executory contract.” It does so in a pro forma manner without the submission of any evidence—and even without bothering to describe the services rendered under the contract.<sup>1</sup> The evidence submitted with this objection will show that this is no “ordinary executory contract.” The objecting counterparty, HealthSpring, Inc. (“HealthSpring”)<sup>2</sup> offers Medicare Advantage plans across the nation to roughly [REDACTED] Medicare enrollees. Through this contract, ModivCare provides non-emergency medical transportation (“NEMT”) services that carry HealthSpring’s enrolled Medicare members to critical medical appointments for dialysis, infusion, chemotherapy, and other life-saving

<sup>1</sup> While presented as “Debtors’ Motion,” the subject contract is that of Debtor ModivCare Solutions, LLC, hereinafter identified as “ModivCare.”

<sup>2</sup> HealthSpring is the counterparty to the contract as the assignee of ModivCare’s contract with original counterparty Cigna Corporate Services, LLC. As will be described below, Health Care Services Corporation in early 2025 obtained the Medicare Advantage business of Cigna, which included HealthSpring.



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treatments. As the Debtors themselves informed the Court in their Disclosure Statement, these transportation services are “engrained in the everyday lives of vulnerable populations,” and “[t]hrough these services, ModivCare plays a critical role in supporting healthcare access and addressing social determinants of health for some of the nation’s most at-risk communities.” Docket No. 550, at 19 (October 16, 2025). HealthSpring respectfully submits that when the Court reviews the evidence, it must conclude that rejection cannot be approved until and unless the health and safety of the beneficiaries of the contract is protected.

In the Motion, ModivCare tacitly requests the Court to endorse its plan to walk away from the vulnerable populations that depend upon the contract on January 28, 2026. In so doing, ModivCare would abandon its contractual promise that “regardless of the reason” for a termination, even in the event of a material breach, ModivCare must provide “run out Services” for 180 days after termination so that HealthSpring’s members can get the care they need. ModivCare makes its abandonment threat knowing very well that finding a replacement in less than 180 days is impossible.

In lieu of evidence to support its desire to reject, ModivCare merely obliquely refers to its inability to “resolve certain issues.” Motion at 3. Although the Court has no way of knowing, this concerns a disagreement beginning in mid-2024 about the amount that ModivCare is owed for its services. But as the parties discussed their positions on the dispute, and throughout all of HealthSpring’s prior dealings with ModivCare pre- and post-bankruptcy, there was no hint that ModivCare would abandon those who needed its services. Nor, to HealthSpring’s knowledge, was any aspect of the dispute drawn to the attention of the Court and creditors in the plan confirmation process.

But on December 18, just three days after plan confirmation, ModivCare advised HealthSpring for the first time that it would terminate all services on January 28. Its object was, and is, clear. To obtain leverage to resolve the dispute, ModivCare is holding hostage the members of the “vulnerable population” in “at-risk communities” it purports to serve. It threatens that, in less than 10 days, it will

leave members of that population stuck at their homes, without necessary transportation to life-saving care.

For three independent reasons, HealthSpring vigorously objects to any rejection of the contract absent assurance from ModivCare that it will provide the run-out services. Despite repeated requests from HealthSpring after last month's shocking revelation, ModivCare has steadfastly refused.

First, the Motion fails to make any evidentiary showing in support of rejection.

Second, even if ModivCare presented evidence to justify its rejection, it could not meet the heightened standard that applies where rejection "will potentially adversely affect the general public interest or may endanger public health or safety." *In re Pilgrim's Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009).

Third, on the evidence presented by HealthSpring here, it is clear that ModivCare could not make a showing even if the more lenient business judgment standard for "ordinary" executory contracts applied. On the facts that exist here, no legitimate business judgment could justify the actions ModivCare threatens. Post-reorganization ModivCare operates the same business, and it proudly proclaims to the world that throughout the bankruptcy it "continued to operate in the ordinary course of business throughout the restructuring process, with no interruption of services for client, members, providers or partners."<sup>3</sup> HealthSpring has agreed that it would pay for run-out services under the terms of the contract, which include good-faith readjustment of the rates. In addition, even were ModivCare correct on the merits of the contractual payment dispute, and its threat to harm Medicare recipients a legitimate business tactic, ModivCare's recovery would be obliterated by the setoff claims sure to ensue as a result of its breach of the termination obligation. Even were HealthSpring in material breach, those run-out obligations remain, and claims will arise from the resulting injury to plan members, the HealthSpring plans, and HealthSpring itself.

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<sup>3</sup> <https://www.businesswire.com/news/home/20251229414980/en/Modivcare-Successfully-Completes-Financial-Restructuring-Reducing-Debt-by-More-Than-85>  
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In sum, the law of executory contracts does not countenance a rejection that would endanger the health and safety of tens of thousands of elderly individuals throughout the country.

## II. PROCEDURAL AND FACTUAL BACKGROUND

### A. **The Contracts and the Parties**

1. On December 29, 2025, the Debtors filed the Motion, and Exhibit 1 thereto lists the following executory contracts, for which ModivCare and HealthSpring are the parties today, that the Debtors seek to reject:

- Master Services Agreement dated April 1, 2023 (“MSA”), attached hereto as Exhibit 1;
- Statement of Work No.11007 dated April 15, 2023 (“SOW”), attached hereto as Exhibit 2;
- Amendment No. 1 to SOW dated November 1, 2023 (“Amendment No. 1”);
- Amendment No. 2 to SOW dated June 1, 2024 (Amendment No. 2); and
- Amendment No. 3 to SOW dated January 1, 2025 (Amendment No. 3).

The MSA, SOW, Amendment No. 1, Amendment No. 2, and Amendment No. 3 are referred to herein, collectively, as the “Contracts.”

2. The Contracts originally were entered between Cigna Corporate Services, LLC (“Cigna”) and ModivCare; however, on March 19, 2025, Health Care Service Corporation (“HCSC”) acquired Cigna’s Medicare businesses, including Cigna’s Medical Advantage (“Acquisition”), and the Contracts ultimately were assigned to HealthSpring, a subsidiary of HCSC. *See* Declaration of Kayla McKenzie in Support of Objection of HealthSpring, Inc., to Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Filed at Docket No. 1133 (“McKenzie Decl.”) at ¶ 3; Declaration of Dana Mott in Support of Objection of HealthSpring, Inc., to Debtors’ Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts Filed at Docket No. 1133 (“Mott Decl.”) at ¶ 3.

3. The Contracts memorialize ModivCare’s role as HealthSpring’s national provider of non-emergency medical transportation (“NEMT”) services for HealthSpring’s roughly [REDACTED] Medicare members. McKenzie Decl. at ¶¶ 11, 14, 30. Specifically, ModivCare provides NEMT services to HealthSpring members to attend medical and behavioral health appointments, and to pick up prescriptions. *Id.* at ¶¶ 7, 67. Most members are elderly and many of their appointments are to receive life-saving treatments, such as dialysis and infusion; each quarter, approximately [REDACTED] HealthSpring members use ModivCare’s transportation service for their medical care. *Id.* at 8, 30-36. In short, the transportation service provided by ModivCare can be the difference between life and death for HealthSpring members. *Id.* at ¶¶ 6-10.

4. ModivCare won the contract to provide NEMT services after Cigna issued a Request for Proposal. ModivCare’s work “went live” in August 2023, and ModivCare’s rates are locked in through the end of 2026.

**B. The Essential and Long-Term Termination and Wind-Down Provisions**

5. HealthSpring’s Medicare Advantage program is a nationwide program. It is difficult to onboard a national NEMT provider, as doing so requires significant technology investment, data transfer, and regulatory compliance considerations. Looking merely at the challenges faced when integrating a new provider for the roughly [REDACTED] plan members eligible for NEMT services, that provider must:

- a. Input and organize all new customer information;
- b. Set up a system to track the use of member benefits; and
- c. Set up a smartphone application, website, and phone system, that HealthSpring plan members can access to schedule their trips;

For its part, HealthSpring must ensure that all links on existing websites and phone numbers are rerouted from ModivCare to the new provider. McKenzie Decl. at ¶ 11.

6. Due to the complexity of onboarding a new provider, NEMT service contracts require a long off-ramp provision to allow for a smooth transition in the event of a termination of services. Cigna (now HealthSpring) required such a provision in the contract with ModivCare to ensure that there was no disruption to care in the event of a contract termination regardless of the reasons. McKenzie Decl. at ¶¶ 12-13.

7. ModivCare agreed to contractual wind-down and termination assistance obligations in the MSA and SOW (collectively, “Wind-Down Period”) to avoid any disruption of critical transportation services for HealthSpring’s members. *Id.* at ¶ 24. Specifically, Section 12.4 of the MSA provides, in relevant part with emphasis added:



See Exhibit 1, Master Services Agreement.

8. In addition to the obligations in Section 12.4, Exhibit 2 to the SOW delineates termination assistance obligations, requiring that ModivCare, among other things:

- [REDACTED]
- [REDACTED]
- [REDACTED]

█ [REDACTED]

See Exhibit 2, Statement of Work No. 1107; McKenzie Decl. at ¶ 24.

**C. The Business Dispute Regarding the Amount of Payment**

9. The Contracts include a risk-sharing arrangement whereby its financial results are bounded by upward and downward limits calculated by the federal healthcare concept of the “Medical Loss Ratio”. *Id.* at ¶¶ 20-21. For ModivCare, the MLR ensures it is compensated when it provides NEMT services in excess of expectations. For Cigna (and now HealthSpring), the MLR ensures it does not overpay when NEMT benefits are under-utilized (e.g., when members do not avail themselves of the benefit). Reconciliation pursuant to the MLR Risk Sharing arrangement was to occur on an annual basis. *Id.* at ¶ 22.

10. In August 2024, after the completion of the first year of the contract, a dispute arose between Cigna and ModivCare concerning whether ModivCare’s administrative costs should be included in the calculation of the MLR. *Id.* at ¶ 37. The dispute continued into 2025. *Id.* In short summary, ModivCare wishes to include its administrative costs in the calculation so as to increase the MLR and thus potentially recover additional fees. *Id.* at ¶ 38; Exhibit 3, ModivCare Memo dated August 6, 2024. Cigna and HealthSpring have both contended that inclusion of administrative costs, as opposed to the actual costs of the rides provided, is both contrary to the plain meaning of the contract—and contrary to regulations and guidance of the federal government’s Centers for Medicare & Medicaid Services (“CMS”). McKenzie Decl. at ¶ 39; Exhibit 4, Cigna letter dated September 25, 2024.

11. The Court need not resolve the merits of the dispute about whether ModivCare may properly include administrative costs under the contract or the law—and hence whether ModivCare’s assertion of breach is merited. *Even if it did allow ModivCare to properly terminate for breach, ModivCare would still be required to provide the run-out services.* But to the extent ModivCare comes forward with evidence to support a proper exercise of judgment in rejecting the Contracts on

that basis, HealthSpring will briefly summarize their terms here.

12. [REDACTED]

13. [REDACTED]

14. [REDACTED]

15. The reconciliation process performed in 2024 for services rendered in the prior year revealed that the parties calculated the MLR differently. HealthSpring calculated the MLR based on the actual covered service amount divided by the capitation payment for the same period; ModivCare's calculation of MLR included non-claim administrative costs, such as staffing, as medical expenses, which resulted in a higher MLR. During 2024, HealthSpring engaged in good-faith negotiations to resolve this issue but without success. *See* Exhibits 3 and 4.

16. Following the closing of the Acquisition in early 2025, ModivCare requested a meeting with the new HealthSpring leadership. This meeting focused on strategic alignment for the remainder of the term of the Contracts. McKenzie Decl. at ¶ 40. Thus began a good-faith effort to resolve open payment issues that did not resolve prior to the filing of ModivCare's petition in bankruptcy on August 20, 2025. *See id.* at ¶¶ 41-43; Exhibits 5-7. At no point did ModivCare threaten to terminate the Contracts or abandon their obligations to Medicare enrollees for run-out services if the Contracts were terminated. McKenzie Decl. at ¶ 44.

**D. ModivCare and HealthSpring Continue to Perform Under the Contract Pre- and Post-Bankruptcy**

17. Notwithstanding the continuing disputes about the MLR calculation, the parties continued to perform their respective duties under the Contracts. At no point did ModivCare threaten to terminate the Contract for breach—let alone, disclaim its 180-day termination obligations. *See* McKenzie Decl. at ¶¶ 44, 50-53.

18. On August 20, 2025, ModivCare filed for relief under chapter 11 of the Bankruptcy Code. *Id.* at ¶ 49. Just one day later, ModivCare, at its request and via a Teams meeting, met with HealthSpring leadership to inform HealthSpring that its Medicare customers would not be negatively impacted by the bankruptcy proceeding and that ModivCare would continue to perform through the end of 2026. *Id.* at ¶¶ 50-53. *See also*, Exhibit 8, ModivCare emails providing bankruptcy updates.

19. In anticipation of the need for a new provider of NEMT services in 2027 (the Contracts were set to expire at the end of 2026), HealthSpring issued a Request for Proposal (RFP) for Non-Emergency Medical Transportation Services. McKenzie Decl. at ¶ 45. ModivCare was invited to participate, and it submitted an RFP response that included rates that were only nominally higher than the existing rates in the Contracts. *Id.* at ¶ 47. At the conclusion of the RFP process in October 2025, HealthSpring ultimately chose a different NEMT provider for 2027. *Id.* at ¶ 48. Upon being notified of the award decision, ModivCare assured HealthSpring that it would continue to perform under the Contracts through 2026. *Id.*

20. In mid-December 2025, ModivCare asked if HealthSpring would reconsider its RFP decision and award the 2027 NEMT contract, instead, to ModivCare. *Id.* at ¶ 54. HealthSpring responded that it could not change its RFP award because it had been based on a fair assessment and that the winner had already been notified; HealthSpring reiterated that ModivCare was still contracted through 2026, and HealthSpring would continue to work with ModivCare as a partner. *Id.*

**E. After Failing to Obtain the 2027 Contract, ModivCare Abandons Past Assurances of Performance and Threatens to Put the Plan Members at Risk**

21. Only a few days later, on December 18, 2025, notwithstanding ModivCare’s repeated assurances that (i) it would continue to perform through 2026, and (ii) its bankruptcy would not disrupt services to HealthSpring’s members, ModivCare sent a letter characterized as a “Thirty Day Termination Notice for Breach” (“Termination Notice”), asserting: (i) that HealthSpring is in material breach of the MSA and SOW for allegedly failing to properly calculate the risk corridor payments tied to MLR payments; (ii) that ModivCare was terminating the MSA and SOW for cause in 30 days pursuant to Section 12.2 of the MSA; and (iii) that ModivCare might also seek to reject the MSA in its bankruptcy proceeding if HealthSpring did not respond to the Termination Notice by Tuesday, December 23, 2025, at 11:59 p.m. CT. McKenzie Decl. at ¶ 55; Exhibit 9, ModivCare letter dated December 18, 2025.

