Technical Advisory Panel of the Cooperative Agreement
Agenda
December 28, 2020 – 1:00 p.m.-3:00 p.m.
Virtual Meeting

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Meeting ID
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Phone Numbers
1-225-443-9608
PIN: 219 679 173#

Welcome and Introductions	Joe Hilbert
Draft Minutes – April 2, 2019	Mr. Hilbert
Overview of the year	Kevin Meyer
Public Comment Period	
Impact of the Pandemic Waived Reporting Reporting Restart Data Reported Through March	Erik Bodin
Quarterly Quality Metrics Report	Tom Eckstein
Metrics for Appalachian School of Law Project	Mr. Bodin
Closing	Mr. Hilbert
Adjourn	

DRAFT – Not Approved

Technical Advisory Panel of the Cooperative Agreement
November 18, 2019 – 10:00 a.m. to 4:00 p.m. Meeting Minutes
Office of Emergency Medical Services, Echo Conference Room
1041 Technology Park Drive, Glen Allen, Virginia 23059

Videoconference Location:
Wise County Health Department
134 Roberts Avenue SW
Wise, Virginia 24239

Members present: Joseph Hilbert (Virginia Department of Health "VDH"), Chair; Don Beatty (Virginia Bureau of Insurance); Tom Eckstein (Arundel Metrics); Lynn Krutak (Ballad Health); Sarah Milder (Arundel Metrics); Andy Randazzo (Anthem); and Dr. Clay Runnels (Ballad Health)

Members participating via videoconference: Bobby Cassell (consumer) and George Hunnicutt, Jr. (consumer)

Members absent: Dr. Ron Clark (Virginia Commonwealth University Health System) and Sean Barden (Mary Washington Hospital)

VDH staff present: Erik Bodin, Director, Division of Certificate of Public Advantage, Managed Care Health Insurance Plans, and Cooperative Agreement, Office of Licensure and Certification; Kevin Meyer, Cooperative Agreement Analyst, Division of Certificate of Public Need, Managed Care Health Insurance Plans, and Cooperative Agreement, Office of Licensure and Certification; Stephanie Norris, Health Economist, Office of Health Equity; Brenden Rivenbark, Senior Policy Analyst, Office of the Commissioner; and Lina Zimmerman, Cooperative Agreement Analyst, Division of Certificate of Public Need, Managed Care Health Insurance Plans, and Cooperative Agreement, Office of Licensure and Certification

Tennessee Department of Health (TDH) staff present: Judi Knecht, Population Health Program Manager, Division of Health Planning

Tennessee Certificate of Public Advantage Monitor: Larry Fitzgerald

Virginia Office of the Attorney General staff present: Amanda Lavin, Assistant Attorney General

Ballad Health officials present: Todd Norris, Senior Vice President, Community Health and System Advancement

<u>Welcome and Introductions</u>

Mr. Hilbert called the meeting to order at 10:17 a.m. and announced that a quorum of Technical Advisory Panel (TAP) members was present. Mr. Hilbert introduced himself and asked each of the TAP members to introduce themselves. After the TAP members introduced themselves, Mr.

Hilbert asked others in the room and participating via videoconference to introduce themselves as well.

Once everyone had an opportunity to introduce themselves, Mr. Hilbert made the following opening remarks to the TAP:

- The purpose of the TAP is to provide ongoing input to the Commissioner on the evolution of measures and benchmarks that should be used to objectively track the benefits and disadvantages of the Cooperative Agreement (CA), as well as measures and benchmarks that should be use to track the progress of Ballad Health with respect to achievement of commitments that have been made

- The TAP's work and recommendations are an important component of VDH's capability to actively supervise the CA

- VDH's efforts with respect to active supervision are ongoing, and evolving in coordination and cooperation with our colleagues at TDH. Mr. Erik Bodin will be providing an update concerning our active supervision efforts

- Today, VDH is bringing to you a proposal for certain revisions to the set of measures that are currently in place. As you can see from the agenda, Brenden Rivenbark of our staff will be presenting the different components of the proposal to you, including metrics pertaining to quality, access and population health

- VDH's proposal addresses what would be measured, how it would be measured and when it would be measured

- The TAP recommended at their meeting in April that a Metrics Workgroup with representation from Ballad Health, TDH, and VDH be established

- That workgroup was convened and their work is reflected in various parts of this proposal. The Panel also recommended that additional focus be given to quality measures that were more directly pertinent to rural facilities. VDH will be discussing that as well as part of the proposal

- If you have a question or comment for Mr. Rivenbark while he is making his presentation, please place your tent card on its end so that I know to call on you. For Mr. Honeycutt and Mr. Castle on videoconference, please speak up if you have a question or wish to make a comment

- Following the presentation of each component, I will ask for a motion and a second to adopt the proposed measures in a block – so that we have something specific on the table to discuss.

- My intent would be for the Panel to discuss the motion, including any questions or comments members have concerning any of the proposed metrics. At that time, if any

member of the Panel would like for one or more proposed measures to be taken out of the block to be discussed and voted on separately, we will do so without objection

- I will then ask the Panel to proceed to a vote by a show of hands on the remaining measures in the block. We will vote by show of hands

- After that, we will return to any other measures that have been removed from the block. I will ask for a motion and second to adopt each of those measures, whereupon we would discuss the motion and then proceed to a vote

- To the extent that certain components of our proposal pertain to reporting structures, timelines or templates – as opposed to specific measures, I will ask for a motion and a second to adopt the structure, timeline or template, and then have discussion on that motion prior to a vote

- Recommendations from the TAP will be sent to the Commissioner in the form of a written report

- Following this meeting, VDH will prepare a draft report which reflects the discussion and actions taken by the panel. We will provide that draft report to each of the Panel members for their review and comment prior to submitting it to the Commissioner by the end of December. Those recommendations will help to inform, but will not necessarily dictate, the Commissioner's final decision concerning any changes to the current set of measures. Any member of the Panel who wishes to submit a dissenting opinion for inclusion in the report may do so.

- Finally, I would note that there is no fixed deadline for the Commissioner's decision concerning new or revised metrics. There are a number of discussions ongoing between VDH, TDH, and Ballad related to the continued evolution of the Active Supervision Framework. It is VDH's intention to ensure that its metrics remain closely aligned with other components of the Active Supervision Framework.

Mr. Hilbert asked the TAP if there were any questions concerning the agenda. Hearing none, Mr. Hilbert directed the TAP members' attention to a copy of the draft minutes from the April 2, 2019 TAP meeting.

Approval of Draft Minutes

Mr. Hilbert gave the TAP a few minutes to review the draft minutes. Mr. Hilbert then asked if any changes needed to be made to the draft minutes. No changes were requested. Mr. Hilbert asked the TAP members for a motion to adopt the minutes from the April 2, 2019 meeting. Mr. Eckstein motioned and Ms. Krutak seconded the motion. The minutes were approved unanimously.

