

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

www.flmb.uscourts.gov

In re:	Chapter 11
Landmark Holdings of Florida, LLC,	Case No. 2:25-bk-00397
	Jointly Administered With
Landmark Management Services of Florida, LLC,	Case No. 2:25-bk-00398
Landmark Rehabilitation Hospital of Columbia, LLC,	Case No. 2:25-bk-00399
Landmark Hospital of Athens, LLC,	Case No. 2:25-bk-00400
Landmark Hospital of Cape Girardeau, LLC,	Case No. 2:25-bk-00401
Landmark Hospital of Columbia, LLC,	Case No. 2:25-bk-00402
Landmark Hospital of Joplin, LLC,	Case No. 2:25-bk-00403
Landmark Hospital of Savannah, LLC,	Case No. 2:25-bk-00404
Debtors. ¹	

**DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO (A) MAINTAIN, ADMINISTER,
MODIFY, AND RENEW THEIR EXISTING REFUND PROGRAMS
AND PAY OR OTHERWISE HONOR PREPETITION OBLIGATIONS
RELATED THERETO, AND (B) HONOR PREPETITION MEDICARE EXTENDED
REPAYMENT SCHEDULE OBLIGATIONS; AND (II) GRANTING RELATED RELIEF**

Judge Delano will conduct the hearing on this motion by Zoom from Courtroom 6A, George C. Young Federal Courthouse, 400 W. Washington Street, Orlando, FL 32801, on **Thursday, March 13, 2025, at 10:30 a.m. Eastern Time**. Parties may attend the hearing by video or telephone via Zoom. **PARTIES MAY NOT APPEAR IN PERSON AT THE FORT MYERS**

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Landmark Holdings of Florida, LLC (1217); Landmark Management Services of Florida, LLC (7031); Landmark Rehabilitation Hospital of Columbia, LLC (5424); Landmark Hospital of Athens, LLC (2745); Landmark Hospital of Cape Girardeau, LLC (1155); Landmark Hospital of Columbia, LLC (5424); Landmark Hospital of Joplin, LLC (9493); and, Landmark Hospital of Savannah, LLC (8003).

COURTHOUSE. Parties are directed to consult Judge Delano’s Procedures Governing Court Appearances regarding policies and procedures for attendance at hearings by video or telephone via Zoom, available at <https://www.flmb.uscourts.gov/judges/delano>. If you are unable to access the Court’s website, please contact the Courtroom Deputy at 813-301-5195 no later than 3:00 p.m. one business day before the date of the hearing.

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by their undersigned counsel, hereby move the Court for the entry of interim and final orders, the proposed form of which is attached hereto as Exhibit A (the “Order”), pursuant to sections 363, 541, and 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Debtors request (i) authority to (a) maintain, administer, modify, and renew their existing Refund Programs (as defined below) and pay or otherwise honor prepetition obligations related thereto, and (b) honor prepetition Medicare ERS Obligations (as defined below); and (ii) related relief. In support of this Motion, the Debtors submit as follows:

I. Relief Requested

1. By this Motion, the Debtors seek entry of the Order to authorize the Debtors to maintain, administer, modify, and renew their existing Refund Programs and pay or otherwise honor prepetition obligations related thereto, to honor prepetition Health Plan Administration Obligations, and related relief, including, among other things, that (i) certain of the overpayments attributable to the Refunds may not be property of the Debtors’ estates; (ii) failure to honor the obligations under the Refund Programs and the Medicare ERS Obligations in the ordinary course may interfere with the Debtors’ ability to maintain patient care, continue operations, and maintain compliance with applicable law and the Regulations; (iii) failure to honor the Refund Programs in the ordinary course may expose the Debtors to liability under the False Claims Act; (iv) failure to continue the Medicare ERS Obligations may terminate the Debtors’ access to Medicare/Medicaid

programs and related reimbursements for the benefit of its patients, and (v) the Court has authority to grant the requested relief under sections 541, 363, and 105(a) of the Bankruptcy Code.

II. Jurisdiction, Venue and Predicates for Relief

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. §157 (b)(2).