22. HealthSpring responded to the Termination Notice on December 23, 2025, stating, among other things, that ModivCare’s termination was improper and requesting that ModivCare rescind the termination to avoid disruption to HealthSpring’s members. McKenzie Decl. at ¶ 57, Exhibit 10, HealthSpring letter dated December 23, 2025. HealthSpring explained that ModivCare’s actions threatened the health and safety of its roughly [REDACTED] Medicare members, who rely on ModivCare for transportation to their medical appointments and life-saving treatments. *Id.* HealthSpring also reminded ModivCare that if it moved forward with the termination, it must still comply with its contractual wind-down and termination assistance obligations to avoid any disruption

to member services. *Id.* HealthSpring concluded by requesting that the parties meet as soon as possible to discuss a plan that would prevent any disruption in services to its members and ensure a smooth transition to a new NEMT provider. *Id.*

23. ModivCare did not respond until the afternoon of Friday, December 26, 2025, when it stated it would not rescind the termination; it did not address its contractual wind-down and termination assistance obligations. McKenzie Decl. at ¶ 58. Furthermore, ModivCare demanded a financial resolution by Monday, December 29, 2025, at 9:00 a.m. CT, less than 24 working hours over the holiday weekend. *Id.* When HealthSpring requested additional information to substantiate ModivCare's demand, ModivCare responded that it would seek the Bankruptcy Court's approval to reject the MSA and SOW effective January 28, 2026, and that it would perform transportation services for HealthSpring's members only through that date. *Id.* at ¶¶ 59-60.

24. On December 29, 2025, ModivCare filed the Motion seeking to reject the Contract, effective as of January 28, 2026. *Id.* at ¶ 61.

25. Neither the Termination Notice nor Motion mentions the contractual wind-down and termination assistance obligations. By letter dated January 7, 2026, HealthSpring again reminded ModivCare of these obligations, as well as emphasized the irreparable harm its members would suffer if ModivCare fails to provide transportation services during the Wind-Down Period. McKenzie Decl. at ¶ 62-63; Exhibit 11, HealthSpring letter dated January 7, 2026. HealthSpring concluded by asking for ModivCare's confirmation that it will comply during the 180-day Wind-Down Period. *Id.*

26. On January 9, 2026, HealthSpring continued to seek a commitment from ModivCare to adhere to its contractual termination assistance and wind down obligations, but ModivCare refused to discuss continuing to provide NEMT services unless HealthSpring awarded it the 2027 Contract. Mott Decl. at ¶ 11. Then on January 16, 2026, ModivCare indicated that whether it continued to provide NEMT services for a transition period beyond January 28, was dependent on HealthSpring agreeing to its demand to resolve the contract dispute. *Id.* at ¶ 12. In response, HealthSpring again requested that

ModivCare provide the necessary run-out services during the 180-day Wind-Down Period, and again confirmed HealthSpring’s willingness to engage in the good-faith discussions on increased rates required by the Contracts. *See* Mott. Decl. ¶ 13 and Exhibit 12.

### III. OBJECTION

#### A. **ModivCare Has Failed to Come Forward with Evidence to Support the Proposed Rejection**

27. The Motion fails to provide any specific reason or analysis to support the proposed rejection of the Contracts. Instead, the Debtors make the bald statement that they “have determined, in the sound exercise of their business judgment, that rejection of the Rejected Contracts as of the Rejection Date will serve the best interests of their estates.” Motion ¶ 12. Without providing any details, the Debtors simply add that the Contracts lack “any material benefit” and are “unnecessary obligations.” *Id.* No declarations or other forms of evidence were submitted with the motion to describe the exercise of business judgment, sound or otherwise.

28. For a trustee or debtor-in-possession to prevail in a motion to reject under the conventional business judgment rule, as used to evaluate a debtor’s rejection of an ordinary executory contract, requires more than the barebones claim contained in the Motion. “To meet the business judgment test, the debtor in possession must ‘establish that rejection will benefit the estate.’” *In re Helm*, 335 B.R. 528, 538 (Bankr. S.D.N.Y. 2006). But here the Debtor has offered nothing more than conclusory allegations, not evidence—and its burden has not been met.

29. By failing to provide any detail or analysis supporting rejection of the Contracts, ModivCare seems to expect the Court to approve the request without question or expectation of evidence. In *In re Pilgrim’s Pride Corp.*, 403 B.R. 413 (Bankr. N.D. Tex. 2009), the Court found this approach unacceptable:

[T]he business judgment rule does not provide [the debtors] unfettered freedom to use the power given by Code § 365(a) however they will. Congress did not intend the Code to be a shield behind which a debtor-in-possession might engage in conduct that would be improper in a non-bankruptcy context. Indeed, as a fiduciary holding its estate in trust and responsible to the court, a debtor-in-

possession must administer its case and conduct its business in a fashion amenable to the scrutiny to be expected from creditor and court oversight.

*Id.* at 426; *see also Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993) (bankruptcy court is not a “rubber stamp” for a debtor in making contractual determinations).

**B. The Court Should Review Rejection of the Contracts by a Higher Standard.**

30. ModivCare is of course correct that rejection of “ordinary” executory contracts is measured by the business-judgment standard. But should ModivCare not relent in its determination to cut off services on January 28, the Court should apply a higher standard due to the critical nature of the Contracts that provide for the health and safety of the Medicare enrollees. In so doing, this Court would be aligned with courts that have applied higher standards in considering whether to approve the rejection of executory contracts that involve significant public policy.

31. The Supreme Court itself has confirmed that some acts of debtors require evaluation under a test more stringent than the business judgment test. In *Midlantic Nat’l Bank v. New Jersey Dep’t of Environmental Protection (In re Quanta Resources Corp.)*, 106 S. Ct. 755 (U.S. 1986), a bankruptcy trustee moved to abandon real property (contaminated by toxic waste) in contravention of local laws designed to protect public health and safety. Because a bankruptcy trustee’s abandonment of property is treated like the rejection of a lease or executory contract, the business judgment rule typically applies. *Id.* at 759 (comparing abandonment of property to rejection of an unexpired lease); *see also Pilgrim’s Pride*, 403 B.R. at 424 n.26 (“[C]ontract rejection is closely related to abandonment[.]”). Observing that the danger to health and safety caused by the trustee’s abandonment would be “imminent” (*id.* at 758 n.3), the *Midlantic* Court concluded: “The Bankruptcy Court does not have the power to authorize an abandonment without formulating conditions that will adequately protect the public’s health and safety.” *Id.* at 762. In so holding, the Supreme Court did warn that this exception was a “narrow one” and “[t]he abandonment power is not to be fettered by laws or regulations not reasonably calculated to protect the

public health or safety from *imminent and identifiable harm*.” *Id.* at 762 n.9 (emphasis added).<sup>4</sup> But the imminent and identifiable harm here is easy to see.

32. While the application of a higher standard to protect health and safety identified in *Midlantic* is “narrowly applied,” this is such a case. A higher bar for rejection is warranted when the executory contract deals with public health and safety, and the debtor’s proposed actions directly threaten that public safety—as do ModivCare’s threatened actions here. In keeping with *Midlantic*, the Fifth Circuit has noted that “special circumstances” may require more than the simple application of the business judgment rule. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5<sup>th</sup> Cir. 1985). HealthSpring submits that the critical nature of the Contracts qualifies the proposed rejection as “special circumstances.”

33. As the *Pilgrim’s Pride* court observed:

The court can easily conceive of a case where rejection of a contract could have a significant impact upon, say, public health, such that its rejection should be allowed only after a more critical review by the court than is contemplated under the ordinary business judgment rule, pursuant to which a court might feel constrained to accept the debtor’s judgment absent the debtor’s bad faith, or whim or caprice.

403 B.R. at 424. While dicta in *Pilgrim’s Pride*, **this case** is that “case” it foresaw. If the Contracts are allowed to be rejected *before* HealthSpring can put a new NEMT provider in place, there will *follow* an immediate and massive impact on the health and safety of HealthSpring’s Medicare members, who will be unable to travel to receive medical care and lifesaving treatments.

34. This Court need not be concerned that applying a higher rejection standard to the Contracts, where the health and safety of thousands of HealthSpring’s Medicare members are at stake, will affect application of the traditional rejection standard in other bankruptcy cases. The *Pilgrim’s Pride* Court noted that a heightened rejection standard “will be rarely applied,” explaining:

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<sup>4</sup> *See also National Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco and Bildisco)*, 104 S. Ct. 1188, 1195 (U.S. 1984) (“A somewhat stricter standard should govern the decision of the Bankruptcy Court to allow rejection of a collective-bargaining agreement.”) (abrogated only when Congress enacted 11 U.S.C. § 1113 to govern CBA’s specifically); *Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 525 (5<sup>th</sup> Cir. 2004) (applying higher standard in deciding whether to approve rejection of public utilities contract).  
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[T]he court anticipates that it would not likely consider applicable the public policy exception to the business judgment rule in future cases absent a threshold showing that rejection of the subject contract (1) is facially inconsistent with a statutory mandate or effects the bypass of a regulatory authority; **or (2) will potentially adversely affect the general public interest or may endanger public health or safety.**

*Id.* at 426 n.30 (emphasis added); *cf. Pomona Valley*, 476 F.3d at 670 (in reviewing whether a reorganization strategy, including rejection of physician vendor agreement, was so unreasonable as to constitute “bad faith,” the court agreed that “a debtor-in-possession must abide by state law health and safety regulations.”). But this is that rare case.

**C. ModivCare Would Not Be Burdened by Providing the Promised Critical Services During The 180-Day Run-Out Period.**

35. The critical nature of ModivCare’s transportation services for HealthSpring’s Medicare members cannot be overstated. McKenzie Decl. at ¶¶ 8-9, 67. This is the very reason the parties negotiated the terms of a Wind-Down Period for 180 days should there be a termination of the Contracts by either party before the end of term. *Id.* at ¶¶ 12-13, 69. The logistical hurdles to replace a national provider of NEMT services for HealthSpring’s roughly [REDACTED] Medicare members are enormous, such as:

- The new provider must input and organize all new customer information;
- The new provider must set up a system to track the use of member benefits;
- The new provider must set up a phone application that HealthSpring customers can download to schedule their trips;
- HealthSpring must ensure that all links on existing websites and phone numbers are rerouted from ModivCare to the new provider; and
- HealthSpring must provide its members at least 30-days’ advance notice of any changes.

McKenzie Decl. at ¶¶ 11, 65-66; Mott Decl. at ¶¶ 6-8. HealthSpring has a similar 180-day wind-down period with its other vendors (*e.g.*, meals, fitness, and vision vendors) to ensure a smooth transition without disruption of services if a vendor is replaced mid-term. McKenzie Decl. at ¶ 70.

36. The paramount interest of HealthSpring in objecting to the proposed rejection of the

Contracts is for the Court to set the effective date of rejection after the conclusion of the Wind-Down Period, whether that be in 180 days (as already contractually agreed by the parties) or an earlier date if it allows sufficient time for HealthSpring to place a new vendor without interruption of services. A representative of HealthSpring will be present and prepared to testify at the hearing that the *earliest* date by which a replacement vendor can be ready is May 1, 2026, which is 100 days from the date this paper is filed. During the run-out period, HealthSpring has committed to pay for service as required by the Contracts and to discuss in good faith higher rates as provided for by the Contracts. Mott Decl. ¶ 13.

37. Keeping its contractual promise to HealthSpring and the enrollee community will not harm ModivCare. In fact, ModivCare must agree that it (and the estate) will be benefited by proper performance of the critical services.

38. Initially, even if ModivCare was in fact owed the additional [REDACTED] for services in 2024 and 2025 that it speciously claims, *see* Exhibit 9, that [REDACTED] likely would be swamped by the massive claim for breach of the run-off services from the tens of thousands of HealthSpring enrollees denied services if ModivCare were to terminate service after January 28. ***Those run-out services are owed by ModivCare to HealthSpring and its Medicare enrollees regardless of whether ModivCare is right about the payment dispute.*** It is unsurprising that ModivCare has come forward with no evidence to support its supposed business judgment on this issue—let alone evidence that would make such behavior rational for any reason other than an improper hostage-taking for financial gain.

39. Sections 365(g) and 502(g) of the Bankruptcy Code provide that ModivCare's rejection of the executory contract would constitute a breach of that contract as of immediately before the bankruptcy petition was filed. See 11 U.S.C. §§ 365(g), 502(g). But HealthSpring will have more than a pre-petition claim, for Section 553 of the Bankruptcy Code preserves certain setoff rights that otherwise exist under contract or applicable non-bankruptcy law. See 11 U.S.C. § 553(a); *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16 (1995). The setoff right is available to a creditor with a prepetition rejection damages claim and may be applied defensively against any prepetition debt owed by that

creditor to a debtor. *See CDI Trust v. U.S. Elecs., Inc. (In re Communication Dynamics, Inc.)*, 383 B.R. 219, 227 (Bankr. D. Del. 2008).

40. If the Contracts are rejected, HealthSpring thus will have an enormous rejection damages claim, particularly with the costs HealthSpring will have to incur to find and install a replacement NEMT vendor and the damages that HealthSpring enrollees will assert. The impact of a resulting rejection damages claim is a relevant element to analyzing whether a debtor has made a valid business decision. *See In re Brick House Props., LLC*, 633 B.R. 410, 424 (Bankr. D. Utah 2021) (debtor’s rejection decision “not an objective and reasonable business judgment” based on, among other things, disproportionate size of rejection damages claim compared to other unsecured claims).