Overview of Active Supervision

Mr. Bodin provided a brief overview of activity pertaining to the active supervision of the Cooperative Agreement since the TAP last met in April of 2019. Mr. Bodin included the following points in his overview:

- Over the past several months, as we have continued to implement and refine the Active Supervision Framework, VDH has formalized a team and structure to support our work to include:
    - A Full-Time Cooperative Agreement Analyst/Complaint Intake Specialist within the Office of Licensure and Certification;
    - A Full-Time Cooperative Agreement Analyst/Complaint Intake Specialist, based in Southwest Virginia, within the Office of Licensure and Certification;
    - Active Supervision management from the Division Director of COPN, MCHIP, and the Cooperative Agreement within the Office of Licensure and Certification;
    - Active Supervision management from the Deputy Commissioner for Governmental and Regulatory Affairs;
    - A Part-Time Health Economist within VDH's Office of Health Equity;
    - A Part-Time Rural Health Manager within VDH's Office of Health Equity;
    - Dedicated support from a Senior Policy Advisor and Senior Policy Analyst within the Office of the Commissioner; and
    - A VDH Cooperative Agreement Active Supervision Committee with membership from:
        - Cooperative Agreement staff
        - Deputy Commissioner for Population Health
        - District Director for our Mount Rogers Health District
        - District Director for our LENOWISCO and Cumberland Plateau Health Districts
        - Director for our Office of Family Health Services
        - Division Director for Population Health Data
        - Division Director for Primary Care and Rural Health
        - Division Director for Social Epidemiology
        - Data and evaluation experts from sister agencies, including the Department of Medical Assistance Services and the Department of Behavioral Health and Developmental Services
        - Other key VDH staff, as needed
    - This Committee has convened twice and will convene quarterly

- VDH will continue to assess staffing needs as we continue to implement and refine the Active Supervision Framework. VDH still has funding for three additional full-time equivalents, if needed.

Wise/Norton Hospital Consolidation

- Ballad requested authorization under the Virginia Order to make the following changes in Wise County and the City of Norton:
    - Relocate medical/surgical and Intensive Care Unit services offered at Mountain View Regional Hospital (MVRH) in Norton and consolidate them with the same services currently offered at Lonesome Pine Hospital (LPH) in Wise.
    - Close the Emergency Department at MVRH.
    - Transition MVRH laboratory services to a contracted service provided by Norton Community Hospital (NCH) in Norton.
    - Transition MVRH radiology services to a contracted service provided by NCH.
    - Transition MVRH pharmacy services to a contracted service provided by NCH.
    - De-license 59 licensed hospital beds at MVRH, resulting in a total licensed bed count of 59 beds at MVRH, including 44 beds certified for long-term/skilled care.
- VDH considered all applicable Conditions of the Virginia Order that must be taken into account prior to approval of a request to adjust the scope of services or service lines and concluded that approval of the request was warranted based on the following:
    - The proposed project is consistent with the applicable Conditions of the Virginia Order.
    - The existing acute care hospital system in Wise County and the City of Norton is duplicative, inefficient, and not sustainable.
    - The population of Wise County and the City of Norton cannot continue to successfully support three full-service hospitals long term.
    - Ballad's current plan will help address the unnecessary duplication of resources in Wise County.
    - The consolidation should result in cost-savings and recouped resources that Ballad can reallocate to population health or other health care improvement.
- VDH is looking forward to reviewing Phase II of Ballad's plan for Wise County

- Staff are currently reviewing a Certificate of Public Need application to move inpatient rehab from NCH to MVRH

- Staff anticipate that Ballad's proposal will include additional behavioral health services for the Wise/Norton community

Southwest Virginia Health Authority

- VDH is working to finalize a Memorandum of Agreement (MOA) with the Southwest Virginia Health Authority (Authority).

- The Authority formed the Virginia Cooperative Agreement Task Force to undertake the responsibilities of the Authority with respect to monitoring Ballad's Cooperative Agreement.

- The Virginia Cooperative Agreement Task Force met on October 7, 2019

    - The Task Force Chairman, Delegate Todd Pillion, tabled consideration of the MOA until the next Task Force meeting to give the Task Force time to select nominees for three or four additional members of the Task Force from the public and to review the MOA.

Areas for Improvement/ Suggestions to Ballad

- VDH has identified the following suggestions for Ballad to improve on:

    - As has been displayed by the public sentiment associated with Ballad's decision to consolidate services across facilities in its service area; proactive, intentional, and culturally empathic communication from Ballad is critical to developing a more successful relationship with public, employees, and community organizations. Ballad, in its future proposals and requests to the states should include communications plans and community outreach strategies.

    - Leverage every opportunity to highlight the regional Virginia work and projects Ballad is undertaking to improve hospital quality of care, population health outcomes, behavioral health outcomes, successful partnerships and collaborations, etc. rather than focusing more on organizational structure changes, financial successes, etc.

    - Maintain close and active communication with the States– provide advance notice, as outlined in the states' COPA/CA, of changes in services/access, potential compliance issues, etc. so that the States are prepared to respond to constituents.

Overview of the Metrics Workgroup

Mr. Hilbert reminded members of the TAP that at their last meeting, in April of 2019, they recommended that a metrics workgroup with representation from VDH, TDH, and Ballad Health convene to develop a comprehensive set of "line of sight" measures that could be utilized to

actively supervise Ballad Health. Mr. Rivenbark provided the TAP with a brief overview of the Metrics Workgroup's progress over the past few months. Mr. Rivenbark's PowerPoint presentation noted the following key points:

- The TAP recommended that a Metrics Workgroup convene
- The Workgroup was tasked with assessing the Cooperative Agreement metrics and measurement framework and with developing a proposal for the TAP to review at their next meeting
- The Workgroup was led by staff from Ballad Health, TDH, and VDH
- Ballad Health, TDH, and VDH staff who participated in the Metrics Workgroup solicited feedback from internal and external subject matter experts throughout the process
- The Workgroup met in-person on July 25th, August 26th, August 27th, and October 8th and held weekly check-in conference calls from July 11th to October 24th
- The Metrics Workgroup will continue meeting and collaborating to develop "line of sight" documents, outputs, and outcome measures for each of Ballad Health's plans

Mr. Rivenbark asked if the TAP members had any questions. Hearing none, Mr. Rivenbark began presenting the proposed Quarterly (Quality) measures.

Presentation of Quarterly (Quality) Measures

Mr. Rivenbark's PowerPoint presentation noted the following:

- Quality data will be presented to the States quarterly using control charts
- Control charts will be presented at the system level, state level, and facility level
- When a "special-cause event" occurs, Ballad will notify the States and propose a mitigation strategy should one be necessary
- Annually, Ballad will propose three performance measures for targeted Quality Improvement (QI) initiatives
- Ballad will notify the States, within six months, should any measure by Premier or Press Ganey be retired and convene a discussion to determine which measure(s) should replace the retired measure(s)
- States may propose additional monitoring metrics to the TAP

- The states or Ballad may propose revisions to the Peer Hospital System group to the TAP annually

Mr. Hilbert asked if there were any questions or comments for Mr. Rivenbark at this time. Hearing none, Mr. Rivenbark read aloud the Quality-Patient Safety (slides 9 & 10), Quality-Mortality and Readmissions (slide 11), Quality-Patient Satisfaction (slide 12), Quality-Timely and Effective Care (slide 13), Rural Quality-Inpatient (slide 14), Rural Quality-Outpatient Patient Satisfaction (slide 15), Rural Quality-Outpatient Prevention (slide 16) and COPA/CA Financial and Operational Quarterly Updates (slide 17).