3. The predicates for the relief requested herein are sections 363, 541, and 105(a) of the Bankruptcy Code.

III. Background

4. On March 9, 2025 (the “Petition Date”), each of the Debtors filed with the Court its respective voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. As of the date hereof, no creditors’ committee has been appointed in these cases. No trustee or examiner has been appointed.

6. The Debtors own and operate five long-term acute care (“LTAC”) hospitals located in Missouri and Georgia. Debtor Landmark Management Services of Florida, LLC provides management services to a sixth LTAC hospital located in Florida that is not owned by the Debtors. The Debtors’ first hospital was opened in 2006. The Debtors’ hospitals provide critical care to patients that require a higher level of care for a longer period of time than a typical hospital can provide.

7. The Debtors have filed these cases with the intention of continuing their operations in the ordinary course of business and seeking to reorganize their financial affairs. Additional

information regarding the Debtors' business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Debtors' Chapter 11 Case Management Summary* (the "Case Management Summary"), which is incorporated herein by reference. Additional facts in support of the specific relief sought herein are set forth below.

A. Refund Programs

8. In the ordinary course of business, the Debtors are required, whether contractually or by various state and federal laws and administrative rules (such laws and rules, collectively, the "Regulations"), to account for refunds, reimbursements, or payments, as applicable, to patients and third-party payors, including healthcare insurers, managed care organizations, plan vendors, commercial payors, private pay sources, Medicare, Medicaid, medical service plan and claims administrators, and other governmental and quasi-governmental agencies (collectively, the "Refund Recipients").² The Debtors routinely process refunds, or are subject to offsets or recoupments for reimbursement of overpayments or payments made by or on behalf of patients, resulting from the interaction between the Debtors' billing procedures, patient medical insurance deductibles, and third-party payments, including payments made in connection with extended repayment plans with the applicable federal or state agencies overseeing Medicare and Medicaid (the "Refund Programs"). As described further herein, the Debtors may owe refunds to Refund Recipients as a result of overpayment by such parties.

² Under a final rule issued by the Centers for Medicare and Medicaid Services ("CMS"), Medicare Part A and B providers and suppliers must report and return overpayments received on behalf of Medicare beneficiaries by the later of the date that is 60 days after the date an overpayment was identified, or the due date of any corresponding cost report, if applicable. See 42 C.F.R. §§ 401 and 402. Healthcare providers and suppliers are also subject to statutory requirements under the Social Security Act, and the failure to report and remit overpayments from Medicare pursuant to the final rule may give rise to False Claims Act liability, significant monetary liabilities, or exclusion from the Medicare program.

B. Patient Refunds

9. In the ordinary course of business, the Debtors bill patients and insurers for medical services provided to patients. After a patient pays the Debtors for medical services, a “credit balance” may occur when the payments and/or adjustments in total exceed the gross charges on a patient account. Once this credit balance is identified and validated by the Debtors, the patient is entitled to a credit or refund from the Debtors (the “Patient Refunds”).

10. Patient Refunds typically result from (i) duplicate payments; (ii) adjustments to a patient’s out-of-pocket obligations following receipt of the insurance payments; (iii) billing corrections; or (iv) a change to the applicable patient’s insurance coverage, including on account of secondary insurance coverage. The Debtors are not aware of any accrued and unpaid Patient Refunds as of the Petition Date. Out of an abundance of caution, the Debtors seek authority by this Motion to pay accrued and unpaid Patient Refunds in the ordinary course of business.

C. Insurance Refunds

11. In the ordinary course of business, the Debtors are paid by healthcare insurers for services provided to patients. Based upon the Debtors’ arrangements with the healthcare insurers and pursuant to various Regulations, if a healthcare insurer overpays for services rendered to patients, the Debtors are obligated to refund the overpaying party for the excess amounts paid to the Debtors (such refunds, the “Insurance Refunds”). Insurance Refunds typically result from (i) overpayment by an insurer; (ii) changes in original charges billed, reducing the amount owed for the service; (iii) payments made by an insurer after termination of coverage; (iv) secondary insurer payments following payment by a primary insurer; and (v) duplicate payments by multiple insurers for the same care or procedure, potentially due to coordination of benefits issues. The Debtors are not aware of any material accrued and unpaid Insurance Refunds as of the Petition Date. Out of

an abundance of caution, Debtors seek authority by this Motion to pay or honor accrued and unpaid Insurance Refunds in the ordinary course of business.