41. In addition to the negative impact of setoff damages, the Contracts have significant positive value to ModivCare through the remaining term of 2026. Despite the parties’ dispute over the MLR payment reconciliations in 2024 and 2025, in order to have a clean slate starting in 2026, HealthSpring offered to increase payments to ModivCare, as follows: starting January 1, 2026, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] McKenzie Decl. at ¶ 41; Exhibit 5. ModivCare agreed to these proposed increases starting on January 1, 2026. McKenzie Decl. at ¶ 42; Exhibit 6. A final agreement was not reached, however, because ModivCare insisted on tying the increased rates to HealthSpring’s agreement to pay it the additional demanded amounts from 2024 and 2025. McKenzie Decl. at ¶¶ 42-43; Exhibit 7.

42. In addition, ModivCare’s RFP response for the new 2027 NEMT contract included rates that were only nominally higher than the rates ModivCare currently receives in the Contracts. McKenzie Decl. at ¶ 47. In other words, ModivCare was willing to continue providing NEMT services to HealthSpring’s members in 2027 for only slightly more than it is scheduled to receive for its

performance through 2026.

43. The evidence presented by HealthSpring, compared to the utter lack of evidence in the Motion, passes the burden to ModivCare to show the Court at least some evidence that the proposed rejection is based on a rational business reason. *See Pilgrim's Pride*, 403 B.R. at 428 (if the non-debtor party shows irrational basis for rejection of contract, then the debtors have the “additional burden of proving they selected the ... contracts for rejection in a rational manner.”). As discussed in further detail below, the evidence in the Declarations filed herewith, along with evidence HealthSpring will present at the hearing, reveal that ModivCare’s proposed rejection is not a rational business decision; rather, it is in retaliation for ModivCare’s failure to win the RFP for the 2027 NEMT contract. Significantly, within just a few days of ModivCare’s asking HealthSpring to reconsider its RFP award decision and, instead, award the 2027 NEMT contract to ModivCare (which HealthSpring refused to do because the winning party had already been notified), ModivCare issued the Termination Notice, even though the remaining term of the Contracts was for entire year and on payment terms only nominally less than ModivCare had included in its RFP proposal for the 2027 NEMT contract. McKenzie Decl. at ¶¶ 54-55.

**D. Even If ModivCare Were Permitted to Defend Its Threatened Actions Under the “Ordinary” Business Judgment Test, It Could Not Do So.**

44. HealthSpring acknowledges that an “ordinary” executory contract, one that does not implicate the welfare of thousands of third parties, is conventionally measured by the business judgment rule. This rule does allow a court, if presented with evidence, to assume a rejection is “rational.”

45. But “in applying the business judgment rule in deciding whether to grant a debtor’s motion to reject a contract a court is not adjured to blindly accept, but rather only to show proper deference to the business judgment of the debtor’s management.” *Pilgrim's Pride*, 403 B.R. at 427. But “once questions regarding the decision-making process have been raised the court’s rule as an ‘overseer of the wisdom’ of the decision-maker requires it to review the process.” *Id.*

46. The Motion says nothing more than it seeks to reject the Contracts because of unnamed “best interests of their estates.” Motion ¶ 12. Similarly, the Motion’s vague references to “any material benefit” and “unnecessary obligations” add nothing. *Id.* In contrast, HealthSpring has filed two Declarations with this Objection that provide the Court with evidence that the Debtors do not have a valid business reason to reject the Contracts.

47. Even had ModivCare come forward with evidence to meet its burden, while the business judgment standard is “deferential” towards a debtor’s judgment a bankruptcy court should “withhold approval when ‘the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code.’” *In re J.C. Penney Direct Mktg. Servs., L.L.C.*, 50 F.4th 532, 534 (5th Cir. 2022) (quoting *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985)). In *Richmond Leasing*, the Fifth Circuit Court of Appeals instructed that a bankruptcy court, in applying the business judgment rule, may consider “the risks of the proposed transaction, the available alternatives, and the danger of prejudice to the objecting parties ...” 762 F.2d at 1312 n.11 (citing *In re Southern Biotech, Inc.*, 37 B.R. 318 (Bankr. M.D. Fla. 1983)).

48. In applying the business judgment rule, courts have refused to authorize rejection where “it finds that the debtor-in-possession’s conclusion that rejection would be ‘advantageous’ is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” *In re Agarwal v. Pomona Valley Medical Group, Inc. (In re Pomona Valley Medical Group, Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (quoting *Lubrizol Enter. v. Richmond Metal Finishers*, 756 F.2d 1043, 1047 (4th Cir. 1985)). In *In re J.C. Penney Direct Mktg. Servs., L.L.C.*, 50 F.4th 532, 534 (5th Cir. 2022), the Fifth Circuit Court of Appeals did not have occasion to adopt the “bad faith, or whim or caprice” test because the objecting creditor there “urg[ed] th[e] court to hold that any bad faith involved in the bankruptcy proceedings should prompt a bankruptcy court to decline a debtor’s decision regarding an executory contract.” *Id.* at 535 (emphasis added). Although the

objecting creditor had been defrauded by a third-party agent of the debtor during negotiations, the *J.C. Penney* Court concluded the fraud had no impact on the debtor's business judgment to reject a burdensome commercial lease. *Id.*

49. In contrast to the facts of *J.C. Penney*, the evidence presented here by HealthSpring shows that ModivCare's desire to improperly threaten the health and well-being of HealthSpring enrollees is at the very heart of ModivCare's decision to reject. ModivCare made post-petition assurances to HealthSpring that the bankruptcy case would not disrupt ModivCare's life-saving transportation services for HealthSpring members through the remaining term of 2026—causing HealthSpring not to seek a replacement NEMT provider then—only to be blindsided by the Motion to reject the Contracts and stop ModivCare's critical performance well before the required Wind-Down Period. This reflects that the Motion was filed in bad faith and is an abuse of the bankruptcy contract rejection process.

50. Were ModivCare not putting lives at risk, and had it not hidden its scheme and thus prevented HealthSpring from having a replacement provider available, the rejection could proceed without contest and ModivCare and HealthSpring could litigate their payment dispute without risk to anyone's health. ModivCare's actions smack of bad faith, and it has done nothing in the Motion to eliminate that possibility.

51. While on the specific facts of *J.C. Penney* the Circuit was not called upon to adopt the “bad faith, or whim or caprice” test, it did cite with approval the decision the *Pilgrim's Pride* bankruptcy court's opinion. In that case, the court declined to approve a debtor's rejection of an executory contract based on retaliation, for such a basis to reject “was not a rational economic decision.” *J.C. Penney*, 50 F.4th at 535 (emphasis added) (citing *Pilgrim's Pride*, 403 B.R. at 428). In *Pilgrim's Pride*, the bankruptcy court explained this concept further:

In the exercise of its business judgment, a debtor in possession may be expected to make its decisions rationally in exercising the rejection option. If, for example, a debtor made rejection and other business decisions through the use of a Ouija Board, the court might quite properly question those decisions. The court must ensure the decision-

making process used by a debtor in possession in exercising its powers under the Code is a sensible one.

403 B.R. at 427 (emphasis added). The *Pilgrim's Pride* Court continued: "By holding Debtors to a requirement that rejection decisions be made rationally, the court precludes reliance on whim or caprice or decisions undertaken in bad faith ...." *Id.* (emphasis added).

52. ModivCare has made no evidentiary showing of any kind. The facts presented by HealthSpring here demonstrate that ModivCare could not make even the lesser showing required by the business judgment standard.

#### **IV. CERTIFICATION OF CONFERENCE**

53. As described in the supporting declarations, client representatives of ModivCare and HealthSpring have conferred at least as recently as Friday, January 16, 2026, in an attempt to resolve the disputes between them in order to protect the Medicare enrollees. At the time of filing this Objection, no agreement has been reached.

54. Counsel for HealthSpring contacted counsel for ModivCare on January 2026, pursuant to BLR 9013-1(g)(1), noting counsel's availability to confer regarding the Motion and the issues to be raised in the Objection. While no agreement was reached prior to filing the Objection, counsel for HealthSpring and ModivCare agreed to continue efforts to confer to try to resolve the disputes between the parties and to discuss next steps and scheduling matters.

#### **V. RESERVATION OF RIGHTS**

55. HealthSpring reserves all rights under applicable law with respect to the Contract as well as the right to amend and/or supplement this Objection as it deems necessary or appropriate

Dated: January 20, 2026

Respectfully submitted,

JONES MURRAY, LLP

/s/ Erin E. Jones  
Erin Elizabeth Jones  
Texas State Bar No.: 24032478  
JONES MURRAY, LLP  
602 Sawyer St. Suite 400  
Houston, Texas 77007  
Telephone: 832-529-1999  
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AND

CROWELL & MORING LLP

/s/ Thomas F. Koegel  
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Email: [rreyna@crowell.com](mailto:rreyna@crowell.com)

**ATTORNEYS FOR HEALTHSPRING, INC.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 20, 2026, the foregoing was served electronically via CM/ECF for those parties registered to receive such service.

*/s/ Erin E. Jones* \_\_\_\_\_

# EXHIBIT **1**

**Entire Document Filed Under Seal**

# EXHIBIT **2**

**Entire Document Filed Under Seal**

# EXHIBIT **3**

**MEMO**

**August 6, 2024**

**TO: Marvin Lewis**

**FROM: Kirk Gonzales**

**RE: Medical Loss Ratio – regulatory requirements for NEMT Brokerage Services**

The following analysis addresses the question of how non-emergency medical transportation (NEMT) brokerage services provided by Modivcare are viewed with respect to the Medical Loss Ratio (MLR) requirements under the Medicaid Managed Care (MMC) Final Rule that the Centers for Medicare and Medicaid Services (CMS) published on May 6, 2016. 81 Fed. Reg. 27,498 (as amended). The MMC Final Rule is codified at 42 C.F.R. § 438 et seq.

42 C.F.R. § 438.4(b)(9) requires capitation rates be developed in such a way that the MCO, PIHP, or PAHP would reasonably achieve a medical loss ratio (MLR) standard of at least 85 percent for the rate year. However, 42 C.F.R. § 438.9 clarifies that the majority of the MMC Final Rule, including the requirements of § 438.4(b)(9), are NOT applicable to NEMT brokerage services.<sup>1</sup> As a result, when Modivcare is contracted to an MCO, the monies paid to it by the MCO associated with NEMT reservation intake and trip routing / re-routing, including active recovery of trips in real-time (NEMT Brokerage Services), would be entirely part of the numerator as incurred claims and/or quality improvement activities.

This conclusion is supported by CMS public guidance issued contemporaneous with the implementation of the MLR Rule. The following is an excerpt of a transcript of a CMS Webinar<sup>2</sup> that addresses this issue:

**QUESTION:** If there is a prepaid ambulatory health plan (PAHP) providing unique services like intensive care management as a high-fidelity wrap-around plan, how would the MLR apply and how would that plan be able to meet the MLR calculation?

**ANSWER (by Renee Frandson, CMS, Center for Medicaid and CHIP Services):** As you saw in the final rule, we did decide that all PAHPs, **except for non-emergency medical transportation (NEMT) PAHPs**, should be subject to calculating and reporting the MLR. We do think that a lot of the activities performed by the PAHP (offering those unique services) will fall under the quality improving activities realm, and in doing so, those quality improvement activities related to intensive care management are included in the numerator of the MLR calculation, so we think there is a high likelihood that the MLR could be met. [Emphasis added].

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<sup>1</sup> § 438.9 excludes NEMT PAHPs. Modivcare operates as a NEMT PAHP as defined by 42 C.F.R § 438.1.

<sup>2</sup> From Q&A Portion of July 21, 2016, CMS Medicaid Managed Care Webinar

**Modivcare’s activities qualify as incurred claims.** CMS states explicitly in the preamble to the MMC Final Rule that, for purposes of the MLR requirement, NEMT services are an “incurred claim” included in the numerator (i.e., the 85%) of the calculation. See 81 Fed. Reg. at 27,526 (reminding stakeholders that “all services, including behavioral health, acute care, pharmacy, NEMT, and LTSS are included in this definition [of incurred claims].” 81 Fed. Reg. at 27,526 (emphases added). This language from the MMC Final Rule strongly suggests that NEMT Brokerage Services should be considered to contribute to the 85% spent on “incurred claims.” Moreover, in the MMC Final Rule, CMS removed the word “medical” from the MLR provision and specifically stated that it was doing so to reflect the fact that services meeting the definition of “incurred claims” at § 438.3(e), for purposes of the MLR calculation, “may not always be medical in nature.” 81 Fed. Reg. at 27,526.

**Modivcare’s activities also qualify as Quality Improvement Activities (QIA).** The regulations provide that certain activities that “improve health care quality” should be included in the numerator along with incurred claims, if they meet the criteria set forth in 45 C.F.R. § 158.150(b). The MMC Final Rule’s preamble explicitly states that service coordination, case management, and activities supporting state goals for community integration of individuals with more complex needs should be included in the MLR calculation’s numerator as health care QIA. 81 Fed. Reg. at 27,528. In addition, CMS further indicated that it expects health care quality improvement activities would include the cost of appropriate outreach, engagement, and service coordination. 81 Fed. Reg. at 27,523. Accordingly, even if for the sake of argument some NEMT Brokerage Services activities performed by Modivcare are not considered services meeting the definition of “incurred claims,” they would nevertheless contribute to the 85% MLR numerator as QIA (i.e., service coordination to ensure members without reliable transportation options are transported to covered health care services through trip reservation intake and management and trip routing / re-routing, including active recovery of active trips in real-time).

In sum, payments made to Modivcare for NEMT Brokerage Services should be treated as incurred claims and/or QIA activities that belong in the numerator of a MLR analysis. CMS has made it clear that an NEMT PAHP is not required to calculate or report a MLR, and the MCO contracting with us should act accordingly. Moreover, our NEMT Brokerage Services fit well within the definitions of an incurred claim and QIA. The fact that the actual transportation is provided through independent contractors rather than direct employees of Modivcare (a requirement of the NEMT brokerage regulations, (see 42 C.F.R. § 440.170(a)(4)(ii)(A)) does not change this analysis.