Discussion of Proposed Quarterly (Quality) Metrics

Mr. Hilbert asked if there were any questions or comments on the Quality measures as presented by Mr. Rivenbark.

Mr. Eckstein asked if the readmission rates for the top 10 causes of readmissions and the mortality rates for the top 10 causes of mortality (slide 11) would change overtime and noted that if the top 10 causes change annually, the data cannot be tracked longitudinally. Mr. Eckstein suggested that the States "lock" some of the top 10 causes so that they can monitor Ballad Health's progress longitudinally.

Dr. Runnels noted that Ballad Health does not normally separate many of these measures by payer type and was surprised by the number of measures that listed "payer type" as a data stratification because this was not discussed by the Metrics Workgroup. Additionally, Dr. Runnels noted that for some measures reporting by payer type might be difficult.

Mr. Rivenbark confirmed that data stratification by payer type had not yet been discussed by the Metrics Workgroup.

Dr. Runnels stated that Ballad Health cannot commit to reporting all of the measures by payer type at this time. Mr. Hilbert acknowledged Dr. Runnels' concerns and stated that VDH would follow up with Ballad Health to discuss which measures could be reported by payer type.

Mr. Eckstein suggested that the States and Ballad consider pulling out certain aggregate payer types – for example, Medicaid and Non-Medicaid payers.

Mr. Hilbert asked if there were any additional comments or questions pertaining to the Quality-Patient Safety (slides 9 & 10), Quality-Mortality and Readmissions (slide 11), Quality-Patient Satisfaction (slide 12), Quality-Timely and Effective Care (slide 13), Rural Quality-Inpatient (slide 14), Rural Quality-Outpatient Patient Satisfaction (slide 15), Rural Quality-Outpatient Prevention (slide 16) and COPA/CA Financial and Operational Quarterly Updates (slide 17).

Hearing none, Mr. Hilbert asked the TAP what level of data should be displayed publically. Mr. Eckstein suggested that the states group smaller facilities together to increase the sample size "n" and to reduce random variation "noise." Mr. Rivenbark agreed that the smaller hospitals could be grouped together to eliminate noise.

Mr. Eckstein noted that the perceptual questions (e.g. patient satisfaction measures) would be difficult, especially in the smaller facilities. One or two bad surveys could "spike" the data. Dr. Runnels agreed with Mr. Eckstein, and noted that one event can really skew the data when the "n" is small.

Mr. Rivenbark suggested that Ballad report the data to the States by facility but that the States would present the data in aggregate.

Mr. Eckstein noted that "n" could also be increased by looking at a longer period of time – increasing the number of data points from one facility. However, Mr. Eckstein recommended that the States group smaller facilities together to increase "n." Dr. Runnels supported Mr. Eckstein's recommendation.

Mr. Hilbert asked if there were any additional questions or comments about the Quarterly (Quality) Measures as presented.

Vote – Quality – Patient Safety Measures

Hearing none, Mr. Hilbert asked the TAP members for a motion to adopt the proposed Quality-Patient Safety Measures (slides 9 & 10). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Dr. Runnels reiterated, for the record, that Ballad Health could not commit to reporting all of the measures by payer type at this time and noted that Ballad Health is still using two different Electronic Medical Record (EMR) systems, further complicating reporting each measure by payer type.

Mr. Hilbert asked if there were any additional comments on the motion to adopt the proposed Quality-Patient Safety Measures (slides 9 & 10). Hearing none, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Quality – Mortality and Readmissions Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Quality-Mortality and Readmissions Measures (slide 11). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Mr. Eckstein reiterated his suggestion that the States "lock" some of the top 10 causes of mortality and readmissions so that they can monitor Ballad Health's progress longitudinally.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Quality – Patient Satisfaction

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Quality-Patient Satisfaction Measures (slide 12). Mr. Eckstein motioned and Dr. Runnels seconded. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Mr. Eckstein suggested that smaller hospitals be grouped together to increase sample size for these measures.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Quality – Timely and Effective Care

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Quality – Timely and Effective Care Measures (slide 13). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Rural Quality – Inpatient Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Rural Quality – Inpatient Measures (slide 14). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Ms. Milder asked for the definition of the Metric titled "Falls Risk Assessment or Falls with Injury (NQF 0202)." Mr. Rivenbark noted that the Metrics Workgroup was still discussing the definition of some measures.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Rural Quality – Outpatient Patient Satisfaction Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Rural Quality – Outpatient Satisfaction Measures (slide 15). Mr. Eckstein motioned and Dr. Runnels seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Ms. Krutak raised concerns about the stability of the Clinical and Group Survey Consumer Assessment of Healthcare Providers and Systems (CG-CAHPS) "In the last six months…" metrics and noted that the source of the data, Ballad Health's EMR, might create some noise because Ballad Health is still on two separate EMRs.

Ms. Krutak asked if the Metrics Workgroup had discussions about Ballad Health's EMRs. Mr. Rivenbark stated that the Metrics Workgroup did discuss Ballad Health's EMRs. Dr. Runnels noted that it might be difficult to pull data from the past six months for facilities that will be transitioning to EPIC.

Mr. Eckstein suggested that the States display access measures alongside Press Ganey's perception measures to show perception vs. reality. Ms. Krutak and Mr. Runnels agreed that showing perception vs. reality was a good idea.

Ms. Milder asked why the metrics about providers listening carefully and explaining things in a way that was easy to understand were selected for *Rural* Quality. Mr. Eckstein noted that most of the facilities in Virginia were rural facilities.

Mr. Hunnicutt asked if Ballad Health tracked return rates of Press Ganey surveys and noted that usually only patients who have a very negative experience or very positive experience complete and return Press Ganey surveys. Mr. Hunnicutt also asked if any other sources had been considered for the patient satisfaction measures.

Dr. Runnels stated that Ballad Health does track return rates and that the rate varies across facilities. Dr. Runnels also noted that while return rates are low, this is an issue for hospitals across the country, and it is the source Ballad Health utilizes for HCAPS.

Mr. Eckstein asked if Ballad had any initiatives to increase Press Ganey returns. Dr. Runnels stated that Ballad does look into initiatives to increase returns and that Ballad wants more feedback from patients.

Dr. Runnels asked if the data source should explicitly say "Press Ganey" and noted that the data source could change. Mr. Hilbert stated that VDH would consider changing the data source if a better source becomes available.

Mr. Eckstein noted that the third Rural Quality – Outpatient Patient Satisfaction Measure (Slide 15) was identical to the fifth measure. Mr. Hilbert stated that the fifth measure would be removed.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

<u>Rural Quality: Outpatient Prevention</u>

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Rural Quality – Outpatient Prevention Measures (slide 16). Ms. Milder motioned and Mr. Eckstein seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

COPA/CA Financial and Operational Quarterly Updates

Mr. Hilbert asked the TAP members for a motion to adopt the COPA/CA Financial and Operational Quarterly Updates (slide 17). Mr. Eckstein motioned and Ms. Krutak seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Ms. Krutak acknowledged that Ballad Health currently updates the states on these items quarterly.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

10-Minute Break

Presentation of Proposed Access Measures

Mr. Rivenbark began presenting the Proposed Access Measures to the TAP. Mr. Rivenbark's PowerPoint presentation noted the following:

- Ballad is required to report various metrics to the States that measure timely access to quality healthcare services
- Ballad has committed to submit an evaluation plan to the States in the event that the closure of a non-Ballad facility has an adverse effect on geographic access to emergency and urgent care services
- Brenden noted the following changes to the Access measures:
    - SBIRT administration in Emergency Departments and Outpatient Facilities
    - Geographic Access to primary care and specialty care

Dr. Runnels commented on how difficult it is to find doctors who are willing to work in rural areas and noted that this often leads to doctors with low patient volumes earning high salaries. Low patient volume is a quality of care concern for Ballad.