D. Refund Reimbursement Procedures and Protocols

12. The Debtors maintain approval procedures for processing Refunds. When the Debtors identify a credit balance payable to a Refund Recipient on account of overpayment by patients or insurers, the Debtors' revenue cycle management department identifies the appropriate department to review and validate the amount of the overpayment. After the overpayment amount is determined, the Debtors either issue a check or other form of payment to the applicable Refund Recipient in the amount of the overpayment, or provide a credit to such Refund Recipient to offset future payments in the amount of the overpayment.

E. Extended Repayment Schedule Obligations

13. In addition to the Refunds described above, certain of the Debtors are subject to extended repayment schedules ("ERS") with the applicable federal or state agencies overseeing Medicare and Medicaid for overpayments received by the Debtors.

14. As is standard with many hospitals, the Debtors are reimbursed through Medicare Part A for Medicare-related capital costs (e.g. depreciation, interest, rent, and property-related insurance and tax costs). These payments are based on the Debtors' projected Medicare Part A patients. A report from the Centers for Medicare & Medicaid Services ("CMS") (the "CMS Cost Report"), due annually, reconciles amounts paid to date with the actual Medicare Part A patient volume during the year. Any difference in the payment received by the Debtors and what was actually incurred based on the Medicare Part A patients has to be refunded to CMS immediately, unless an extended repayment plan is requested and approved by CMS.

15. As of the Petition Date, the Debtors are subject to the following ERS (collectively, the “Medicare ERS Obligations”):

Debtor	FYE	Principal Amount	Interest Rate	Prepetition Balance
Landmark Hospital of Joplin, LLC	12/31/2023	\$1,169,000.00	12.125%	\$841,520.01
Landmark Hospital of Cape Girardeau, LLC	12/31/2023	\$1,262,900.00	12.125%	\$1,044,041.82
Landmark Hospital of Columbia, LLC	12/31/2024	\$2,431,300.00	12.375%	\$2,380,744.08
Landmark Hospital of Joplin, LLC	12/31/2024	\$2,231,900.00	12.375%	\$2,185,009.81
				\$6,451,315.71

16. Generally, the ERS permits the applicable Debtor to repay the stated overpayment over a sixty (60) month period, rather than one lump sum. The monthly installments are then withheld from future interim payments on the due date of each month. If the obligated Debtor misses a payment or otherwise fails to honor the repayment schedule, the schedule is deemed defaulted, the schedule is revoked, and the Debtors’ payments are placed on 100% withhold until the overpayment amount is recovered in full.

17. In addition, the Debtors anticipate receiving a CMS Report for FYE 2025 and that some payments received to date in 2025 may be subject to a refund. As a result, it is possible that the Debtors will need to enter into additional ERS post-petition. Accordingly, the Debtors seek authority to continue their performance under the Medicare ERS Obligations, and to enter into post-petition ERS as needed, and pay the obligations thereunder, in the ordinary course of business.

IV. Basis for Relief Requested

18. Cause exists to authorize the Debtors to maintain, administer, modify, and renew their existing Refund Programs and pay or otherwise honor prepetition obligations related thereto,

to honor prepetition Medicare ERS Obligations, because, among other things, (i) certain of the overpayments attributable to the Refunds may not be property of the Debtors' estates; (ii) failure to honor the obligations under the Refund Programs and the Medicare ERS Obligations in the ordinary course may interfere with the Debtors' ability to maintain patient care, continue operations, and maintain compliance with applicable law and the Regulations, and access Medicare/Medicaid reimbursements; (iii) failure to honor the Refund Programs in the ordinary course may expose the Debtors to liability under the False Claims Act; and (iv) the Court has authority to grant the requested relief under sections 541, 363, and 105(a) of the Bankruptcy Code.