# EXHIBIT **4**



Cigna Healthcare  
900 Cottage Grove Road  
Hartford, CT 06152

September 25, 2024

ModivCare Solutions, LCC  
Attention: Legal Department  
Kirk Gonzales  
6900 Layton Avenue, Suite 1200  
Denver, CO 80237

**RE: Medicare Advantage – Medical Loss Ratio Risk Sharing under Section 5.6 of the Statement of Work No. SOW\_11007**

Dear Mr. Gonzales:

Cigna Healthcare (“Cigna”) writes to respond to ModivCare Solutions’ (“ModivCare”) letter dated August 6, 2024. Specifically, Cigna rejects ModivCare’s attempt to include the cost of both: (i) Customer Service Representatives (staff who answer customer calls and address issues such as eligibility and coverage, travel destination, and confirmation of services) and (ii) Customer Advocate/Transportation Routers (staff who route trips based on customer travel date, time and destination), as medical expenses in calculating the Medical Loss Ratio (“MLR”) under the MLR Risk Sharing arrangement, listed as section 5.6 in Statement of Work No. SOW\_11007 (“SOW”) to the parties’ April 1, 2023 Master Services Agreement (“Agreement”). Your position is contrary to both the Agreement’s SOW and to CMS Medicare Advantage (“MA”) regulations and guidance applicable to this situation.

The SOW’s MLR Risk Sharing Provision

[Redacted]

Here, the contract’s language does not support including ModivCare’s staffing costs as medical expenses for calculating the MLR. [Redacted]

[Redacted]

Furthermore, this Agreement is the result of an arm’s length transaction. If ModivCare wanted a different result, it should have negotiated for it. Instead, the parties executed the Agreement which only allows for the actual **covered service amounts** to count towards the MLR.

CMS’ Regulations and Guidance on MLR for Medicare Advantage



CMS guidance for calculating MLR under MA also supports Cigna's position. The guidance is found in CMS's MA regulations, specifically at 42 CFR § 422.2420 et seq. entitled "Requirements for a Minimum Medical Loss Ratio".<sup>1</sup> For background, the MA MLR regulations refer to medical expenses as "incurred claims" and administrative costs as "non-claim costs". (42 CFR § 422.2401) Generally, the MA MLR regulation states the MLR numerator equals the "**amount** [Cigna] pays for **covered services**", meaning incurred claims or medical expenses. (42 CFR §§ 422.2420(b)(1)-(2)) However, the MLR regulation explicitly excludes specific amounts – namely, administrative fees – from the definition of incurred claims. (42 CFR § 422.2420(b)(4)). Applied here, ModivCare's staffing costs are categorized as non-claim administrative costs and thus are excluded from incurred claims. Simply put, CMS directs that administrative costs mean non-medical costs. Yet ModivCare advocates for a contrary result.

Additionally, to the extent that the Agreement is classified as a capitated contract, the Agreement does not pass CMS' four-factor incurred claim test which would allow administrative costs to count towards medical expenses. For capitated contracts, CMS allows certain administrative costs to count towards medical expenses when four factors are met. Review of the applicable factors makes it clear that ModivCare cannot meet two of the four required factors.<sup>2</sup> First, NEMT services are not a clinical service, as required by the test. Second, NEMT services are not provided through an integrated delivery system, which is also required by the test. Because these two threshold factors are not met, ModivCare's administrative functions (staffing costs) cannot be included in incurred claims (medical expenses), despite the classification of the Agreement as a capitated contract. As such, under CMS' applicable MA regulations and guidance, ModivCare's staffing costs are not included as part of the MLR numerator as those costs are clearly non-claim costs.

#### ModivCare's Memo on MLR

Cigna received and reviewed a copy of ModivCare's memo titled "Medical Loss Ratio – regulatory requirements for NEMT Brokerage Services". In the memo, ModivCare relies on CMS' regulations and guidance applicable to **Medicaid managed care** to conclude that minimum MLR standards are not applicable to NEMT services, and thus, the entire amount paid for NEMT services are included in incurred claims to calculate the MLR. ModivCare's reliance is misplaced for a myriad of reasons. First and most significantly, Medicaid authority is inapplicable to the Medicare program. Second, the Medicaid regulation (42 CFR § 438.9) containing the MLR standard exemption for NEMT services does not have an analogous Medicare regulation. This means CMS deliberately choose not to carve-out NEMT services from MA MLR standards. Third, the Medicaid regulation only applies to NEMT pre-paid ambulatory health plans ("PAHP"). (42 CFR § 438.9(b)) NEMT PAHPs are entities who only provide NEMT services under a contract with a state Medicaid administrator. (42 CFR § 438.9(a)) Here, ModivCare is not operating as a NEMT PAHP because ModivCare is contracted with Cigna to provide NEMT services to Medicare beneficiaries. Therefore, Cigna rejects all implication that Medicaid regulations allow ModivCare to treat administrative costs as medical expenses under the Medicare program or under the Agreement.

Cigna believes this to be our final interpretation of MLR calculation per CMS guidelines and will continue to administer the contract as such. Thank you for your understanding and we appreciate your partnership.

<sup>1</sup> Neither CMS' MA regulations nor its guidance address the specific situation of calculating MLR for NEMT services.

<sup>2</sup> CMS, Medical Loss Ratio (MLR) Data Form Filing Instructions for [Contract Year 2023](#) (hyperlink); see also, CMS' website for Regulations and Guidance on [Medical Loss Ratio](#) (hyperlink), specifically, [CMS' February 10, 2018 Guidance Letter Regarding Medical Loss Ratio](#) (hyperlink).

# EXHIBIT **5**



June 23, 2025

ModivCare Solutions  
Marvin Lewis and Cody Huffman  
6900 Layton Avenue, Suite 1200  
Denver, CO 80237

**RE: Medicare Advantage – Best and Final Proposal to Amend Statement of Work No. SOW\_11007**

Dear Marvin and Cody:

HealthSpring Life & Insurance Company, Inc. d/b/a Cigna Medicare Advantage ("HealthSpring") writes ModivCare Solutions, LLC ("ModivCare") to propose HealthSpring's best and final offer to resolve the impasse regarding the financial terms of Statement of Work No. SOW\_11007 ("SOW") under the parties' April 1, 2023 Master Services Agreement ("Agreement"). HealthSpring proposes this offer in good faith to demonstrate its commitment and partnership to ModivCare. HealthSpring's offer is –

[REDACTED] If HealthSpring's offer is not accepted by **June 25, 2025**, HealthSpring will continue to operate under the present terms and conditions of the SOW and Agreement through the remainder of the term period, which ends December 31, 2026.

HealthSpring's Offer

[REDACTED]

The deadline to accept HealthSpring's offer is **June 25, 2025**.

Non-Acceptance of HealthSpring's Offer

If Health Spring's offer is not accepted by June 25, 2025, HealthSpring intends to continue working under the existing terms and conditions of the SOW and the Agreement which were negotiated and agreed to by ModivCare and

300 E Randolph St, Chicago, IL 60601  
Mobile: 201-978-0398 • kayla\_mckenzie@hcsc.com

HealthSpring for the remainder of the contract period ending December 31, 2026. Stated alternatively, this means HealthSpring will continue – through December 31, 2026 – to: [REDACTED]

In closing, HealthSpring's best and final offer to increase the capitated PMPM fee and modify the MLR Risk Sharing arrangement, as detailed above, must be accepted by or on **June 25, 2025**.

Please contact Heath Campbell at 813-416-7979 or Heath.Campbell@CignaHealthcare.com if you have any questions or need any additional information.

Thank you,

*Kayla McKenzie*

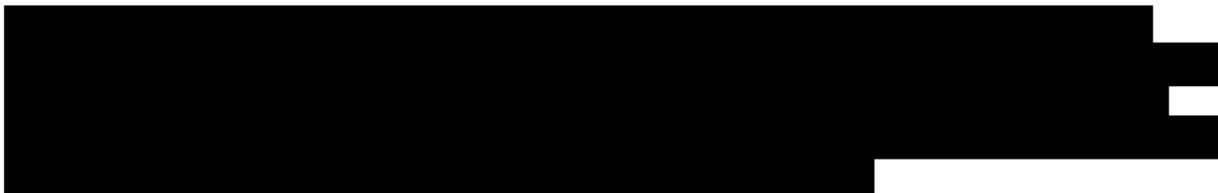
Medicare Vendor Management & Delegation Oversight

# EXHIBIT **6**

**From:** Sharon Wilson <[Sharon.Wilson@modivcare.com](mailto:Sharon.Wilson@modivcare.com)>  
**Sent:** Wednesday, June 25, 2025 3:57 PM  
**To:** Campbell, Heath H (CTR) <[Heath.Campbell@CignaHealthcare.com](mailto:Heath.Campbell@CignaHealthcare.com)>; Marvin Lewis <[marvinl@modivcare.com](mailto:marvinl@modivcare.com)>; Cody Huffman <[Cody.Huffman@modivcare.com](mailto:Cody.Huffman@modivcare.com)>  
**Cc:** Kayla McKenzie <[kayla\\_mckenzie@hsc.com](mailto:kayla_mckenzie@hsc.com)>  
**Subject:** [External] RE: 2026 Payment Rate - Confirmation Requested

Hello Heath,

Modivcare acknowledges receipt of your offer letter dated June 23, 2025. After careful review and consideration, our position is as follows:



With respect to Medical Loss Ratio (MLR) calculations, Modivcare maintains that direct staffing and service costs should be included in the MLR calculation, in accordance with CMS guidelines for transportation services. This approach is consistent with Cigna's 2026 offer. Accordingly, we accept the offer as it pertains to the 2026 contract year.

We also wish to clarify that Modivcare does not waive its claims to monies owed for the 2024 and 2025 claim years under the current MLR calculation methodology outlined in our contract. We remain open to engaging with the appropriate members of Cigna's leadership team to resolve this matter.

Regards,

**Sharon Wilson**  
**Vice President, Enterprise Account Management**  
**ModivCare**  
**Phone:** [404.888.5898](tel:404.888.5898) **Mobile:** [404.783.9923](tel:404.783.9923)  
**Email:** [sharon.wilson@modivcare.com](mailto:sharon.wilson@modivcare.com) | **Website:** [ModivCare.com](http://ModivCare.com)  
**LinkedIn:** [ModivCare](#) | **Facebook:** [ModivCare](#) | **Twitter:** [@ModivCare](#)

**From:** Campbell, Heath H (CTR) <[Heath.Campbell@CignaHealthcare.com](mailto:Heath.Campbell@CignaHealthcare.com)>  
**Sent:** Monday, June 23, 2025 8:45 AM  
**To:** Marvin Lewis <[marvinl@modivcare.com](mailto:marvinl@modivcare.com)>; Cody Huffman <[cody.huffman@modivcare.com](mailto:cody.huffman@modivcare.com)>  
**Cc:** Kayla McKenzie <[Kayla\\_McKenzie@hsc.com](mailto:Kayla_McKenzie@hsc.com)>; Sharon Wilson <[Sharon.Wilson@modivcare.com](mailto:Sharon.Wilson@modivcare.com)>  
**Subject:** 2026 Payment Rate - Confirmation Requested  
**Importance:** High

**CAUTION:** This email is not from a Modivcare employee -- **DO NOT** reply to this email if the sender is claiming to be a Modivcare employee. **DO NOT** click links or open attachments unless you recognize the sender and know the content is safe.

Marvin/Cody,

In April HCSC offered Modivcare a 2026 rate increase in good faith to address a disagreement of the calculation of MLR on the legacy Cigna contract.

Thank you,

**Heath H. Campbell**

AVP, National Vendor Management

Pronouns: he, him, his

Office: 860-902-5472

Work Mobile: 813-416-7979

Email: [heath.campbell@cigna.com](mailto:heath.campbell@cigna.com)



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# EXHIBIT **7**



Medicare Oversight

July 1, 2025

ModivCare Solutions  
Marvin Lewis and Cody Huffman  
6900 Layton Avenue, Suite 1200  
Denver, CO 80237

**RE: Medicare Advantage – Response to Proposal to Amend Statement of Work  
No. SOW\_11007**

Dear Marvin and Cody:

HealthSpring Life & Insurance Company, Inc. d/b/a Cigna Medicare Advantage ("HealthSpring") writes ModivCare Solutions, LLC ("ModivCare") to acknowledge receipt of ModivCare's response to HealthSpring's offer to fully resolve the financial misalignment for Statement of Work No. SOW\_11007 ("SOW"). Initially, HealthSpring offered to resolve the financial misalignment on a go-forward basis by [REDACTED]

[REDACTED] In response, ModivCare was agreeable to [REDACTED]; however, ModivCare stated it would not waive claims under the MLR Risk Sharing arrangement for 2024 and 2025 – this condition neither aligns nor comports with HealthSpring's offer to fully resolve the financial misalignment.

As such, HealthSpring will continue to operate under the presently negotiated and agreed upon terms and conditions of the SOW through the remainder of the term period, which ends December 31, 2026.

Please contact Heath Campbell at 813-416-7979 or Heath.Campbell@CignaHealthcare.com if you have any questions or need any additional information.

Thank you,

*Kayla McKenzie*

Medicare Vendor Management & Delegation Oversight

300 E Randolph St, Chicago, IL 60601  
Mobile: 201-978-0398 • kayla\_mckenzie@hcsc.com

# EXHIBIT **8**

**From:** Lance Wittl <Lance.Wittl@modivcare.com>  
**Sent:** Monday, September 15, 2025 10:34 PM  
**To:** Levesque, Mark (CTR); Karas, Melanie (CTR); Campbell, Heath H (CTR)  
**Subject:** Chapter 11 Update

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Team,

As you know, Modivcare is undergoing a pre-arranged Chapter 11 restructuring, supported by an overwhelming majority of our lenders. This process is designed to strengthen our financial foundation, and we remain committed to emerging as a stronger, privately held company in the fourth quarter of 2025.

Why this matters to you:

- Your members will continue receiving uninterrupted services.
- Our business continues to operate as usual, with a focus on operational excellence.
- The Chapter 11 process is subject to court oversight, ensuring fairness and transparency.
- Through the Chapter 11 process, we intend to assume all critical customer contracts.
- Each step positions Modivcare to emerge a stronger, more sustainable organization, with reduced debt and enhanced long term stability.

