

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

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In re: : Chapter 11
: :
MODIVCARE INC., *et al.*, : Case No. 25-90309 (ARP)
: :
Debtors.¹ : (Jointly Administered)
: :
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**NOTICE OF UNRESOLVED ISSUES REGARDING ENTRY OF FINAL DIP ORDER
IN ADVANCE OF CONTINUED FINAL DIP HEARING**

PLEASE TAKE NOTICE that, on August 20, 2025 (the “**Petition Date**”), the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) filed voluntary petitions for relief under title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Court**”) commencing these chapter 11 cases (the “**Chapter 11 Cases**”).

PLEASE TAKE FURTHER NOTICE that on September 30, 2025, the Court held a hearing (the “**Final DIP Hearing**”) to consider entry of a final on the *Emergency Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* [Docket No. 4] (the “**DIP Motion**”),² and to consider the objection³ thereto and replies⁴ in support of the DIP Motion.

PLEASE TAKE FURTHER NOTICE that following the presentation of evidence, the Debtors, the Official Committee of Unsecured Creditors (the “**Committee**”), and the DIP Secured Parties agreed to continue the Final DIP Hearing, as to legal argument and closing statements, until

¹ A complete list of each of the Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

² Capitalized terms used, but not otherwise defined herein, have the meaning assigned in the DIP Motion.

³ See *Objection of Official Committee of Unsecured Creditors to Final Approval of the DIP Motion* [Docket No. 346].

⁴ See *Debtors’ Reply to Objection of the Official Committee of Unsecured Creditors to Final Approval of the DIP Motion* [Docket No. 377]; *Reply of DIP Agent, DIP Lenders, and Consenting Creditors in Support of the Emergency Motion of the Debtors For Entry of a Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* [Docket No. 378].



October 3, 2025, at 12:00 p.m. (prevailing Central Time) (the “*Continued Final DIP Hearing*”) and to confer, in the period between the Final DIP Hearing and the Continued Final DIP Hearing, in an effort to narrow the issues in dispute prior to the Continued Final DIP Hearing.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Court’s request at the Final DIP Hearing, appended hereto as **Exhibit 1** is a chart reflecting the issues that the parties have been able to resolve and those issues that the parties have been unable to resolve.

PLEASE TAKE FURTHER NOTICE that all documents filed in the Chapter 11 Cases, and other relevant case information are available free of charge on the following website maintained by the Debtors’ claims and noticing agent, Kurtzman Carson Consultants, LLC (d/b/a Verita Global), in connection with the Chapter 11 Cases: <https://www.veritaglobal.net/ModivCare>. Copies of any pleadings or papers filed with the Court may also be obtained by visiting the Court’s website at <https://ecf.txsb.uscourts.gov> in accordance with the procedures and fees set forth therein.

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Dated: October 3, 2025
Houston, Texas

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

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

Certificate of Service

I certify that on October 3, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II

Timothy A. ("Tad") Davidson II

Exhibit 1

ModivCare – DIP Issues List

Issue	UCC	Status
1. <i>Unqualified Right to Credit Bid</i> (Paragraph 13(b))	The Proposed Final Order provides that the DIP Agent and/or the Prepetition First Lien Agent shall have the “unqualified” right to credit bid.	<u>RESOLVED</u> Removed Prepetition First Lien Agent’s unqualified right to credit bid from Proposed Final Order.
2. <i>Rights and Remedies Upon Termination Event</i> (Paragraphs 15(a)-(b))	The Proposed Final Order would grant the DIP Agent with the automatic right to exercise all remedies set forth in the Proposed Final Order and in the DIP Loan Documents upon a Termination Event, subject only to a five day notice period during which the Debtors and other parties in interest can seek an emergency hearing to contest whether a Termination Event has occurred.	<u>RESOLVED</u> The Debtors resolved this objection by revising the Proposed Final Order to require the DIP Agent to seek relief from the automatic stay before exercising any remedies against the DIP collateral.
3. <i>Prepetition DIP Fees</i> (Paragraph 20(b))	The Proposed Final Order would grant full approval to and shield from challenge any and all fees on the DIP Facility paid prepetition.	<u>RESOLVED</u> This sentence will be removed.
4. <i>Proceeds of Subsequent Financing</i> (Paragraph 11)	The Proposed Final Order states that any cash proceeds derived from any alternative financing obtained pursuant to section 364 of the Bankruptcy Code be used to repay both the DIP Obligations and the First Lien Adequate Protection Superpriority Claims in full.	<u>RESOLVED</u> Language to be modified to reference only repayment of the DIP Obligations.
5. <i>Amendments to the DIP Loan Documents</i> (Paragraph 20(g))	The Proposed Final Order provides no opportunity for the Committee to review or object to any amendments to the DIP Loan Documents that the Debtors determine (in their sole discretion) are immaterial.	<u>RESOLVED.</u> Amendment provision consistent with last-filed Proposed Final Order.