A. Certain Overpayments Attributable to the Refunds May Not Be Property of the Debtors' Estates

19. Section 541 of the Bankruptcy Code generally provides that all property in which a debtor has a legal or equitable interest, including any interest in property that a debtor acquires postpetition, becomes property of the estate upon the commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1), (a)(7). Importantly, section 541 of the Bankruptcy Code does not by itself create new legal or equitable interests in property; instead, “[p]roperty interests are created and defined by state law.” *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (noting that “Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law”). Congress was clear that section 541(a)(1) of the Bankruptcy Code “is not intended to expand the debtor’s rights against others more than they existed at the commencement of the case.” H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 367–68 (1977); see also *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) (holding that the “rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less”). Thus, if a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor’s estate under section 541 of the Bankruptcy Code and the

debtor is prohibited from distributing such property to its creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) (“The Bankruptcy Act simply does not authorize a [debtor] to distribute other people’s property among a bankrupt’s creditors . . . [S]uch property rights existing before bankruptcy in persons other than the bankrupt must be recognized and respected in bankruptcy.”).

20. While § 541(a)(1) includes all of a debtor’s legal or equitable interests as property of the estate, “§ 541(d) operates to exclude those equitable interests of which a debtor holds only bare legal title.” *Bakst v. Corzo (In re Corzo)*, 406 B.R. 154, 158 (Bankr. S.D. Fla. 2008). When a debtor holds legal title to, but does not have equitable interest in, certain property, the debtor must turn such property over to the holders with such equitable interest in the property. See *MCZ, Inc. v. Andrus Res., Inc. (In re MCZ, Inc.)*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) (“Where Debtor merely holds bare legal title to property as agent or bailee for another, Debtor’s bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner.”). A debtor who holds proceeds attributable to property owned by another holds only bare legal title to such property, and thus must turnover such proceeds to the interest holder of such property. See, e.g., *In re Columbia Pac. Mortg., Inc.*, 20 B.R. 259, 262–64 (Bankr. W.D. Wash. 1981) (awarding holder of participation ownership interest proceeds of a property sale because holder was beneficial owner, and debtor only held legal title to the proceeds).

21. The Debtors may not have equitable title to the identified, quantified, and validated overpayments held for the benefit of the Refund Recipients because holding such amounts may be akin to the Debtors holding funds in trust. The Supreme Court has held that property held by debtors for a third-party (such as funds held on account of a resulting trust) is not property of the estate. *Begier v. Internal Revenue Serv.*, 496 U.S. 53, 59 (1990) (“Because the debtor does not

own an equitable interest in property he holds in trust for another, that interest is not ‘property of the estate.’”); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) (noting that “Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition” from the bankruptcy estate). Further, courts in this district have held that Section 541(b)(1) provides that “[p]roperty of the estate does not include . . . any power that the debtor may exercise solely for the benefit of an entity other than the debtor. . . . Therefore, if a debtor holds property in trust for someone else, that property does not become property of the debtor’s bankruptcy estate.” *In re The Ctrs. For Special Needs Tr. Admin.*, Case No. 8:24-bk-00676-RCT, Doc. No. 314, at *10 n. 35 (Bankr. M.D. Fla. Aug. 5, 2024). Thus, any property held by the Debtors on account of the Refund Programs may be not property of the Debtors’ estates.

22. Because the Debtors may not have legal or equitable interest in the overpayments, the Debtors should be permitted to honor their obligations under the Refund Programs. Since such identified, quantified, and validated amounts are the property of the Refund Recipients and not property of the Debtors’ estates, the relief requested in this motion will not prejudice creditors or other parties in interest.

B. Payment of Prepetition Refund Obligations and Medicare ERS Obligations is Authorized by Sections 363 and 105(a) of the Bankruptcy Code

23. The Debtors administer the Refund Programs and Medicare ERS Obligations in the ordinary course of business and, therefore, the relief requested herein does not require further Court order pursuant to section 363(c)(1) of the Bankruptcy Code. 11 U.S.C. § 363(c)(1). To the extent the Court determines any of the requested relief, including the payment of prepetition amounts related to the Refund Programs and Health Plan, is outside the ordinary course of business, the Court may nevertheless grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code. Section 363(b) provides, in relevant part, that “[t]he [debtor], after notice and