Dr. Runnels stated that Ballad does not consider "population-weighted percentage of residents across all census blocks that reside within 30 miles of a specialty care clinic" and "population-weighted percentage of residents across all census blocks that reside within 20 miles of a primary care clinic" to be value-added measures. Dr. Runnels contended that Ballad would prefer to measure time to third appointment.

Mr. Beatty asked why the States wanted to measure the "population-weighted percentage of residents across all census blocks that reside within 30 miles of a specialty care clinic" and the "population-weighted percentage of residents across all census blocks that reside within 20 miles of a primary care clinic."

Ms. Milder commented that, the percentage of residents within a certain distance, in contrast to time to the third available appointment, gets at social determinants of health – "it's looking at can you get to a clinic."

Dr. Runnels contended that the measure is inaccurate because proximity to a clinic does not mean access. Dr. Runnels explained that a Medicaid patient may live one mile from a clinic, but that clinic may not be accepting Medicaid patients and reiterated that time to third appointment would be a better measure of access to care.

Ms. Krutak pointed out this measure would be difficult to track as clinics open and close frequently in the region and noted that it is Ballads understanding that these measures were for all clinics, not just Ballad Health clinics.

Mr. Hilbert asked if there were any additional comments on the Proposed Access Measures.

Mr. Eckstein cautioned against utilizing zip code of residence because zip codes can often mask problem areas.

Vote: Proposed Access Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Access Measures (slides 20, 21, and 22). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Ms. Milder noted that for some of the measures the data source listed is "Ballad EMR." Thus, these measures are only looking at Ballad's patients, not the larger population. Ms. Milder contended that, where available, population data would be better.

Dr. Runnels reiterated, for the record, that Ballad does not consider "population-weighted percentage of residents across all census blocks that reside within 30 miles of a specialty care clinic" and "population-weighted percentage of residents across all census blocks that reside within 20 miles of a primary care clinic" to be value-added measures. Dr. Runnels contended that Ballad would prefer to measure time to third appointment.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Presentation of Proposed Population Health Measures

Mr. Rivenbark began presenting the Proposed Population Health Measures to the TAP. Mr. Rivenbark's PowerPoint presentation noted the following:

- On June 18, 2019, Ballad Health submitted their STRONG Children and Families Population Health Plan to the States

- The Metrics Workgroup reviewed the Plan, Ballad's proposed population health outcome measures, and Ballad's proposed impact measures to develop a "line of sight" connecting Plan strategies and activities to outcome and impact measures

- Ballad Health's STRONG Children and Families Population Health Plan included the following strategies:

    - Increase Birth Outcomes and STRONG Starts

    - Increase Educational Readiness and Performance

    - Increase Healthy Behaviors in Children, Youth, and their Support Systems to Improve Health and Strengthen Economic Vitality

    - Change Social Norms to Support Parents, Families, and the Community

        - Develop population health infrastructure within the health system and community

        - Position Ballad Health as a community health improvement organization

        - Enable community resources and sound health policy

Mr. Hilbert asked if there were any questions or comments for Mr. Rivenbark at this time. Hearing none, Mr. Rivenbark read aloud the Proposed Output Measures: Increase Birth Outcomes & Strong Starts (slides 26 and 27), Proposed Output Measures: Increase Educational Readiness and Performance (slide 28), Proposed Output Measures: Increase Healthy Behaviors in Children, Youth, and their Support Systems to Improve Health and Strengthen Economic Vitality (slide 29), Proposed Output Measures: Change Social Norms to Support Parents, Families, and the Community (slides 30 and 31), Proposed Outcome Measures (slide 32), and Proposed Impact Measures (slide 33).

Discussion of Proposed Population Health Measures

Mr. Hilbert asked the TAP members if they had any questions or comments for Mr. Rivenbark.

Ms. Milder asked why so many measures were numbers instead of percentages or rates. Mr. Rivenbark explained that the Metrics Workgroup found that some measures did not have a reasonable denominator at this time. Mr. Eckstein stated that it is important to establish rate-based measures early, so that the States can identify areas of success and areas for improvement.

Mr. Eckstein asked why the proposed output metric for "Increase prenatal programs/supports across facilities" is "Number of prenatal programs/supports provided by behavioral health facilities" (slide 27). Specifically, Mr. Eckstein wanted clarification as to why the metric was limited to behavioral health facilities.

Mr. Rivenbark asked if Mr. Norris had an explanation. Mr. Norris was unsure but suggested a different output measure might capture the number of prenatal programs/supports provided across facilities.

Mr. Hilbert stated that VDH would take a closer look at that metric.

Mr. Rivenbark noted that there is considerable overlap between these metrics and the behavioral health plan metrics.

Mr. Eckstein recommended that the activity "Expand maternal MAT and other recovery programs" (slide 26) be modified to include "best-practice programs."

Mr. Hunnicutt asked what a business-health collaborative is. Mr. Norris explained that participating businesses in the region come together to collaboratively work on strategies to improve the health status of the region.

Mr. Runnels asked if the Metrics Workgroup had discussions around the baseline year. Mr. Rivenbark stated that the baseline year would be pre-merger when available. Mr. Runnels commented that Ballad Health would like for all the baselines to be pre-merger.

Mr. Eckstein noted that Ballad's STRONG initiative is centered around reducing ACEs and asked if there was a program to monitor/measure ACEs in the community. Additionally, Mr. Eckstein noted that some ACEs, including inter-partner violence, are not included although they seem relevant to Ballad Health's initiative.

<u>Vote: Proposed Output Measures – Increase Birth Outcomes and STRONG Starts</u>

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Output Measures – Increase Birth Outcomes and STRONG Starts (slides 26 and 27). Ms. Krutak motioned and Mr. Eckstein seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Mr. Eckstein commented that many of these metrics need denominators.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

<u>Vote: Proposed Output Measures – Increase Educational Readiness and Performance</u>

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Output Measures – Increase Educational Readiness and Performance (slide 28). Mr. Eckstein motioned and Dr. Runnels seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Mr. Eckstein reiterated his comment that many of these metrics need denominators.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Proposed Output Measures – Increase Health Behaviors in Children, Youth, and their Support Systems to Improve Health and Strengthen Economic Vitality

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Output Measures – Increase Health Behaviors in Children, Youth, and their Support Systems to Improve Health and Strengthen Economic Vitality (slide 29).