Issue	UCC	Status
6. <i>Right to Enter Leased or Licensed Premises</i> (Paragraph 15(e))	The Proposed Final Order allows the DIP Agent to enter upon any leased or licensed premises of the Debtors for the purposes of exercising any remedy with respect to the DIP Collateral, unless otherwise provided in any separate and enforceable agreement by and between the applicable landlord or licensor and the DIP Agent.	<u>RESOLVED.</u> The DIP Agent must first obtain an order of the Bankruptcy Court, on notice to the Debtors, the Committee, and the applicable landlord/licensor, before entering any leased or licensed premises for the purpose of exercising remedies with respect to the DIP Collateral.
7. <i>Interest Rate</i> (Paragraph 3(iv))	The Proposed Final Order should not provide for the current payment of interest to the Prepetition First Lenders at a rate that is 2.0% above the default rate, which is already 2.0% more than the standard rate.	<u>RESOLVED</u> If oversecured, interest would accrue at the contract default rate; if undersecured, no accrual of interest.
8. <i>506(c), 552(b) and Marshaling Waivers</i> (Paragraph 8, K, 20(f))	The 506(c), 522(b) and marshaling waiver is not appropriate and should be removed from the Proposed Final Order.	<u>COMPANY/LENDER PROPOSAL</u> A “soft marshaling” construct whereby the lenders will look to proceeds of avoidance actions last. <u>UCC RESPONSE</u> No 506(c) waiver. No waiver of the “equities of the case” exception to section 552(b) of the Bankruptcy Code. Solely to the extent that the Court approves DIP Liens and Adequate Protection Liens on unencumbered assets, a “soft marshaling” construct whereby the lenders will look last to any collateral that was unencumbered as of the Petition Date.

Issue	UCC	Status
9. Challenge Limitations (Former Paragraph 6)	The Proposed Final Order should state that a final, non-appealable order resulting in a Successful Challenge needs to be obtained prior to the Challenge Period Termination Date.	<u>COMPANY/LENDER PROPOSAL</u> Proposed Final Order resolved Committee’s objection by removing concept of Challenge Period Termination Date. <u>UCC RESPONSE</u> The UCC requests the following language: <i>“Notwithstanding anything to the contrary herein, the Committee shall have standing, without the need to file any motion seeking standing, to assert any estate claims against Prepetition Secured Parties and to challenge any of the assertions set forth in Paragraphs D, E and F hereof.”</i>
10. Standing to Bring a Challenge (Former Paragraph 6)	The Proposed Final Order should not require the Committee to obtain an order of the Court prior to the Challenge Period Termination Date granting standing to bring any Challenge.	<u>COMPANY/LENDER PROPOSAL</u> Proposed Final Order resolved Committee’s issue by removing concept of Challenge Period Termination Date. Committee request for automatic standing is unresolved. <u>UCC RESPONSE</u> The UCC requests the following language: <i>“Notwithstanding anything to the contrary herein, the Committee shall have standing, without the need to file any motion seeking standing, to assert any estate claims against Prepetition Secured Parties and to challenge any of the assertions set forth in Paragraphs D, E and F hereof.”</i>

Issue	UCC	Status
11. Committee Fees (13-week Budget at 3) (Paragraph 7(i), 16)	The \$1,750,000.00 cap for Committee fees is arbitrary and insufficient. The Post-Termination Carve-Out of \$250,000 is inadequate. The Committee Investigation Budget of \$50,000 is inadequate.	<u>COMPANY/LENDER PROPOSAL</u> The Debtors have increased the Committee Investigation Budget from \$50,000 to \$250,000 in the Proposed Final Order. Total budget for the case is \$2.8 million. <u>UCC RESPONSE</u> The Committee disagrees with the statement that the approved budget includes \$2.8 million for Committee professional fees, which is insufficient in any event. The Committee's professional fees shall be carved out from budget variance testing, and the budget shall not act as a cap on administrative claims that can be asserted by the Committee's professionals. The Committee Investigation Budget shall be increased to \$500,000. The Post-Termination Carve-Out for the Committee shall be increased to \$2,000,000, and the Carve-Out shall be amended to include all allowed Committee fees incurred prior to a Carve-Out Trigger Notice, irrespective of the budget.

Issue	UCC	Status
12. Stipulation Regarding Cash Collateral (Paragraph F)	The Proposed Final Order includes a stipulation that all of the Debtors' cash is Cash Collateral without being subject to challenge.	<u>COMPANY/LENDER PROPOSAL</u> Paragraph F of the Final Order has been revised to provide that the stipulation that all of the Debtors' cash is Cash Collateral is subject to the conclusion of the Independent Investigation. <u>UCC RESPONSE</u> The UCC requests the following language: <i>“Notwithstanding anything to the contrary herein, the Committee shall have standing, without the need to file any motion seeking standing, to assert any estate claims against Prepetition Secured Parties and to challenge any of the assertions set forth in Paragraphs D, E and F hereof.”</i>
13. Backstop Premium	The Backstop Premium should not be decided in conjunction with Proposed Final Order and the decision should be deferred to plan confirmation.	Unresolved.
14. Milestones (Exhibit A)	Each milestone should be extended by 90 days.	Unresolved.
15. Professional Fee Escrow (Paragraph 7(iii))	The Debtors should remove the Professional Fee Escrow Account.	Unresolved.
16. DIP Account (Paragraph 2(d))	The Debtors should not pay interest and fees on cash in DIP Account or the Professional Fee Escrow Account (if it remains in place).	Unresolved.
17. DIP Liens & Adequate Protection (Paragraph 2(j), 3(i), 4(i))	The DIP Liens and Adequate Protection Liens should not extend to unencumbered assets including avoidance actions.	Unresolved.