a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts in the Eleventh Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., In re Biscayne Park LLC*, No. 10-20941-AJC, 2010 Bankr. LEXIS 5902 (Bankr. S.D. Fla. Oct. 19, 2010) *EpiAviation, inc. v. Phillips (In re Phillips)*, No. 2:12-cv-585-FtM-29 (M.D. Fla. May 7, 2013); *In re Thomas*, 24-20266, (Bankr. S.D. Ga. Jan. 23, 2025); *In re Diplomat Constr., Inc.*, 481 B.R. 215 (Bankr. N.D. Ga. 2012); *In re Taylor, Bean & Whitaker Mortg. Corp.*, No. 3:09-bk-07047-JAF, 2010 Bankr. LEXIS 5331 (Bankr. M.D. Fla. June 30, 2010); *Teras Breakbulk Ocean Navigation Enters., LLC v. Angueira (In re Teras Breakbulk Ocean Navigation Enters., LLC)*, 658 B.R. 611 (S.D. Fla. 2024); *In re Bryan*, No. 12-31486-WRS (Bankr. M.D. Ala. Sep. 3, 2013).

24. In addition, the Court has authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein because such relief is necessary for the Debtors to carry out their duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). *See also Harrington v. Kapila*, No. 06-60391-CIV-JORDAN, at *1 (S.D. Fla. Nov. 30, 2006) (“the debtor-in-possession has all the rights and powers, and shall perform all the functions and duties of a Chapter 11 trustee. 11 U.S.C.S. § 1107(a). Because a debtor in possession is empowered to perform the duties of a trustee, a debtor in possession is a fiduciary of the estate and its constituents as is the attorney for the debtor in possession.”). Under

section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *See Capital Factors, Inc. v. Kmart Corporation*, 291 B.R. 818, 822 (N.D. 111. 2003); *aff’d by In the Matter of: Kmart Corporation*, 359 F.3d 866 (7th Cir. 2004); *cert. denied Handleman Company v. Capital Factors, et al.*, 543 U.S. 986, 125 S. Ct. 495, 160 L. Ed. 2d 370 (2004). Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first 21 days of a case where doing so is “necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of the Debtors’ estates.

25. The relief requested herein is appropriate and warranted under both section 105(a) of the Bankruptcy Code and, assuming, *arguendo*, that the overpayments are property of the Debtors’ estate, section 363(b) of the Bankruptcy Code. The Refund Recipients consist of patients, insurers, and Medicare/Medicaid, all of whom are vital to the Debtors’ operations. The Debtors’ failure to provide reimbursement for overpayments, continue to operate pursuant to negotiated contractual arrangements, or pay or honor prepetition amounts owed, has potentially catastrophic effects on operations and the value of the Debtors’ estates. Further, the Debtors risk losing the trust of the impacted Refund Recipients as well as their ability to participate in Medicare/Medicaid programs. Such a change in the Debtors’ business operations likely will deter future patients from selecting the Debtors’ for the long-term acute care. If that were to occur, the negative impact on the Debtors’ business, their estates, creditors, and patients would be significant and potentially irreversible. It is therefore necessary that the Debtors be permitted to pay or otherwise honor Refunds and prepetition amounts in connection with honoring the Medicare ERS Obligations.

26. Further, Courts in this district and others have granted authority for debtors to pay similar obligations as those sought to be paid hereunder as a routine matter in similar cases. *See, e.g., In re Healthcare Holdings of Florida LLC, et al.*, No. 24-21355-SMG (Bankr. S.D. Fla. Nov. 4, 2024) (Docket No. 36) ; *In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Mar. 5, 2024) (Docket No. 260) (authorizing debtors to maintain and administer refund programs and honor related prepetition obligations); *In re Envision Healthcare Corp.*, No. 23-90342 (CML) (Bankr S.D. Tex. June 27, 2023) (Docket No. 452) (authorizing debtors to honor prepetition obligations under patient, healthcare facility, and insurance refund programs); *In re Genesis Care Pty Ltd.*, No. 23- 90614 (DRJ) (Bankr. S.D. Tex. June 1, 2023) (Docket No. 81) (authorizing debtors to honor prepetition obligations related to patient refunds, insurance refunds, and rebates).