Ms. Milder motioned and Mr. Eckstein seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Proposed Output Measures – Change Social Norms to Support Parents, Families, and the Community

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Output Measures – Change Social Norms to Support Parents, Families, and the Community (slides 30 and 31). Mr. Eckstein motioned and Dr. Runnels seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Ms. Milder asked how the number of sites on EPIC was a measure of changing social norms and suggested that the measure be modified so that it is clear how it relates to the goal.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Proposed Outcome Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Outcome Measures (slide 32). Mr. Eckstein motioned and Dr. Runnels seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Vote: Proposed Impact Measures

Mr. Hilbert asked the TAP members for a motion to adopt the proposed Impact Measures (slide 33). Mr. Eckstein motioned and Ms. Milder seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Mr. Eckstein recommended that ACEs be added as an impact measure.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Lunch

Public Comment Period

Mr. Hilbert announced that the TAP members would now hear public comment. Mr. Hilbert asked if there were any members of the public in attendance who would like to comment. Hearing none, the public comment period ended.

Presentation of Reporting Structure/ Timeline

Mr. Rivenbark guided the members of the TAP through the Proposed Annual Performance Review and Data Submission Timeline.

Dr. Runnels noted that Ballad Health is generally supportive of the timeline and that there were ongoing conversations between VDH and Ballad Health regarding when the quarterly meetings would occur.

Vote: Reporting Structure/Timeline

Mr. Hilbert asked the TAP members for a motion to adopt the Proposed Annual Performance Review and Data Submission Timeline. Dr. Runnels motioned and Mr. Eckstein seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Presentation of Proposed Quarterly Update Templates

Mr. Rivenbark guided the TAP through the Proposed Quarterly Update Templates.

Mr. Hilbert asked the TAP members if they had any question or comments about the Proposed Quarterly Update Templates. Mr. Eckstein noted that there might be a way to streamline the templates.

Mr. Rivenbark suggested that the templates could be restructured so that there is a section for measures that Ballad is achieving and a separate section for measures that Ballad is behind on.

Ms. Krutak noted that there is still discussion around the data submission format and that Ballad Health may prefer to continue using their performance management system.

Vote: Proposed Quarterly Update Templates

Mr. Hilbert asked the TAP members for a motion to adopt the Proposed Annual Performance Review and Data Submission Timeline. Dr. Runnels motioned and Mr. Eckstein seconded the motion. Mr. Hilbert asked the TAP members if there was any discussion of the motion.

Hearing no additional comments, Mr. Hilbert called for a vote by show of hands on the motion. The motion was approved unanimously.

Next Steps

Mr. Hilbert stated that in the next few weeks VDH would prepare a draft report which reflects the discussion and actions taken by the TAP. Mr. Hilbert noted that VDH would provide a copy of the draft report to each member of the TAP for their review and comment prior to submitting it to the Commissioner by the end of December. Mr. Hilbert reminded the TAP that their recommendations will help inform, but will not necessarily dictate, the Commissioner's final decision concerning any changes to the current set of measures.

Dr. Runnels thanked Joe for facilitating the meeting.

Mr. Eckstein thanked Mr. Rivenbark and the team members who put the proposed measures together and noted that a lot of progress had been made in the past year or two.

Mr. Bodin asked Mr. Hilbert if he would like the group to meet in April 2020 or November 2020. Mr. Hilbert stated that the group would meet again in November 2020.

Adjourn

The meeting Adjourned at approximately 2:15 p.m.

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303 Med Tech Parkway
Johnson City, TN 37604
balladhealth.org

March 25, 2020

The Honorable Norman Oliver, MD, MA
State Health Commissioner
Virginia Department of Health
109 Governor Street
Richmond, VA 23219

The Honorable Lisa Piercey, MD, MBA, FAAP
Commissioner
Tennessee Department of Health
710 James Robertson Parkway
Nashville, TN 37243

Re: Notification of Force Majeure Event resulting in a Material Adverse Event

Dear Commissioners:

We are writing pursuant to the Tennessee Terms of Certification ("TOC") and the Virginia Cooperative Agreement ("CA") to provide notice under Article 1 of the TOC related to occurrence of a Force Majeure Event and a resulting Material Adverse Event; and under condition 17 of the CA relating to the occurrence of a Material Adverse Event.

The COVID-19 Pandemic has become an all-encompassing event in terms of human capital and financial impact, and certainly Ballad Health is no exception. The effects of the Pandemic are well-documented, and Ballad Health has already experienced significant adverse effects as a result of the Pandemic, which effects are expected to be ongoing. Ballad believes this Pandemic qualifies as a material adverse event, under both the TOC and the CA. We, in our capacities as the Chief Executive Officer and Chief Financial Officer of Ballad, respectively, certify that the foregoing notice is true and correct in all material aspects to the best of our knowledge after due inquiry.

The manifestation of issues related to the Pandemic implicates Section 8.02 of the TOC and Condition 49 of the CA.

Thank you for what you and your departments are doing to help our respective states respond to the Pandemic. Extraordinary circumstances such as those you are facing are a burden few people can understand. To say we are grateful for your leadership would be an understatement. We are blessed both of you are in the positions you are in at this time in history. We look forward to doing all we can collectively do to get through this current challenge, and to engaging with you at the appropriate time to discuss the implications of this event and its implications for the TOC and CA.

God Bless you both.

Sincerely,

Alan Levine
Chairman & CEO

Lynn Krutak
Chief Financial Officer

cc: Herbert H. Slatery III
Tennessee Attorney General

Janet M. Kleinfelter
Deputy Attorney General

Jeff Ockerman, Director, Division of Health Planning
Tennessee Department of Health

Erik Bodin, Director, Office of Licensure and Certification
Virginia Department of Health

Allyson Tysinger
Virginia Senior Assistant Attorney General

Dennis Barry
Southwest Virginia Health Authority

Larry Fitzgerald
Tennessee COPA Monitor

Kevin Meyer
COPA Analyst, Virginia Department of Health

Tim Belisle
EVP & General Counsel, Ballad Health

Karen Guske
SVP Ballad Health, COPA Compliance Officer

Richard Cowart
Baker Donelson

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303 Med Tech Parkway
Johnson City, TN 37604
balladhealth.org

April 3, 2020

The Honorable Norman Oliver, MD, MA
State Health Commissioner
Virginia Department of Health
109 Governor Street
Richmond, VA 23219

Re: Request for Suspension related to the COVID-19 Pandemic

Dear Commissioner Oliver:

As you are well aware, the 2020 COVID-19 Pandemic (the "Pandemic") is unprecedented in scope and scale. The Pandemic is having an immediate impact on the delivery of health services and the financial viability of health care providers, and Ballad Health ("Ballad") is no exception. Each of President Trump, Governor Lee of Tennessee, and Governor Northam of Virginia has issued an Executive Order waiving or suspending various health care regulatory requirements during the period of the public emergency.

On April 2, 2020, the Virginia Department of Health (the "Department") granted Ballad a temporary waiver of Condition 27 of Virginia's Order and Letter Authorizing a Cooperative Agreement ("CA") to allow Ballad to respond to the Pandemic. Based upon these extraordinary circumstances as of the date hereof, Ballad would like to request temporary suspension of the following Conditions of the CA during the period of the public emergency and a reasonable recovery period thereafter:

1. Terms of Certification. Ballad hereby requests that the following provisions of Article V of the Terms of Certification, as incorporated by Condition 5 of the CA, be suspended during the period of public emergency and a reasonable recovery period thereafter: Section 5.04, Section 5.05(e), and Section 5.06; provided, however, that Section 5.06 shall only be suspended for the purposes of obtaining necessary supplies to deal with the public emergency. In addition, Ballad requests that the requirements of Addendum 1 of the Terms of Certification, as incorporated by Condition 5 of the CA, would be suspended during the period of public emergency and a reasonable recovery period thereafter only to the extent that payors agree to voluntarily prepay or otherwise financially support Ballad's public emergency relief efforts.