Throughout the Chapter 11 process, all Bankruptcy Court orders can be found on the Verita claims agent website: <https://www.veritaglobal.net/Modivcare>

Some of the orders you can expect to see confirm our ability to continue to deliver on these commitments:

- **Plan and Disclosure Statement Communication Materials:** Communication materials prepared for teammates and clients to share the Plan of Reorganization and Disclosure Statement filings with the Bankruptcy Court. These are important documents that outline our path out of Chapter 11 and filing them puts us one step closer to completing a successful restructuring.
- **Disclosure Statement Hearing Notice:** Informs recipients of the Disclosure Statement Hearing in the Bankruptcy Court, which is scheduled to be held on October 6, 2025. The Disclosure Statement is an important document that contains detailed information on Modivcare's business and the steps by which the Company will undertake to complete the Chapter 11 process.
- **Bar Date:** Informs recipients of the deadline by which creditors must file a proof of claim form, which the Court has established as Wednesday, October 1st, before 5 PM Central Time.
- **Proof of Claim Form:** The form creditors must fill out and submit to the Court if they believe they are owed money by Modivcare from prior to the bankruptcy filing that has not been paid. Please note, all creditors receive this form, and receiving this form does not mean you have to file a claim with the Court.

Thank you,

**Lance Witt**  
Sr. Director, Client Services

**Modivcare**

Mobile: 405.410.9115

Email: [lance.witti@modivcare.com](mailto:lance.witti@modivcare.com) | Website: [modivcare.com](http://modivcare.com)

LinkedIn: [Modivcare](#) | Facebook: [Modivcare](#) | Twitter: [@Modivcare](#)

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VRI | 1400 Commerce Center Dr, Franklin, OH 45005 | 1-800-860-4230

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**From:** Lance Wittl <Lance.Wittl@modivcare.com>  
**Sent:** Friday, September 19, 2025 3:52 PM  
**To:** Levesque, Mark (CTR); Karas, Melanie (CTR); Campbell, Heath H (CTR)  
**Cc:** Sharon Wilson  
**Subject:** Chapter 11 Update 09-19-2025

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Team,

As part of our commitment to supporting you, we are aiming to keep you more regularly updated as we move forward through our Chapter 11 process.

To that end, we will be providing you with weekly updates summarizing key developments in our case and upcoming milestones, as well as recapping any communications delivered over the course of the week. If there are no updates, we will let you know that as well.

Our goal is to ensure you receive clear, timely information directly from us. As a reminder, we are continuing to operate as usual throughout this process, and we expect no changes in how we work together or disruption in care for your members.

We appreciate your ongoing support throughout this process and are always available to answer your questions.

### **Modivcare Restructuring Communications Update and Materials 09/19/2025**

- **Court Updates**
  - Our “second day” hearing was reset from September 16 to September 30. The hearing was reset to give the newly appointed official committee of unsecured creditors time to review and respond to first day pleadings. This is a normal and expected step that helps ensure all parties are heard and is not an indication of a negative change in our Chapter 11 process.
- **Ongoing and Received Communications**
  - We are required by the Courts to provide certain legal notices to creditors throughout our Chapter 11 process. Recently, this group received notices including the Disclosure Statement Hearing Notice, Bar Date Notice, and Proof of Claim Form.
- **Upcoming Communications**
  - Looking ahead, creditors should expect to receive the Plan of Reorganization, Disclosure Statement, and other solicitation-related materials. All documents sent by the Courts are compiled online by our claims agent, Verita, at [veritaglobal.net/Modivcare](https://veritaglobal.net/Modivcare).

Thank you,

**Lance Wittl**  
Sr. Director, Client Services

**Modivcare**  
Mobile: 405.410.9115  
Email: [lance.wittl@modivcare.com](mailto:lance.wittl@modivcare.com) | Website: [modivcare.com](https://modivcare.com)

[LinkedIn: Modivcare](#) | [Facebook: Modivcare](#) | [Twitter: @Modivcare](#)

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**From:** Lance Wittl <Lance.Wittl@modivcare.com>  
**Sent:** Friday, September 26, 2025 3:16 PM  
**To:** Levesque, Mark (CTR); Karas, Melanie (CTR); Campbell, Heath H (CTR)  
**Cc:** Sharon Wilson  
**Subject:** Chapter 11 Update 09-26-2025

Hello Team,

As part of our commitment to supporting you, we are aiming to keep you more regularly updated as we move forward through our Chapter 11 process.

To that end, we will be providing you with weekly updates summarizing key developments in our case and upcoming milestones, as well as recapping any communications delivered over the course of the week. If there are no updates, we will let you know that as well.

Our goal is to ensure you receive clear, timely information directly from us. As a reminder, we are continuing to operate as usual throughout this process, and we expect no changes in how we work together or disruption in care for your members.

We appreciate your ongoing support throughout this process and are always available to answer your questions.

**Modivcare Restructuring Communications Update and Materials 09/26/2025**

- **Court Updates**
  - Our creditor meeting was held on September 22. A creditor meeting is a required meeting in the Chapter 11 process where the debtor answers questions from the United States Trustee and creditors regarding the Company, its finances and the Chapter 11 case generally. This meeting is largely for background purposes, and no substantial updates or impacts to our Chapter 11 timeline resulted from this meeting.
- **Ongoing and Received Communications**
  - We are required by the Courts to provide certain legal notices to creditors throughout our Chapter 11 process. Recently, this group received notices including a motion to pay claims of critical vendors, Disclosure Statement Hearing Notice, Bar Date Notice and Proof of Claim Form, motions to pay and retain certain advisors and professionals, and a motion to approve certain lease rejections.
- **Upcoming Communications**
  - Looking ahead, creditors should expect to receive the Plan of Reorganization, Disclosure Statement, and other solicitation-related materials. All documents sent by the Courts are compiled online by our claims agent, Verita, at [veritaglobal.net/Modivcare](https://veritaglobal.net/Modivcare).

Thank you,

**Lance Wittl**  
Sr. Director, Client Services

**Modivcare**

Mobile: 405.410.9115

Email: [lance.wittl@modivcare.com](mailto:lance.wittl@modivcare.com) | Website: [modivcare.com](https://modivcare.com)

LinkedIn: [Modivcare](https://www.linkedin.com/company/modivcare) | Facebook: [Modivcare](https://www.facebook.com/modivcare) | Twitter: [@Modivcare](https://twitter.com/Modivcare)

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**From:** Lance Wittl <Lance.Wittl@modivcare.com>  
**Sent:** Monday, October 6, 2025 9:41 AM  
**To:** Levesque, Mark (CTR); Campbell, Heath H (CTR); Karas, Melanie (CTR)  
**Subject:** Chapter 11 Update 10-03-2025

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Team,

I hope you had a great weekend!

As part of our commitment to supporting you as we move forward through our Chapter 11 process, we will be keeping you updated on a more regular basis.

To that end, we will be providing you with weekly updates summarizing key developments in our case and upcoming milestones, as well as recapping any communications delivered over the course of the week. We will also let you know if there are no updates to report.

Our goal is to ensure you receive clear, timely information directly from us. As a reminder, we are continuing to operate as usual throughout this process, and we expect no changes in how we work together, nor do we expect any disruption in care for your members.

We appreciate your ongoing support throughout this process and are always available to answer your questions.

### **Modivcare Restructuring Communications Update and Materials 10/03/2025**

- **Court Updates**

- Our second day hearing was held on September 30. Our final cash management and trade vendor motions were approved, allowing us to continue to meet all of our financial obligations to our stakeholders. We are still awaiting approval of the final draw on our "debtor-in-possession" financing, which would grant us access to the remaining \$37.5 million of the \$100 million committed by our lenders as part of this process.

- **Ongoing and Received Communications**

- We are required by the Courts to provide certain legal notices to our creditors throughout the Chapter 11 process. Recently, this group received notices including the Final Trade Vendor Order, Disclosure Statement Hearing Notice, Bar Date Notice and Proof of Claim Form, motions to pay and retain certain advisors and professionals, and a motion to approve certain lease rejections.

- **Upcoming Communications**

- o Looking ahead, creditors should expect to receive the Plan of Reorganization, Disclosure Statement, and other solicitation-related materials. All documents sent by the Courts are compiled by our claims agent, Verita, and can be found online at [veritaglobal.net/Modivcare](http://veritaglobal.net/Modivcare).

Thank you,

**Lance Witt**  
Sr. Director, Client Services

**Modivcare**  
Mobile: 405.410.9115  
Email: [lance.witti@modivcare.com](mailto:lance.witti@modivcare.com) | Website: [modivcare.com](http://modivcare.com)  
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**From:** Lance Wittl <Lance.Wittl@modivcare.com>  
**Sent:** Friday, December 5, 2025 2:04 PM  
**To:** Levesque, Mark (CTR); Karas, Melanie (CTR)  
**Cc:** Campbell, Heath H (CTR)  
**Subject:** Chapter 11 Update

Good afternoon,

As part of our ongoing commitment to supporting you as we move forward through our Chapter 11 process, please see the 12/5/25 updates.

### **Modivcare Restructuring Communications Update and Materials 12/5/2025**

As we continue to progress towards our confirmation hearing this Monday December 8, we wanted to take a moment to let you know our plan remains on track, and we continue to expect to emerge from Chapter 11 around the end of the year.

Our operations remain strong, and our teams are fully focused on serving you and your members with the same reliability and care you expect from Modivcare. We will provide additional updates as new milestones are reached or developments occur. We will provide you with an update on our confirmation hearing in our next update email on Friday, December 12.

All official filings and related materials remain available at [veritaglobal.net/Modivcare](https://veritaglobal.net/Modivcare). Please reach out to your Modivcare account representative or to me directly with any questions.

Thank you again for your ongoing confidence and partnership.

Thank you,

**Lance Wittl**  
Interim Vice President, Enterprise Account Management

**Modivcare**  
Mobile: 405.410.9115  
Email: [lance.wittl@modivcare.com](mailto:lance.wittl@modivcare.com) | Website: [modivcare.com](https://modivcare.com)  
LinkedIn: [Modivcare](#) | Facebook: [Modivcare](#) | Twitter: [@Modivcare](#)

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# EXHIBIT **9**



6900 Layton Ave  
Suite 1200  
Denver, CO 80237

Office 800.486.7647  
[modivcare.com](http://modivcare.com)

*Overnight Delivery Service*

December 18, 2025

Cigna  
900 Cottage Grove Road  
Hartford, CT 06152  
Attn: Supply Chain Management, C8SCM

RE: Thirty Day Termination Notice for Breach

CC: Kayla McKenzie, Sr Director, Medicare Vendor Management & Delegation Oversight

To whom it may concern:

This notice is provided pursuant to Section 12.2 of the Master Services Agreement (“MSA”) effective April 1, 2023, between Cigna Corporate Services (“Cigna”) and ModivCare Solutions, LLC (“Modivcare”), and serves to notify Cigna of its material breach of the MSA. Specifically, in violation of the MLR Risk Sharing arrangement defined in Section 5.6 in the Statement of Work No. SOW 11007 (“SOW”) to the MSA, Cigna has failed to pay Modivcare [REDACTED] for the non-emergency transportation brokerage services Modivcare performed in 2024. Further, Cigna is in anticipatory breach of its 2025 MLR Risk Sharing payment obligation (currently estimated to be approximately [REDACTED]).

Section 5.6 of the SOW defines [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Importantly, the only CMS guidance that specifically addresses non-emergency transportation services is found in reference to *Medicaid*-managed care, for which non-emergency transportation is a mandatory benefit. That guidance requires the inclusion of costs associated with customer service staff and routers scheduling the reservations and assisting members and transportation



6900 Layton Ave  
Suite 1200  
Denver, CO 80237

Office 800.486.7647

[modivcare.com](http://modivcare.com)

providers with transportation issues as expenses for the MLR calculation.<sup>1</sup> Interpreting the CMS guidance for non-emergency transportation to mean it is inapplicable to the MSA merely because the guidance is in reference to Medicaid rather than Medicare services would effectively render meaningless the MSA's plain and clear language applying CMS guidance for non-emergency transportation.

The requirement in Section 5.6 to apply CMS guidance for non-emergency transportation was intentional. It is well-established that non-emergency transportation is not a traditional Medicare-covered service, yet 5.6 includes language that directs the parties to calculate the MLR based on CMS guidance for non-emergency transportation. Had Cigna intended to limit the MLR calculation strictly to Medicare guidance it could have included that caveat in the MSA or simply excluded the requirement to apply guidance for non-emergency transportation from Section 5.6 entirely. It did not.

In accordance with Section 12.2 of the MSA, the agreement will terminate, and all services provided by Modivcare shall cease, 30 days from the date of this notice unless Cigna cures its breach by paying the outstanding balance of [REDACTED] in full, and providing a written warrant and representation that it will timely pay the full balance of its 2025 MLR Risk Sharing obligation, on or before January 2, 2026.

In addition, Modivcare may seek to reject the MSA in connection with its pending Chapter 11 case in the event Cigna does not respond to this letter by December 23, 2025 at 11:59 P.M. (CT).

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Shepard".

Ken Shepard

SVP, Finance

Modivcare

6900 Layton Ave | Suite 1200 | Denver, CO 80237

[kenneth.shepard@modivcare.com](mailto:kenneth.shepard@modivcare.com)

---

<sup>1</sup> See 42 C.F.R. § 438.4(b)(9); see also Q&A Portion of July 21, 2016, CMS Medicaid Managed Care Webinar

# EXHIBIT **10**



December 23, 2025

**Via Overnight Courier**

ModivCare Solutions, LLC  
Attention: Legal Department  
6900 Layton Avenue, Suite 1200  
Denver, CO 80237

**Via Email**

Ken Shepard  
SVP, Finance  
ModivCare  
6900 Layton Ave, Suite 1200  
Denver, CO 80237  
kenneth.shepard@modivcare.com

**RE: Response to ModivCare Solutions, LLC's December 18, 2025 Notice of Breach and Termination**

Dear Mr. Shepard:

I write on behalf of HealthSpring, Inc. ("HealthSpring")<sup>1</sup> to respond to ModivCare Solutions, LLC's ("ModivCare") letter dated December 18, 2025 (the "Notice Letter").

In the Notice Letter, ModivCare: (1) declares that HealthSpring is in material breach of the parties' April 1, 2023 Master Services Agreement ("Agreement") and the Statement of Work No. SOW\_11007 ("SOW"); (2) provides notice that ModivCare is terminating the Agreement and SOW for cause in 30 days pursuant to Section 12.2 of the Agreement; and (3) that ModivCare may also seek to reject the Agreement in the company's bankruptcy proceeding if HealthSpring does not respond to the Notice Letter by Tuesday, December 23, 2025 at 11:59 p.m. CT.