27. Additionally, if the obligations under the Refund Programs are not honored, the Debtors may face legal sanctions or be liable for fines in the jurisdictions in which they operate. For instance, the Patient Protection and Affordable Care Act (“ACA”) enacted new rules governing overpayments made by Medicare and Medicaid. 42 U.S.C. § 18001 *et seq.* Pursuant to the integrity provisions of the Medicare and Medicaid programs under the ACA, a person has “60 days after the date on which the overpayment was identified” to report and return such overpayment. 42 U.S.C. § 1320a-7k(d)(2). Any overpayment retained after the 60-day deadline is an “obligation” subject to liability under the False Claims Act (“FCA”). *Id.* at § 1320a-7k(d)(3). The FCA states in relevant part that “any person who . . . knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government . . . is liable to the United States Government for a civil penalty . . . plus 3 times the amount of damages which the Government sustains because of the act of that person.” 31 U.S.C. § 3729(a)(1)(G); *see also* 31 U.S.C. § 3729(b)(3) (the term “obligation” means

an “established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment”). Accordingly, if the Debtors fail to obtain the relief sought by the Motion and are unable to report and return any overpayments by the 60-day deadline set forth by the ACA, the Debtors may be subject to penalties and treble damages under the FCA.

28. For the foregoing reasons, the continuation of Debtors’ Refund Programs and honoring the Medicare ERS Obligations is appropriate and in the best interests of the Debtors, their estates, and all other parties in interest in these chapter 11 cases. Accordingly, the Debtors request that the Court authorize the Debtors to perform their obligations under the Refund Programs and the Medicare ERS Obligations in the ordinary course of business.

C. Cause Exists to Authorize the Banks to Honor Checks and Electronic Fund Transfers

29. The Debtors further request that the Court authorize applicable financial institutions (the “Banks”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Refund Programs and Health Plan Administration Obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of the Refund Programs and Health Plan Administration Obligations dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.

V. Necessity for Immediate Relief

30. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” If the Debtors are not permitted to continue to use their Cash Management System in its current form, it would cause immediate and irreparable harm by causing operational chaos, disabling the Debtors from paying for goods and services received postpetition or otherwise approved by this Court and disrupting the collection of receivables. Accordingly, the relief requested herein is consistent with Bankruptcy Rule 6003.

VI. Request for Waiver of Stay

31. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

VII. Reservation of Rights

32. Nothing contained herein is intended to be or shall be deemed as (i) an implication or admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors’ or any party in interest’s rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors’ or any other party in interest’s rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) a waiver of the obligation of any party in interest to file a proof of claim, (v) an agreement or obligation to pay any claims, (vi) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vii) an admission as to the validity of any liens satisfied pursuant to this Motion, or (viii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under

section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any other party in interest's rights to dispute such claim subsequently.

VIII. Notice

33. The Debtors will serve notice of this Motion on (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) all known creditors holding secured claims against the Debtors' estates; (d) those creditors holding the 20 largest unsecured claims against the Debtors' estates on a consolidated basis; (e) all parties that have filed a request for receive of filings pursuant to Bankruptcy Rule 2002; and (f) CMS.

IX. No Previous Request

34. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just and proper.

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Fort Myers, Florida
Dated: March 12, 2025

Respectfully submitted,

/s/ Jamie Z. Isani

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*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**
www.flmb.uscourts.gov

In re:

Landmark Holdings of Florida, LLC,

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Landmark Hospital of Savannah, LLC,

Debtors.¹

Chapter 11

Case No. 2:25-bk-00397

Jointly Administered With

Case No. 2:25-bk-00398

Case No. 2:25-bk-00399

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¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Landmark Holdings of Florida, LLC (1217); Landmark Management Services of Florida, LLC (7031); Landmark Rehabilitation Hospital of Columbia, LLC (5424); Landmark Hospital of Athens, LLC (2745); Landmark Hospital of Cape Girardeau, LLC (1155); Landmark Hospital of Columbia, LLC (5424); Landmark Hospital of Joplin, LLC (9493); and, Landmark Hospital of Savannah, LLC (8003).