2. Financial Investments and Related Commitments. Ballad further requests that the following conditions and the plans set forth thereunder be suspended during the period of public emergency and a reasonable recovery period thereafter: Condition 8 (HIE), Condition 11, Condition 19 (Pay Equalization), Conditions 23, 24, and 25 (Health Research and Graduate Medical Education Spending), Condition 33 (Rural Health Services Plan), Condition 34 (Behavioral Health Services Plan), Condition 35 (Children's Health Services), and Condition 36 (Population Health Improvement Plan), and the requirements of Exhibit B to the TOC (as incorporated into the CA). In addition, Ballad seeks suspension of Condition 37 (Reimbursement of SVHA Costs) during the period of public emergency and a reasonable recovery period thereafter.

   In order to continue the provision of health services during the Pandemic, Ballad, like many health systems, will need to sustain its liquidity by ceasing all spending that is not immediately necessary and

increase its line of credit. The amounts and time frames for foregoing financial investments would be reestablished at the conclusion of the public emergency. At such time, Ballad Health would submit amended plans under such Conditions.

3. Payors, Managed Care, and Related Items. Ballad further requests that Condition 10 (Payors), Condition 11 (Value-based Payment) be suspended during the period of the public emergency and a reasonable recovery period thereafter.

4. Common Clinical IT Platform. Ballad further requests that Condition 26 (Common Clinical IT Platform) be suspended during the period of the public emergency and a reasonable recovery period thereafter.

5. Staffing and Physician Recruitment. Ballad further requests that the provisions of Condition 32 (Physician Needs Assessment) and any plans promulgated thereunder, be suspended for the period of the public emergency and a reasonable recovery period thereafter. During the Pandemic, Ballad will need flexibility to meet staffing needs. For example, Ballad may need to employ certain physicians to keep them in the market.

6. Quality Improvement and Reporting Requirements. Ballad further requests that the requirements of Condition 12 (Quality Improvement and Quality Reporting) be suspended for the period of the public emergency and a reasonable recovery period thereafter.

7. Termination of Employees. Ballad further requests that the requirements of Condition 20 (Severance Policy) and Condition 21 (Termination of Employees) be suspended for the period of the public emergency and a reasonable recovery period thereafter.

8. Financial Reporting. Ballad further requests that the requirements of Condition 40 (Financial Reporting) be suspended for the period of the public emergency and a reasonable recovery period thereafter.

9. Quantitative Measures. Ballad further requests that the quantitative measures set forth in that certain Letter from the Department of Health dated as of January 12, 2018 be suspended for the period of the public emergency and a reasonable recovery period thereafter. In addition, Ballad requests that the provisions of 12 VAC 5-221-100, 110, and 120 be suspended during the period of public emergency and a reasonable recovery period thereafter.

10. Material Adverse Event. As set forth in that certain Notification dated as of March 25, 2020, Ballad Health asserts that the Pandemic is a "Material Adverse Event", as described in Condition 17, and that Ballad is entitled to any and all of its rights and remedies in such an event.

Given the extraordinary circumstances and extreme operating conditions, Ballad hereby respectfully requests a prompt response to its request for the suspensions and further requests that such suspension be effective from and after March 1, 2020.

We appreciate your consideration of this request, and your partnership in providing relief during these uncertain and trying times. Please let us know if you need any additional information.

Sincerely,

Alan Levine
Executive Chairman and Chief Executive Officer

cc: Herbert H. Slatery III
Tennessee Attorney General

Janet M. Kleinfelter
Deputy Attorney General

Lisa Piercey, MD, Commissioner
Tennessee Department of Health

Jeff Ockerman, Director, Division of Health Planning
Tennessee Department of Health

Erik Bodin, Director, Office of Licensure and Certification
Virginia Department of Health

Dennis Barry
Southwest Virginia Health Authority

Allyson Tysinger
Senior Assistant Attorney General

Larry Fitzgerald
Tennessee COPA Monitor

Kevin Meyer
COPA Analyst, Virginia Department of Health

Tim Belisle
EVP & General Counsel, Ballad Health

Karen Guske
SVP Ballad Health, COPA Compliance Officer

Richard G. Cowart
Baker Donelson

COMMONWEALTH of VIRGINIA

Department of Health

M. Norman Oliver, MD, MA
State Health Commissioner

P O BOX 2448
RICHMOND, VA 23218

TTY 7-1-1 OR
1-800-828-1120

April 23, 2020

Mr. Alan Levine, Chairman & CEO
Ballad Health
303 Med Tech Parkway
Johnson City, Tennessee 37604

Re: Suspension of Cooperative Agreement Provisions in Response to Notice of Material Adverse Event

Dear Mr. Levine:

I am in receipt of your notice pursuant to Condition 17 of the Order and Letter Authorizing a Cooperative Agreement (the Order) of a Material Adverse Event due to the COVID-19 pandemic. Condition 17 of the Order defines a Material Adverse Event as "any fact, event, change, development or occurrence that, individually or together with any other event, change, development or occurrence, is or is reasonably likely to be, materially adverse to the business, condition (financial or otherwise), assets, operations or results of operations of the New Health System, taken as a whole, or on the ongoing ability of the New Health System to comply with any condition. 'Material Adverse Event' includes noncompliance with any condition of the cooperative agreement."

On March 12, 2020, Governor Ralph Northam issued Executive Order 51 (2020) declaring a state of emergency in the Commonwealth due to COVID-19, a disease of public health threat. In addition, Governor Northam declared that the anticipated effects of COVID-19 constitute a disaster under Virginia Code § 44-146.17. Accordingly, I find that the emergency created by the COVID-19 pandemic constitutes a "Material Adverse Event" under the Order.

Due to the COVID-19 emergency, you have requested suspension of several conditions of the Order. I have reviewed those requests under Condition 49, which authorizes me to amend, retain, or remove a condition upon evidence that a change in circumstances has materially affected Ballad's ability to meet a condition and that Ballad's inability is not affected by deficiencies in management. I find that temporary suspension of the following conditions, as further detailed below, is necessary in order for the benefits of the Cooperative Agreement to continue to outweigh the disadvantages:

- Condition 5: The following sections of the Managed Care Contracts and Pricing Limitations contained in Article V of the Tennessee Certificate of Public Advantage Terms of Certification may be temporarily suspended, as further detailed below:
    - Section 5.04
    - Section 5.05(e)
    - Section 5.06 solely for purposes of obtaining necessary supplies to deal with the public emergency
    - Addendum One solely to the extent that payors agree to voluntarily prepay or otherwise financially support Ballad's public emergency relief efforts.
- Conditions 8, 19, 23, 24, 25, 33, 34, 35, and 36: Spending in accordance with the plans submitted under each of these conditions, as well as actions required by those plans to be performed during the period of the emergency, may be temporarily suspended. Ballad shall submit updated plans and spending commitment schedules within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated. The total spending commitment required by each of these conditions is not amended and shall not be reduced. Additionally, requirements related to participation in the following programs are not suspended: Commonwealth's ConnectVirginia health information exchange, ConnectVirginia's Emergency Department Care Coordination Program and Immunization Registry, and Virginia's Prescription Monitoring Program.
- Condition 10: This condition may be temporarily suspended; however, Ballad is encouraged to attempt to negotiate a risk-based component during any contract negotiation during the duration of the suspension.
- Condition 11: Working with the Virginia Department of Medical Assistance Services (DMAS) to develop and implement value-based payment programs may be temporarily suspended.
- Condition 12: Required periodic data reporting and online posting may be temporarily suspended; Ballad will be required to submit, and post online, within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated.
- Condition 21: Compliance with the 60-day notice requirement contained in subsection B may be temporarily suspended as long as Ballad provides notice of any reduction action as set forth in subsection B 5 days in advance of implementing such action.
- Condition 22: Compliance with any career development programs may be temporarily suspended.