---

<sup>1</sup> As you know, Cigna Corporate Services, LLC ("Cigna") contracted with ModivCare. However, pursuant to an assignment as part of the sale of Cigna's Medicare Advantage business to Health Care Service Corporation, Cigna assigned the Agreement and related documents to HealthSpring.

For the reasons set forth herein and previously communicated to ModivCare, HealthSpring is not in breach of the parties' Agreement and SOW. Therefore, ModivCare's declaration of breach and corresponding termination of the Agreement and SOW is improper. More importantly, ModivCare's actions threaten the health and safety of HealthSpring's membership and ModivCare's clients. As you know, ModivCare was contracted to be HealthSpring's national provider of non-emergency transportation services (NEMT) to HealthSpring's 300,000+ Medicare members. ModivCare, among other things, provides transportation to our member's medical appointments, behavioral health appointments, and to obtain prescriptions. Many of these appointments are for life-saving services, such as dialysis and infusion, and tens of thousands of our members rely upon ModivCare to transport them to receive the care they need. Indeed, ModivCare is projected to provide almost 200,000 trips in Q1 2026 based upon past utilization patterns, and ModivCare's rash actions are jeopardizing the ability of these members to navigate their complex care needs and obtain life-saving care.

**HealthSpring is not in breach of the parties' Agreement and SOW.** ModivCare's core position is that the medical loss ratio ("MLR") risk sharing calculation set forth in the SOW requires HealthSpring to include ModivCare's administrative costs in the numerator of the MLR as incurred claims. However, as set forth in greater detail to ModivCare in prior correspondence, including a letter dated September 16, 2024, the applicable regulations and guidance applicable to Medicare Advantage organizations such as HealthSpring do not allow administrative costs, like those claimed by ModivCare, to be included as incurred claims in the MLR. Furthermore, the parties' Agreement does not support including ModivCare's administrative expenses as medical expenses for calculating the MLR.

[REDACTED] The encounter file only allows the actual cost of the services provided by ModivCare's transportation providers and does not allow administrative costs. As such, HealthSpring vehemently disputes that it is in breach of the parties' Agreement and SOW.

**Any termination of the Agreement and SOW for cause would be improper and create substantial harm to HealthSpring's members.** ModivCare's Notice Letter also states that it is providing notice that it is terminating that Agreement and SOW for cause and within 30 days due to HealthSpring's alleged non-compliance MLR Risk Sharing requirements. As set forth above, HealthSpring is not in breach of the Agreement and SOW. Therefore, any termination by ModivCare for cause would be improper, and furthermore would severely disrupt access to critical medical care for HealthSpring's members and create substantial damages to HealthSpring. To the extent that ModivCare proceeds with its purported for cause termination, HealthSpring reserves all rights to seek emergency relief in an appropriate venue to prevent the disruption of members receiving access to critical healthcare services and to file any resulting claim against ModivCare.

**Any rejection of the Agreement in the bankruptcy proceedings would likewise create substantial harm to HealthSpring's members.** Finally, ModivCare's Notice Letter states that "it may seek to reject the MSA in connection with its pending Chapter 11 case in the event Cigna does not respond to this letter by December 23, 2025 at 11:59 P.M. (CT)." Just like any putative termination, any rejection of the Agreement and SOW would severely disrupt access to critical medical care for HealthSpring's members and create substantial damage to HealthSpring. HealthSpring reserves all rights to object to such a rejection and seek appropriate relief to prevent the disruption of members receiving access to critical healthcare services. HealthSpring furthermore reserves the right to file any resulting claim against ModivCare for the damage that would ensue from such a rejection.

**ModivCare has contractual wind down obligations.** As set forth above, HealthSpring strongly disputes that it is in breach and believes that any putative termination is improper. Furthermore, to the extent that ModivCare intends to improperly proceed with a termination or seek to reject the Agreement in the bankruptcy proceedings, ModivCare has contractual obligations to [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Therefore, to the extent that ModivCare intends to proceed with a termination or rejection, HealthSpring requests that the parties meet as soon as possible to discuss a plan that will prevent any disruption in services to our mutual members/clients and ensure a smooth transition to a new services provider. Please contact me at [Dana Mott-bronson@hcsc.net](mailto:Dana.Mott-bronson@hcsc.net), to discuss as soon as possible.

HealthSpring expressly reserves and does not waive all claims, causes of action, demands, defenses, arguments, and otherwise with respect to ModivCare.

Sincerely,



Dana Mott, DSVP  
Government Programs

# EXHIBIT **11**



January 7, 2026

**Via Overnight Courier**

Modivcare Solutions, LLC  
Attention: Legal Department  
6900 Layton Avenue, Suite 1200  
Denver, CO 80237

**Via Email**

Ken Shepard  
SVP, Finance  
Modivcare  
6900 Layton Ave, Suite 1200  
Denver, CO 80237  
kenneth.shepard@modivcare.com

**RE: Modivcare Solutions, LLC's Termination Assistance Obligations**

Dear Ken:

I write regarding Modivcare Solutions, LLC's ("Modivcare") improper termination of the parties' April 1, 2023 Master Services Agreement ("Agreement") and the Statement of Work No. SOW\_11007 ("SOW"), as well as Modivcare's threatened rejection of the Agreement and SOW in the Bankruptcy Court.

As an initial matter, while we believe that Modivcare has improperly terminated the parties' Agreement and SOW, we are hopeful that Modivcare will reasonably engage in dispute resolution discussions to reach a mutually agreeable solution to the parties' dispute. At the same time, if we cannot reach a resolution, we need to ensure that Modivcare is prepared to adhere to its contractual termination assistance and wind down obligations to avoid irreparable harm to HealthSpring and its members. This letter addresses those concerns.

**By way of background, Modivcare's improper termination of the Agreement and SOW came without any warning and after HealthSpring justifiably relied upon Modivcare leadership's assurances that it would continue to perform.**

Beginning in late 2024, the parties had discussions regarding the risk corridor payments and MLR calculation. During those discussions, HealthSpring repeatedly made it clear that the calculations were properly done and no additional money was owed under the risk corridor payment methodology.

In the spirit of partnership, HealthSpring nevertheless offered to pay Modivcare increased capitated payments and adjust the risk sharing mechanism for 2026 to help Modivcare on a going-forward basis. Modivcare rejected HealthSpring's offer. Thereafter, on July 1, 2025, HealthSpring wrote Modivcare stating that HealthSpring expected Modivcare to continue performing under the existing terms of the Agreement and SOW for the duration of the contract term (i.e., through 2026). Modivcare did not respond to that letter. Subsequently, Modivcare became a debtor-in-possession ("DIP") under Chapter 11 of the Bankruptcy Code by

a petition filed on August 20, 2025. At that time, Modivcare leadership assured HealthSpring in writing and in meetings that Modivcare would continue to perform through 2026. HealthSpring justifiably relied upon those assurances in proceeding with performing its obligations under the Agreement and SOW during the ensuing four months of Modivcare's DIP operations.

Furthermore, in the fall of 2025, Modivcare participated in HealthSpring's Request For Proposal (RFP) for Non-Emergency Medical Transportation (NEMT) services to be effective January 1, 2027 (i.e., immediately after the expiration of the existing Modivcare contract). Modivcare submitted an RFP response that included rates nominally higher than the existing contract rates for HealthSpring—demonstrating that the existing rates are undoubtedly economically viable. HealthSpring ultimately chose a different NEMT provider to begin January 1, 2027. Upon notification of the award decision, Modivcare, assured HealthSpring of its intent to continue performing under the existing agreement through 2026.

Notwithstanding Modivcare's repeated assurances that it would continue to perform, on December 18, 2025, Modivcare sent a letter characterized as a "Thirty Day Termination Notice for Breach" (the "Notice Letter"). The Notice Letter asserted: (1) that HealthSpring is in material breach of the parties' Agreement and SOW for allegedly failing to properly calculate the risk corridor payments tied to the MLR calculation; (2) that Modivcare was terminating the Agreement and SOW for cause in 30 days pursuant to Section 12.2 of the Agreement; and (3) that Modivcare might also seek to reject the Agreement in the company's bankruptcy proceeding if HealthSpring does not respond to the Notice Letter by Tuesday, December 23, 2025 at 11:59 p.m. CT.

On December 23, 2025, HealthSpring responded to the Notice Letter. In its response, HealthSpring, among other things, stated that Modivcare's termination is improper and requested that Modivcare rescind the termination to avoid disruption to member services. As HealthSpring explained, Modivcare's actions threaten the health and safety of 300,000+ HealthSpring members and Modivcare's clients. As HealthSpring's national provider of NEMT services, Modivcare provides transportation to our member's medical appointments, behavioral health appointments, and to obtain prescriptions. Many of these appointments are for life-saving services, such as dialysis and infusion, and tens of thousands of our members rely upon Modivcare to transport them to receive the care they need. HealthSpring further stated that, to the extent Modivcare moves forward with the improper termination, it must comply with its contractual wind-down and termination assistance contract obligations to avoid any disruption to member services. HealthSpring requested that the parties meet as soon as possible to discuss rescission of the improper termination and discuss a plan that will prevent any disruption in services to our mutual members/clients and ensure a smooth transition to a new services provider.

On the morning of Friday, December 26, 2025, HealthSpring again reasserted its request via video conference that Modivcare formally rescind its improper termination of the parties' contract to permit the two business parties the opportunity to amicably resolve the issue. On the afternoon of Friday, December 26, 2025, Modivcare responded stating that it would not rescind the termination and failed to address its contractual termination assistance obligations. Furthermore, Modivcare demanded a financial resolution by Monday, December 29, 2025 at 9:00 CT—less than 24 working hours over the holiday weekend. When HealthSpring requested additional information to substantiate Modivcare's demand, Modivcare informed HealthSpring that it would seek Bankruptcy Court approval to reject the Agreement and SOW effective January 28, 2026 and that it would continue services through that date. Again, Modivcare did not address its termination assistance obligations post-termination.

**Modivcare has contractual termination assistance and wind down obligations to prevent a disruption in access to care for HealthSpring's members.**

The Agreement obligates Modivcare to perform certain termination assistance and wind down services that are designed to ensure there is not disruption of services upon a contract termination. Specifically, Section 12.4 of the Agreement states:

[REDACTED]

Exhibit 2 to the SOW obligates Modivcare to, among other things:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

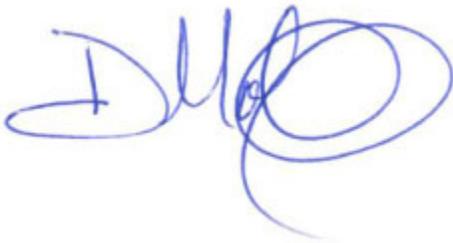
**HealthSpring and its members will be irreparably harmed if Modivcare does not comply with its contractual obligations to provide HealthSpring continuing services consistent with the terms of the Agreement. Given the urgent need to protect our members, HealthSpring requests that Modivcare respond to the following points by January 8, 2026, at 5:00pm ET:**

1. Confirm that Modivcare will provide all contracted services through January 28, 2026 consistent with the terms of the parties' Agreement and SOW.

2. Modivcare will adhere to its contractual termination assistance and wind down obligations as outlined in the Agreement and SOW, including, but not limited to, continuing to provide all services under the agreement for a period of 180 days after January 28, 2026.
3. The parties meet on or before January 9, 2026 to discuss Modivcare's termination assistance and wind down obligations.

HealthSpring expressly reserves and does not waive all claims, causes of action, demands, defenses, arguments, and otherwise with respect to Modivcare.

Sincerely,

A handwritten signature in blue ink, appearing to be 'D. Mott', with a large, stylized flourish at the end.

**Dana Mott**  
Divisional Senior Vice President

# EXHIBIT **12**

**From:** Dana Mott <[Dana\\_Mott-bronson@hcsc.net](mailto:Dana_Mott-bronson@hcsc.net)>  
**Date:** Monday, January 19, 2026 at 6:08 PM  
**To:** Kenneth Shepard <[Kenneth.Shepard@modivcare.com](mailto:Kenneth.Shepard@modivcare.com)>  
**Subject:** Modivcare/HCSC Follow-up

Hi Ken:

Thanks again for talking Friday afternoon.

As you know, by Modivcare's motion to reject the Cigna (HealthSpring) Agreement via the Chapter 11 Bankruptcy process, dated December 29, 2025, Modivcare asserts that it will cease all services effective January 28, 2026. We have made repeated written requests that Modivcare adhere to its contractual termination assistance and wind down obligations to support a transition to a new provider. The Agreement obligates Modivcare to perform certain termination assistance and wind down services that are designed to ensure there is no disruption of services to our members upon a contract termination, regardless of the reason.

Specifically, Section 12.4 of the Agreement states that commencing upon any notice of termination (regardless of the reason therefore) and continuing for a period of 180 days after the effective date of the termination, Modivcare shall:

■ [REDACTED]

■ [REDACTED]

In addition, Modivcare is required to provide information and cooperate to agree upon a transition plan.

HealthSpring has requested that Modivcare provide critical information regarding our members that is only in the possession of Modivcare. Until this past Friday, Modivcare had not provided that information. Based on our call, we understand that Modivcare will provide all requested information, although the timeline for doing so is unclear. It also is imperative that the Modivcare team immediately meet with our team to develop a transition plan, including, but not limited to, identifying what Modivcare will be delivering to HealthSpring and the timeline for doing so.

With respect to Modivcare's obligations to provide continuing services for up to 180 days for any notice of termination, regardless of the reason, HealthSpring has made numerous requests for confirmation that Modivcare will provide the necessary run out services. To date, Modivcare has

refused to engage in any discussions on this topic, unless HealthSpring resolves the historical dispute. As we have previously noted, any dispute between the parties is entirely separate from Modivcare's obligations to provide these run out services as Modivcare has contractual duties to provide them.

HealthSpring once again requests that Modivcare separately discuss—pursuant to its contractual obligations—the run-out services. To the extent that Modivcare is concerned about payment, HealthSpring is willing to discuss in good faith a fair and reasonable payment rate. It is critical that Modivcare decouple the resolution of the historical dispute and comply with its termination assistance obligations immediately as failure to do so will jeopardize the health and safety of our members.