INTERIM ORDER

(I) AUTHORIZING DEBTORS TO (A) MAINTAIN, ADMINISTER, MODIFY, AND RENEW THEIR EXISTING REFUND PROGRAMS AND PAY OR OTHERWISE HONOR PREPETITION OBLIGATIONS RELATED THERETO, AND (B) HONOR PREPETITION HEALTH PLAN ADMINISTRATION OBLIGATIONS; AND (II) GRANTING RELATED RELIEF

THIS CASE came on for consideration upon the motion (the “Motion”)² of the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) for entry of interim and final orders pursuant to sections 363, 541, and 105(a) of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004 (i) authorizing Debtors to (a) maintain, administer, modify, and renew existing Refund Programs and pay or otherwise honor prepetition obligations related thereto, and (b) honor prepetition Health Plan Administration Obligations; and (ii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to decide the Motion and the relief requested therein in accordance with 28. U.S.C. §§ 157(a)-(b) and 1334(b); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been given as provided in the Motion, and such notice having been adequate and appropriate under the circumstances; and it appearing that no other or further notice of the Motion need be provided; and the Court having held a hearing on March 13, 2025, to consider the relief requested in the Motion (the “Hearing”); and upon the Debtor’s Chapter 11 Case Management Summary, the record of the Hearing, and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their respective estates and creditors, and all parties-in-interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

² Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

ORDERED:

1. The relief requested in the Motion is hereby GRANTED on an interim basis.
2. The Debtors are authorized, but not directed, pursuant to sections 363, 541, and 105(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 to maintain, administer, modify, and renew existing Refund Programs and pay or otherwise honor prepetition obligations.
3. The Debtors are further authorized, but not directed, pursuant to sections 363 and 105(a) of the Bankruptcy Code, and Bankruptcy Rules 6003 and 6004 to honor prepetition Medicare ERS Obligations, and to enter into new ERS in the ordinary course of business.
4. Nothing contained in the Motion or this Interim Order is intended or should be construed to convert a prepetition claim into an administrative expense priority claim.
5. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to such obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.
6. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Interim Order.

7. Nothing contained in the Motion or this Interim Order or any payment made pursuant to the authority granted by this Order is intended to be or shall be deemed as (i) an implication or admission as to the validity of any claim against the Debtors; (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim; (iii) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable nonbankruptcy law; (iv) a waiver of the obligation of any party in interest to file a proof of claim; (v) an agreement or obligation to pay any claims; (vi) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (vii) an admission as to the validity of any liens satisfied pursuant to the Motion; or (viii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code.

8. Notwithstanding anything to the contrary contained in the Motion or herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, authorizing the Debtors' use of cash collateral (the "Cash Collateral Order") and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

9. The Debtors will serve notice of this Motion on (a) the U.S. Trustee; (b) all known creditors holding secured claims against the Debtors' estates; (c) those creditors holding the 20 largest unsecured claims against the Debtors' estates on a consolidated basis; (d) all parties that have filed a request for receive of filings pursuant to Bankruptcy Rule 2002.

10. Notwithstanding entry of this Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by any party.

11. The final hearing is scheduled on _____, 2025, at _____ (prevailing Eastern Time) before this Court (the "Final Hearing").

12. Any objection to the relief requested in the Motion on a permanent basis must, by 4:00 p.m. (prevailing Eastern Time) on _____ (the "Objection Deadline"), be: (a) filed with the Court and (b) actually received by (i) the Office of the U.S. Trustee; (ii) proposed counsel to the Debtors, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, Attn: Justin Paget, email: jpaget@hunton.com; (iv) counsel for Amerant, Garbett, Allen, Roza & Yates, P.C., Brickell Tower, 80 S.W. Eighth Street, Suite 3100, Miami, Florida 33130, Attn: David S. Garbett, Esq., Email: dgarbett@garlawfirm.com; and (v) the attorneys for any official committee of unsecured creditors, if then appointed in these cases, on or before the Objection Deadline.

13. A reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two business days before the Final Hearing.

14. This Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all action necessary to carry out this Interim Order.

16. Notice of the Motion as provided therein is good and sufficient notice.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Debtors' counsel is directed to serve a copy of this Interim Order on the parties which were provided notice pursuant to the Motion and file a proof of service within three days of entry of this Interim Order.