- Condition 26: The schedule to create a common IT platform within 48 months of closing (by 1 February 2022) is extended only to the point of accounting for any adverse impact to the schedule from the loss of IT contractors due to the pandemic.

- Condition 27: The Commissioner previously provided a temporary suspension of the following requirements until 30 days after expiration of the declared COVID-19 state of emergency:

  - provision of notice to the Commissioner 9 months in advance of a change in service lines or scope of services at an existing hospital;

  - submission of a plan detailing how essential services will continue to be provided

  - receiving approval of the plan by the Virginia Department of Health (VDH) prior to implementation.

- Condition 40: Provision of information regarding key financial metrics and the balance sheet comparing performance to the prior year may be temporarily suspended. Ballad shall submit the key financial metrics and the balance sheet comparing performance to the prior year within 90 days after the period of emergency declared in Executive Order 51 expires or is terminated.

- Condition 47: Participation in quarterly teleconferences with DMAS scheduled to occur during the period of the COVID-19 emergency may be temporarily suspended.

The temporary suspension of the conditions detailed above is effective for the period of the emergency declared by Executive Order 51 and a recovery period of 30 days after Executive Order 51 expires or is terminated, except where otherwise noted. Ballad may seek an extension of the recovery period, if necessary. Additionally, the temporary suspension of these conditions does not reduce or remove Ballad's obligations and commitments under the Order, including Ballad's spending commitments set forth in the conditions of the Order.

With respect to the quantitative measures required by 12 VAC 5-221-100, VDH will not establish any new quantitative measures; and the Technical Advisory Panel will not meet during the period of the COVID-19 emergency. Quarterly and annual reporting on the quantitative measures, beginning with the submission currently due on May 15, 2020, will be submitted at the first quarterly report that is scheduled at least 60 days following the expiration or termination of the emergency declared in Executive Order 51.

I am aware of the unprecedented scope and impact that the COVID-19 pandemic is having on our healthcare providers and their ability to provide effective delivery of services. I appreciate Ballad's preparation and responsiveness in planning for and dealing with this ongoing crisis.

If you have any questions, please contact Robert Payne, Director of the Office of Licensure and Certification at (804) 367-2109, or Robert.Payne@VDH.Virginia.gov. Thank you for your response to the community in this public health emergency.

Sincerely,

DocuSigned by:
M. Norman Oliver MD
E9885CE3DE124C6...

M. Norman Oliver, MD, MA
State Health Commissioner

cc: Allyson K. Tysinger, Senior Assistant Attorney General, Office of the Attorney General
Richard Cowart, Baker Donelson
Robert A. K. Payne, JD, Director, Office of Licensure and Certification
Erik Bodin, Director, Division of Certificate of Public Need
E. Sue Cantrell, MD, District Director, Lenowisco Health District
Jeff Ockerman, Director, Division of Health Planning, Tennessee Department of Health
Joe Hilbert, Deputy Commissioner, Governmental and Regulatory Affairs

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It's your story. We're listening.

Alan Levine
Chairman,
President and Chief Executive Officer

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balladhealth.org

September 18, 2020

The Honorable Norman Oliver, MD, MA
State Health Commissioner
Virginia Department of Health
109 Governor Street
Richmond, VA 23219

The Honorable Lisa Piercey, MD, MBA, FAAP
Commissioner
Tennessee Department of Health
710 James Robertson Parkway
Nashville, TN 37243

Re: Request for modification to the Health Research and Graduate Medical Education Plan

Dear Commissioners Oliver and Piercey:

Pursuant to Section 3.06(c) of the Terms of Certification ("TOC") and Condition 4 of the Virginia Order and Letter Authorizing a Cooperative Agreement ("CA"), Ballad Health ("Ballad') proposes to modify the previously approved Health Research and Graduate Medical Education ("HR/GME") Plan. Currently, notwithstanding the merits of certain programmatic spending, or the benefits contributory to furthering health or access to services for low income individuals in our region, spending by Ballad which is not specifically tied to a three-year plan is not credited toward the Ballad spending commitment. This presents obvious challenges as opportunities arise in the region for Ballad to support these initiatives which could not have been foreseen when the plans were drafted. The healthcare and community service marketplace is certainly fluid, and opportunities often arise which merit investment, and which help further larger goals of the States and Ballad – but which cannot be adequately or specifically planned for by Ballad over a three-year horizon, as Ballad does not have knowledge of many opportunities that will arise from within the communities beyond its own efforts in partnership with the community. There are many good ideas and thoughtful new initiatives which help achieve positive impact, but which also are not accommodated in the plans themselves. Consequently, it places Ballad in the position of having to restrict certain financial support for promising ideas simply because they are not in a plan. While these plans are important, they do not represent the full universe of opportunities to meet the goals important to all the parties.

Several examples have arisen, and one current such example is Ballad's desire to support a research program designed by Virginia Tech's Pamplin College of Business and the Appalachian School of Law to furnish legal services to Ballad low-income patients to assist those patients in addressing social determinants of health care. While certainly this spending could be attributed to several of the goals of the states and Ballad, the opportunity does not fit "squarely" within an existing plan (in other words, we believe the spending on this initiative furthers population health, rural health care, *and* research and academic goals, and an argument could be made for inclusion in any or all of the plans). The Terms of Certification and Letter Authorizing the Cooperative Agreement provide for Ballad to seek modification of the plans, should Ballad wish to do so. In this case, we are seeking a modification to the HR/GME plan, and we provide our reasoning herein.

Each state has an approved HR/GME Plan with four identical strategies or goals. Two of the primary strategies in the approved HR/GME Plan are for Ballad to (1) Support Health Research in the Region (Strategy 3 in the HR/GME Plan) and (2) to Support Education and Training in the region (Strategy 4 in

the HR/GME Plan). The attached addresses how this proposed project meets the Plan strategies and as such why the related spending should qualify as HR/GME Plan spend.

Ballad respectfully requests a prompt response to its request to modify the HR/GME Plan given the program is tied to the academic year and hence, prompt action is necessary for it to start, as hoped, in September. Separately, for visibility, pursuant to discussions with the monitors, Ballad is planning to propose an alternative process by which spending can be considered which may not be specifically foreseen within a plan, as we hope to determine if there is a more streamlined mechanism to be able to make these kind of decisions without requiring community organizations with worthy ideas to potentially wait for a protracted period for Ballad to modify the relevant plan and submit a modified plan for approval.

Please contact us if you have any questions regarding this matter.