HealthSpring reserves all rights.

Thank you,

Dana



**Dana Mott**

DSVP, Government Programs

**Office:** 202-249-7214 | 1001 Pennsylvania Ave NW, Ste 760 Washington, DC 20004|  
[Dana\\_Mott-Bronson@hcsc.net](mailto:Dana_Mott-Bronson@hcsc.net)

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#### Disclaimer

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

In re:

MODIVCARE, INC., *et al.*,

Debtors.

Chapter 11

Case No. 25-90309 (ARP)

(Jointly Administered)

**DECLARATION OF KAYLA MCKENZIE IN SUPPORT OF OBJECTION OF  
HEALTHSPRING, INC., TO DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO REJECT CERTAIN  
EXECUTORY CONTRACTS FILED AT DOCKET NO. 1133**

I, Kayla McKenzie, do hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, the following:

1. I am over the age of eighteen and competent to make this declaration. The facts stated herein in this declaration are true and correct to the best of my knowledge.

2. I am currently employed as Senior Director of Medicare Vendor Management & Delegation Oversight for Health Care Service Corporation ("HCSC"). I have held that position since March 2025. Prior to that I held several positions at Cigna Healthcare, over the course of nineteen years.

3. In 2024, HCSC announced the acquisition of Cigna's Medicare Advantage business, an acquisition that closed in March 2025. As is described in more detail below, prior to that transaction Debtor ModivCare Solutions, LLC ("Debtor" or "ModivCare") entered into a contract with Cigna to provide Non-Emergency Medical Transportation ("NEMT") services to enrollees of Medicare Advantage health plans administered by Cigna. Prior to the sale of Cigna's Medicare Advantage business, Cigna assigned the ModivCare contract to its affiliate HealthSpring, Inc. ("HealthSpring"). After the transaction, HealthSpring became a wholly owned

subsidiary of HCSC.

4. Both before and after the transaction I have been involved in the operational oversight of, and engagement with, ModivCare on behalf of Cigna, HCSC, and HealthSpring.

5. I am authorized to execute this Declaration on behalf of HealthSpring. If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of such facts, events and transactions.

**Non-Emergency Medical Transportation in Medicare Advantage**

6. Medicare Advantage is an alternative to traditional Medicare. At a high level, Medicare Advantage organizations contract with the federal government to provide or arrange to provide for the coverage of Medicare, and if applicable, additional benefits. In order to provide additional benefits, a Medicare Advantage organization is required to submit a bid to the federal government that identifies the specific benefits, and the Centers for Medicare & Medicaid Services (“CMS”) must then approve those benefits.

7. NEMT is a Supplemental benefit that HealthSpring offers to its Medicare Advantage program members that provides rides for members to obtain necessary healthcare services. NEMT allows the members to obtain transportation to and from appointments essential for their health—such as doctor visits, dialysis, infusion, and chemotherapy—among other things. This is a crucial benefit because it removes transportation barriers, ensuring that the most vulnerable individuals, such as seniors, disabled individuals, those with behavioral health needs, and low-income individuals, can access essential healthcare. NEMT benefits are typically offered through a national solution vendor, such as ModivCare. A NEMT vendor like ModivCare acts as a technology-driven broker that is responsible for arranging and coordinating the transportation for members using a network of transportation providers. Members are able to schedule these rides

in advance or in real time, through simple, common portals to a single service provider.

8. NEMT service provides a lifeline to seniors, individuals with disabilities, those with behavioral health needs, and low-income populations, who would otherwise miss life-sustaining treatments like dialysis, infusion, or chemotherapy. It helps ensure that patients receive timely care and it facilitates a seamless transition for patients moving between hospitals, rehabilitation centers, and home, which is essential for successful recovery. It provides safe and reliable transport, reducing the anxiety of missing appointments and supports long-term mental wellness. NEMT service provides consistent access to routine check-ups and specialized treatments that help prevent complications from chronic illnesses such as diabetes and heart disease.

9. It is critical that NEMT service remains uninterrupted for HealthSpring members. The very purpose of NEMT service is to ensure that members, many of whom are low income and have complex medical needs, have available transportation to receive medical care. If NEMT service is disrupted, HealthSpring members, especially those within these vulnerable populations, would miss important doctor visits, leading to worsening health and increased reliance on costly emergency room care. Because many members, including the elderly and low-income individuals, lack any alternative means of transportation, they would likely skip treatments. The lack of consistent care for chronic conditions like diabetes, kidney disease (dialysis), or heart disease would lead to severe complications and potentially life-threatening situations. And unmanaged conditions would escalate, forcing members to rely on costly emergency room services that could have been avoided. NEMT prevents a downward spiral for these vulnerable populations by ensuring that they can reach the care they need, when they need it.

10. On its website, ModivCare acknowledges the serious responsibility that NEMT

providers bear for vulnerable populations.<sup>1</sup> In explaining how its “goal isn’t a number, it’s a difference,” ModivCare acknowledges that it “serve[s] the most underserved by facilitating non-emergency medical transportation to enable greater access to care, reduce costs, and improve outcomes.” ModivCare further states:

We believe social and economic factors such as where you live, work or learn should never be a barrier to care. These factors, known as the social determinants of health, lead to inequities in our healthcare system and it’s our mission to close that gap by making connections to care. To make a world of difference, one patient at a time. That’s what drives us.

11. HealthSpring’s Medicare Advantage program is a nationwide program. It is difficult to onboard a national NEMT provider, as doing so requires significant technology investment, data transfer, and regulatory compliance considerations. Looking merely at the challenges faced when integrating a new provider for the roughly [REDACTED] plan members eligible for NEMT services, that provider must:

- a. Input and organize all new customer information;
- b. Set up a system to track the use of member benefits; and
- c. Set up a smartphone application, website, and phone system, that HealthSpring plan members can access to schedule their trips;

For its part, HealthSpring must ensure that all links on existing websites and phone numbers are rerouted from ModivCare to the new provider.

12. Due to the complexity of onboarding a new provider, NEMT service contracts require a long off-ramp provision to allow for a smooth transition in the event of a termination of services. Cigna (now HealthSpring) required such a provision in the Contract with ModivCare to ensure that there was no disruption to care in the event of a contract termination regardless of the

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<sup>1</sup> See “About Modivcare,” [https://www.modivcare.com/company/about-modivcare/?gad\\_source=1&gad\\_campaignid=20987313344](https://www.modivcare.com/company/about-modivcare/?gad_source=1&gad_campaignid=20987313344).

reasons.

13. The bottom line is that these transition services/off-ramp provisions are included solely to protect the members' health and safety. Without such an off-ramp, health plan members will be at risk of missing appointments necessary for their health and well-being.

**The Agreement Between Cigna/HealthSpring and ModivCare**

14. In 2023, Cigna Corporate Services, LLC ("Cigna") and ModivCare Solutions LLC ("ModivCare") entered into a Master Services Agreement and corresponding Statement of Work whereby ModivCare provided NEMT services for Cigna's Medicare Advantage members nationwide.

15. In 2023, I was the Senior Director of National Ancillary Contracting and Vendor Management for Cigna Healthcare. While in that role, I was responsible for many Medicare Advantage agreements that were national in scope, including Medicare Advantage Supplement contracts, and more specifically, the agreement between Cigna and ModivCare.

16. Attached to the Objection of HealthSpring, Inc., to Debtors' Motion for Entry of an Order Authorizing the Debtors to Reject Certain Executory Contracts [Docket No. 1133] ("HealthSpring's Objection") as Exhibit 1 is a true and correct copy of the Master Services Agreement entered between Cigna and ModivCare, dated April 1, 2023 (hereinafter referred to as the "MSA" or "Contract").

17. Attached to HealthSpring's Objection as Exhibit 2 is a true and correct copy of the Statement of Work No. SOW\_11007 entered between Cigna and ModivCare, dated April 15, 2023, pursuant to the MSA (hereinafter referred to as the "SOW").

18. I was involved in the negotiations for all of the material provisions of the MSA and SOW, including terms for compensation and termination.

19. The parties negotiated a capitated payment fee for ModivCare’s services to be based on a Per-Member-Per-Month (“PMPM”) rate, as reflected in Section 5.1 of the SOW. The PMPM payment to ModivCare is intended to be an all-inclusive payment, accounting for both the cost of the transportation services, as priced by Modivcare, as well as any administrative costs that ModivCare incurs to arrange for the services. This PMPM payment structure is standard in the industry for NEMT providers.

20. Starting in 2024, the parties also negotiated the Medical Loss Ratio (“MLR”) Risk Sharing arrangement, reflected in Section 5.6 of the SOW. [REDACTED]

21. The MLR for Medicare Advantage, as the federal government explains, is “expressed as a percentage, generally representing the percentage of revenue used for patient care, rather than for such other items as administrative expenses or profit.” <https://www.cms.gov/medicare/health-drug-plans/medical-loss-ratio> In other words, MLR calculates the amount a plan spends on covered benefits compared to the plan premium for those services. [REDACTED]

22. [REDACTED]

[REDACTED]

[REDACTED]

23. [REDACTED]

[REDACTED]

[REDACTED]

24. [REDACTED]

25. After the MSA and SOW were executed, I participated in meetings between Cigna and ModivCare representatives where we discussed logistics for implementing the Contract. I believe there was a clear understanding by both parties as to how the Contract would be interpreted and administered.

26. During negotiations, ModivCare did not raise any concern regarding compensation for administrative costs and did not express an intention to include administrative costs to calculate the MLR.

27. In March 2025, HCSC acquired Cigna's Medicare businesses, including Cigna's Medicare Advantage program and its affiliate HealthSpring. Prior to the acquisition, Cigna

assigned the Contract with ModivCare to HealthSpring, which is today a wholly owned subsidiary of HCSC.

28. Since the Contract's inception in 2023, ModivCare has performed under the Contract by providing NEMT services for Cigna's/HealthSpring's Medicare Advantage members.

29. The NEMT services provided by ModivCare are vital to HealthSpring's most vulnerable members because it provides safe and reliable transportation to and from pharmacies, doctor appointments, lab visits, and treatment facilities, including life-sustaining dialysis, infusion, and chemo/radiation treatment.

30. Roughly [REDACTED] of HealthSpring's members are eligible to use this service and approximately [REDACTED] of those members use the benefit per quarter.

31. As HealthSpring's national solution vendor for NEMT services, ModivCare acts as the single point of contact for HealthSpring's Medicare members to obtain NEMT services. HealthSpring members rely upon ModivCare to provide these services for, among other things, life-sustaining medical care such as dialysis, infusion, and chemotherapy, including thousands of members who receive rides many times a week.

32. [REDACTED]

[REDACTED]

[REDACTED]

33. [REDACTED]

[REDACTED] Obviously, chemotherapy is a life-saving treatment and HealthSpring members need to ensure that they have timely and reliable transportation to these services.

34. [REDACTED]

[REDACTED]

[REDACTED]

35. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

36. As can be seen, HealthSpring members rely on transportation to these visits to improve their health, manage chronic conditions, and avoid costly emergency room visits. This is particularly vital for seniors, people with disabilities, and those with behavioral health needs, who frequently rely on this transportation.

**The Contract Dispute**

37. In August 2024, a dispute arose between Cigna and ModivCare concerning whether ModivCare’s administrative costs should be included in the calculation of the MLR. The dispute continued into 2025.

38. Attached to HealthSpring’s Objection as Exhibit 3 is a true and correct copy of a memo dated August 6, 2024, from Kirk Gonzales with ModivCare to Cigna where ModivCare advocates for including administrative costs in the calculation of MLR.

39. Attached to HealthSpring’s Objection as Exhibit 4 is a true and correct copy of a letter dated September 25, 2024, from Cigna to Kirk Gonzales with ModivCare, where Cigna explained that Centers for Medicare and Medicaid Services’ guidance and Medicare Advantage regulations prohibit including administrative costs in the calculation of MLR.

40. After the exchange of views about the calculation of the MLR in mid-2024, the discussion regarding the merits of the dispute ceased—although ModivCare continued to request

rate increases. In October 2024, Cigna and HealthSpring announced to ModivCare and other providers the impending sale of Cigna's Medicare Advantage business. In the summer of 2025, after the completion of that sale HealthSpring (now as a member of the HCSC corporate family) attempted to address ModivCare's continuing requests for rate increases.

41. Attached to HealthSpring's Objection as Exhibit 5 is a true and correct copy of a letter dated June 23, 2025, from me to Marvin Lewis and Cody Huffman at ModivCare, where HealthSpring offered to resolve the Contract dispute by [REDACTED]

[REDACTED] HealthSpring made clear that these proposed changes would not be retroactively applied.

42. Attached to HealthSpring's Objection as Exhibit 6 is a true and correct copy of ModivCare's response dated June 25, 2025, where ModivCare stated that it would agree to the increased PMPM fee and to modify the MLR Risk Sharing arrangement starting in 2026, but that it would not waive claims under the MLR Risk Sharing arrangement for 2024 and 2025.

43. Attached to HealthSpring's Objection as Exhibit 7 is a true and correct copy of a letter dated July 1, 2025, from me to Marvin Lewis and Cody Huffman at ModivCare, where HealthSpring acknowledged ModivCare's response to HealthSpring's proposal. As the letter explained, because ModivCare was unwilling to fully resolve the Contract dispute with HealthSpring's offer, HealthSpring considered the offer rejected. HealthSpring would continue to operate under the negotiated and agreed-upon terms and conditions of the SOW through the remainder of the term period, which ends December 31, 2026.

44. Throughout this period, from August 2024 through July 2025, ModivCare never threatened termination of the Contract. It also never contended that if it did terminate the contract,

that it could abandon its obligation to provide run-out services to the Medicare Advantage enrollees it served. To the contrary, ModivCare repeatedly stated it wanted to continue with the business.

**Request for Proposal**

45. On or about June 6, 2025, HealthSpring issued a formal Request For Proposal (“RFP”), to solicit bids from vendors to provide NEMT services for HealthSpring’s Medicare Advantage programs for the term January 1, 2027, through December 31, 2027 (“2027 Contract”). In its RFP, to avoid improper disputes regarding the MLR from ModivCare or any other vendor who might win the RFP, HealthSpring made clear that the PMPM rate was considered an all-inclusive rate and that there would be no negotiation for a separate fee to cover administrative costs.

46. Vendors who wanted to bid for the RFP went through several rounds of responses and presentations from July through September.

47. ModivCare participated in the RFP process and submitted its bid for the 2027 Contract. [REDACTED]

[REDACTED]

[REDACTED], and

was in terms and rates generally competitive with all other RFP respondents.

48. On or about November 13, 2025, HealthSpring awarded the 2027 Contract to MTM Health (“MTM”). MTM is an alternative provider of NEMT services. ModivCare was informed that it had not won the contract on that same day. After being notified of the award decision, ModivCare assured HealthSpring that it would continue to perform under the Contract through 2026.

**ModivCare's Bankruptcy**

49. While it was bidding for the 2027 Contract, ModivCare filed for Chapter 11 bankruptcy on August 20, 2025.

50. After filing for bankruptcy, ModivCare requested a special meeting with HealthSpring leadership to discuss ModivCare's bankruptcy. On August 21, 2025, Heath Campbell, Dana Mott, Stephen Harris, Nancy Wohlhart and I met with Heath Sampson, Kenneth Shepard and Cody Huffman from ModivCare. ModivCare assured us that there was no need for concern and that the transportation services provided to HealthSpring's customers would not be disrupted in any way. ModivCare did not raise the Contract dispute regarding administrative costs and it did not mention termination of the Contract at all.

51. ModivCare and HealthSpring held several subsequent meetings, including one on August 28 where we discussed the strategic partnership and longer-term relationship between HealthSpring and ModivCare. During these meetings, there was never a threat to terminate. To the contrary, the parties were operating with the understanding that we had a Contract that would last through the end of 2026.

52. ModivCare provided HealthSpring with weekly email updates on the status of its bankruptcy proceedings. Attached to HealthSpring's Objection as Exhibit 8 are true and correct copies of emails dated September 15, 2025, September 19, 2025, September 26, 2025, October 6, 2025, and December 5, 2025.

53. In several of those updates, ModivCare repeatedly assured HealthSpring that "we are continuing to operate as usual throughout this process, and we expect no changes in how we work together, nor do we expect any disruption in care for your members" and "our teams are fully focused on serving you and your members with the same reliability and care you expect from

ModivCare.”

**ModivCare’s Termination**

54. On or about December 15, 2025, at ModivCare’s request, Heath Campbell and I met with representatives of ModivCare, Kenneth Shepard and Cody Huffman. ModivCare asked whether HealthSpring would be willing to change its mind about the RFP and instead award the 2027 Contract to ModivCare. We explained that the RFP process provided a fair assessment and that HealthSpring has made its decision. We also stated that ModivCare was contracted through 2026 and HealthSpring would continue to work with ModivCare as a partner. ModivCare then emphasized that they still had a dispute about PMPM rates and stated that a letter was forthcoming. Even then, the ModivCare representatives did not mention termination.

55. A few days later, on December 18, 2025, ModivCare sent a letter to Cigna (not HealthSpring) asserting that it was terminating the agreement for cause. In the letter, it contended that HealthSpring had materially breached the MSA and SOW. ModivCare further stated that it would cease all services within 30 days and that it might seek to reject the MSA in connection with its bankruptcy if HealthCare did not respond by December 23. Attached to HealthSpring’s Objection as Exhibit 9 is a true and correct copy of that letter. In the letter, ModivCare contended that it was owed an additional [REDACTED] for services in 2024 pursuant to the MLR Risk Sharing arrangement, and that it would be owed an estimated [REDACTED] for 2025 when the year-end calculation for that year is performed. It made the provision of all its services, including the essential transportation services during a run-out period, contingent on receipt of payment of the 2024 demand by January 2, 2026.

56. While the issue of the MLR Risk Sharing is irrelevant to ModivCare’s obligation to protect Medicare enrollees with services during the run-out period, to be clear HealthSpring

contends ModivCare has been fully paid for 2024 and that when the 2025 figure is properly calculated it will likely be approximately [REDACTED].

57. On December 23, 2025, HealthSpring sent a letter in response contesting ModivCare's assertion that HealthSpring was in breach of the MSA and SOW. HealthSpring explained that ModivCare's termination was improper and would create substantial harm to HealthSpring's members by severely disrupting access to critical medical care. HealthSpring also reminded ModivCare of its contractual wind down obligations to ensure a smooth transition to a new NEMT services provider. Attached to HealthSpring's Objection as Exhibit 10 is a true and correct copy of HealthSpring's letter dated December 23, 2025. In its letter, HealthSpring requested that the parties meet as soon as possible to discuss a plan that will prevent any disruption in services to its members, and ModivCare's clients.

58. On Friday, December 26, 2025, ModivCare responded by refusing to rescind the termination and demanding a financial resolution by the following Monday, December 29, by 10:00 a.m. EST. ModivCare did not respond to our inquiries about whether it would comply with its contractual obligations with regard to the termination provisions—including service to Medicare enrollees during the 180-day run-out period.

59. On the same day, HealthSpring requested additional information to substantiate ModivCare's demand.

60. ModivCare responded by informing HealthSpring that it would seek Bankruptcy Court approval to reject the MSA and SOW, effective January 28, 2026, and that it would continue services through that date. Again, ModivCare did not address its contractual obligations post-termination.

61. On December 29, 2025, ModivCare filed its motion to reject the MSA and SOW in

the Bankruptcy Court.

62. On January 7, 2026, HealthSpring sent another letter to ModivCare reiterating its contractual obligations with regard the termination provisions. Attached to HealthSpring's Objection as Exhibit 11 is a true and correct copy of HealthSpring's letter dated January 7, 2026.

63. In that letter, HealthSpring wrote:

**HealthSpring and its members will be irreparably harmed if ModivCare does not comply with its contractual obligations to provide HealthSpring continuing services consistent with the terms of the Agreement. Given the urgent need to protect our members, HealthSpring requests that ModivCare respond to the following points by January 8, 2026 at 12:00 ET:**

1. Confirm that ModivCare will provide all contracted services through January 28, 2026 consistent with the terms of the parties' Agreement and SOW.
2. ModivCare will adhere to its contractual termination assistance and wind down obligations as outlined in the Agreement and SOW, including, but not limited to, continuing to provide all services under the agreement for a period of 180 days after January 28, 2026.
3. The parties meet on or before January 9, 2026 to discuss ModivCare's termination assistance and wind down obligations.

### **Transition to MTM**

64. Since ModivCare's termination notice letter, HealthSpring has been actively working with MTM, the NEMT service provider who won the RFP for the 2027 Contract, to ensure that it is prepared to take over providing NEMT services for HealthSpring's Medicare Advantage members as soon as possible.

65. In order for MTM to be able to take over this responsibility, several aspects and logistics must be prepared, tested and verified, including the following:

- a. MTM must ensure that it has the infrastructure in place to receive and securely store confidential information for HealthSpring's members, in compliance with all privacy guidelines. This takes time to test and vet.
- b. MTM must set up the system to track the use of member benefits and then

convey that information back to HealthSpring.

- c. MTM must ensure that it has the proper network of providers in place to service HealthSpring's members, including specialty transportation providers who can transport wheelchairs. This takes time to vet new providers and negotiate contracts with them.
- d. HealthSpring must assess and test MTM's phone app to make sure that HealthSpring's members can use it to schedule their trips; and
- e. HealthSpring similarly must assess its own websites and phone numbers to ensure that all of the existing links and numbers are re-routed from ModivCare to MTM.

66. In addition, HealthSpring will need time to be able to provide notice to its members so that there are no surprises. For example, if there will be new phone numbers or apps or websites to be used to schedule transit, HealthSpring needs to give that notice in advance of the actual transition.

67. Because HealthSpring's most vulnerable members depend on this transportation service in order to see their doctors, attend lab visits, obtain their prescription medicine, and receive treatment, it is critical that the transition from ModivCare to MTM be as smooth and seamless as possible.

68. In all likelihood, MTM will not likely be ready to take over NEMT services until May 1, 2026.

69. The challenges that MTM faces are the reason for the 180-day termination assistance obligations in the MSA and SOW. To safely transition these services to another vendor without interruption to HealthSpring's members, requires time and ModivCare's assistance.

70. HealthSpring has a similar 180-day requirement with its other vendors (*e.g.*, meals, fitness, and vision vendors) to ensure a smooth transition without disruption of services if a vendor is replaced mid-term.

71. For the transition to MTM, HealthSpring needs the following information from

ModivCare:

- a. A list of preferred providers ModivCare uses based on member preferences or needs;
- b. Details on benefits that have been used so far in 2026;
- c. Which customers have pre-scheduled trips, so that customers will not need to reschedule or start from scratch;
- d. A documented transition plan per the existing agreement;
- e. Any other reports pertaining to services provided in 2026; and
- f. Which customers have special requirements (e.g., wheelchairs).

72. HealthSpring does not have other vendors who can provide this service, either nationally or regionally within Medicare.

73. Contracting with a national provider is required for HealthSpring's members to have a single-entry point to the services. Trying to cobble together a patchwork of multiple providers amplifies the difficulty.

### **Flex-Cards Are Not a Solution**

74. HealthSpring has explored other potential solutions to ModivCare's improper conduct, including the provision of pre-paid "flex cards" to members for payment of transportation services. However, that is not a viable solution.

75. As an initial matter, if HealthSpring were to alter the method of how NEMT benefits were to be provided to its members, such as funding flex-cards, it would first need to provide at least 30-days' notice to its members before this new method could be implemented, because Medicare Advantage organizations like HealthSpring cannot simply give out cash-equivalent gift cards to members in situations such as this. This would be true even if the new method was to be on an interim basis.

76. Furthermore, it would be very disruptive to HealthSpring's members to provide

them with a completely different method of service such as funding flex-cards that the members would use to pay for transportation on their own (e.g., Uber or Lyft).

77. While HealthSpring could fund cards, there is no way to ensure that members would use those funds only for transportation to doctors' visits, pharmacies, or treatment centers.

78. A second challenge is that members have already started using their 2026 benefits with ModivCare. It would be very difficult to track member benefits from the current transit service through ModivCare, then transition to a flex-card and then ultimately transition to a new transit service through MTM.

Signed under penalty of perjury pursuant to 28 U.S.C. § 1746 on January 20, 2026, at Apex,  
North Carolina

/s/ Kayla McKenzie

Kayla McKenzie

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

In re:

MODIVCARE, INC., *et al.*,

Debtors.

Chapter 11

Case No. 25-90309 (ARP)

(Jointly Administered)

**DECLARATION OF DANA MOTT IN SUPPORT OF OBJECTION  
OF HEALTHSPRING, INC., TO DEBTORS' MOTION FOR ENTRY OF AN ORDER  
AUTHORIZING THE DEBTORS TO REJECT CERTAIN  
EXECUTORY CONTRACTS FILED AT DOCKET NO. 1133**

I, Dana Mott, do hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, the following:

1. I am over the age of eighteen and competent to make this declaration. The facts stated herein in this declaration are true and correct to the best of my knowledge.

2. I am currently employed as Divisional Senior Vice President for Health Care Service Corporation ("HCSC"). I have held that position since January 1, 2025. Prior to that, I held several positions within the organization since April 2016.

3. HealthSpring is the assignee of a contract between Cigna and Debtor ModivCare Solutions, LLC ("ModivCare" or "Debtor"), which provides Non-Emergency Medical Transportation ("NEMT") services to members of Medicare Advantage health plans administered by HealthSpring. HCSC completed the acquisition of the Medicare Advantage business of Cigna in March 2025. HealthSpring is a wholly owned subsidiary of HCSC.

4. I am authorized to execute this Declaration on behalf of HealthSpring. If called to testify, I could and would competently testify to the facts set forth herein based on my personal knowledge of such facts, events and transactions.

5. In my role, I am familiar with regulatory requirements related to providing NEMT Benefits to HealthSpring's Medicare Advantage programs.

6. The Centers for Medicare & Medicaid Services ("CMS") maintains oversight over Medicare benefits and programs, including HealthSpring's Medicare Advantage program.

7. Pursuant to CMS guidelines, if HealthSpring were to alter the method of how NEMT benefits were to be provided to its members, such as funding flex-cards that members would use to pay for transportation on their own, it would first need to give its members at least 30-days' advanced notice before this new method could be implemented. This would be true even if the new method were employed on an interim basis.

8. It is therefore impossible for HealthSpring to comply with CMS guidelines in implementing any replacement program for NEMT benefits by January 28, 2026.

9. I was also involved with recent discussions between HealthSpring and ModivCare Solutions LLC ("ModivCare") concerning ModivCare's purported termination of the contract between HealthSpring and ModivCare for NEMT services ("Contract").

10. I am informed and believe based on reports to me from my colleague at HCSC, Kayla McKenzie, that prior to its letter dated December 18, 2025, ModivCare indicated that it was interested in continuing to provide NEMT services through 2026, pursuant to the Contract.

11. On January 9, 2026, I had a call with Kenneth Shepard, Senior Vice President of Finance at ModivCare. In that call he stated that ModivCare was unwilling to negotiate a settlement amount that was less than the amount referenced in its December 18 demand letter, or discuss continuing to provide NEMT services to HealthSpring's members beyond January 28, 2026, unless HealthSpring provided a meaningful opportunity for business in 2027 and beyond.

12. On January 16, 2026, I had another conversation with Mr. Shepard at his request,

with the hope that ModivCare would commit to adhere to its contractual termination assistance and wind down obligations as outlined in the Contract, including, but not limited to, continuing to provide all services under the agreement for a period of 180 days after January 28, 2026. Mr. Shepard did not reference any requirement for business in 2027, but he made a counteroffer toward resolving the disputed amounts for 2024 and 2025. He also proposed new rates for 2026 which would be applied during a transition period, but that required HealthSpring to agree to ModivCare's demands about the disputed amounts for the two past years.

13. Attached to HealthSpring's Objection as Exhibit 12 is a true and correct copy of an email I sent on January 19, 2026, to Mr. Shepard confirming our January 16, 2026, conversation and further confirming HealthSpring's willingness to "discuss in good faith a fair and reasonable rate" should ModivCare continue to refuse to perform under the contractually agreed rate.

Signed under penalty of perjury pursuant to 28 U.S.C. § 1746 on January 20, 2026, at Washington, D.C.

/s/ Dana Mott

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Dana Mott