Sincerely,

Alan Levine
Chairman, President and Chief Executive Officer
Ballad Health

Attachment

cc: Janet M. Kleinfelter
Deputy Attorney General

Jeff Ockerman
Tennessee Department of Health

Judi Knecht, Population Health Program Manager, TN Tennessee Department of Health

Erik Bodin, Director, Office of Licensure and Certification, VA Department of Health

Dennis Barry
Southwest Virginia Health Authority

Allyson Tysinger
Senior Assistant Attorney General

Larry Fitzgerald
Tennessee COPA Monitor

Kevin Meyer
COPA Analyst, Virginia Department of Health

Tim Belisle
EVP & General Counsel, Ballad Health

Karen Guske
SVP Ballad Health, COPA Compliance Officer

Claire C. Haltom
Baker Donelson

Attachment

Proposal to Amend Plan for Health Research and Graduate Medical Education (HR/GME) Spending

Pursuant to Section 3.06(c) of the Terms of Certification ("TOC") and Condition 4 of the Virginia Order and Letter Authorizing a Cooperative Agreement ("CA"), Ballad Health ("Ballad') proposes to modify the previously approved HR/GME Plan. Ballad wishes to support a research program designed by Virginia Tech's Pamplin College of Business and the Appalachian School of Law to furnish legal services to Ballad low-income patients to assist those patients in addressing social determinants of health care. Ballad wishes for this spending to apply toward the HR/GME Plan.

Why this Proposal and Action on It Is Necessary

This proposal will address why a modification to the existing plan is required, and why it is advantageous to patients and the region as a whole for the proposed program to go forward. It has been represented to Ballad there is presently no other funding available for this program, and without Ballad's financial support, this program will not proceed. Ballad is willing to offer its financial support in the amount of $2 million over the course of 5 years. We are hopeful the States agree this spending is relevant to the overall goals of the COPA and Letter Authorizing the Cooperative Agreement, so the program may proceed.

The healthcare and community service marketplace is quite fluid. While the development of three-year plans is a good starting place, the reality is it is not possible for a three-year plan to consider the entire universe of good ideas and thoughtful new approaches to serving the needs of a region the size of New Hampshire. The marketplace of good ideas cannot be centrally planned, and some of the best ideas are organically tied to the variety and depth of volunteer organizations, not-for-profits and even corporate initiatives Ballad has no visibility into when drafting a three-year plan. We believe the fact that Ballad is a potential source of funding of new ideas encourages organizations to bring us ideas which further overall goals, but which also may not have been considered when creating a three-year plan. That these ideas are not specified in a plan does not necessarily make them less worthy in terms of consideration for Ballad's spending commitment. In fact, if an idea adds value competitively with Ballad's initial plan, then it would be prudent to change our course, and invest in that idea. While we hope we can mutually agree with the states on a process for expediting this type of non-plan spending, the current Terms of Certification and Letter Authorizing the Cooperative Agreement specify that Ballad may seek modification of the plans themselves. We are doing that in this case.

This program is tied to the academic year and hence, prompt action is necessary for it to start, as hoped, this September.

Proposed Project

The Appalachian School of Law is a law school accredited by the American Bar Association since 2001. Its Dean is Elizabeth McClanahan, a retired Justice of the Supreme Court of Virginia. Consistent with the American Bar Association's increased emphasis on clinical training for law students and making them more "practice ready" when they graduate from law school, the Appalachian School of Law emphasizes clinical training. It also emphasizes social responsibility and every law student must perform 25 hours of community service each semester (temporarily suspended due to the COVID-19 pandemic). The School is located in Grundy, Virginia, *i.e.,* in Buchanan County.

Pursuant to its ideals and educational philosophy, the School has developed a clinical training program for second and third-year law students. The program will entail furnishing free legal services to persons (usually low-income patients or relatives of low-income patients) for legal assistance on issues such as: avoiding eviction; obtaining insurance coverage; food assistance; income supplements; outpatient drug payment assistance; requesting disability benefit payments or appealing the denial of such payments; and similar services. These are not social service functions. The law students will operate under the direct supervision of one or more licensed attorneys who are either on the faculty of the School, volunteer *pro bono*, or work for the Southwest Virginia Legal Aid Society or Legal Aid of East Tennessee. The activities undertaken by the law students and their supervising attorneys will be conducted pursuant to the applicable rules of the State Bar where the services are furnished. The services will be furnished to persons residing both in the State of Tennessee and the Commonwealth of Virginia. It is impossible to predict at the outset the breakdown of services between the two states, but the expectation is that a significant volume of services will be furnished to persons in both states. The program includes a law school class requiring text book and other readings, and the class syllabus with course goals is attached as Appendix A. Students successfully completing the MLP course will receive 3 credit hours and those who successfully complete a semester of service with the MLP internship will receive 2 credit hours that count toward the requirements for their law degrees. The students will work with physicians, nurses, hospital social workers, and other Ballad clinical staff. As part of this process, we expect that Ballad's clinicians will learn what legal assistance can do to improve health outcomes for low-income patients, especially in Ballad's service where the social determinants of health play such a major role.

The work that the students are expected to do in this course reflects legal work routinely handled by lawyers in legal aid clinics, and increasingly in health care settings. Indeed, there is a national organization, the National Center for Medical Legal Partnership, that encourages programs of this nature. https://medical-legalpartnership.org/. Its web site includes reports of what lawyers have done for patient/clients and include: fighting eviction; appealing adverse benefit determinations for housing and food assistance; and dealing with health insurers. This site also quotes a physician as saying "I can't imagine practicing medicine

without a lawyer" in the context of what lawyers have been able to do for her patients to improve their health outcomes. https://medical-legalpartnership.org/why-lawyers/. This program is very similar to a successful program that has been conducted by Children's Hospital of Richmond at Virginia Commonwealth University (VCU) in conjunction with the Legal Aid Justice Center and the University of Richmond School of Law. The Virginia Medical-Legal Partnership (MLP) began at the University of Virginia as a collaboration among the University of Virginia Children's Hospital, the University of Virginia School of Law, and the Legal Aid Justice Center (LAJC). MLP's are present across the state with programs associated with the Central Virginia Legal Aid Society, Legal Information Network for Cancer (LINC), and the VCU Massey Cancer Center. In addition, the LAJC Northern Virginia office collaborates with Legal Services of Northern Virginia and the InovaCares Clinic for Children in Falls Church. All four of these programs are focused on assisting patients and families with the various socioeconomic and legal issues that come from illness and hospitalization. In distinction to the other programs across Virginia, the Ballad Health-ASL MLP will contain education for law and business students in addition to the medical students and residents. Further, the research component is unique amongst the programs and will lead to an improved understanding of the rural population served.

Faculty members and business students from Virginia Tech's Pamplin College of Business will also participate in this program. They will devise metrics for measuring the impact of the program and then gather data to measure the effects, if any, of the program. The research aspects of the program will be developed and implemented by the faculty members from Virginia Tech's Pamplin College of Business and Ballad's Research leadership including the VP/Chief Academic Officer. The data collected on the program will be compiled in accordance with accepted research standards, and the results of the program will be presented in one or more articles suitable for publication and submitted for publication in one or more appropriate journals (which may be electronic).

How this Proposed Program Fits within the Objectives of the TOC and CA

As is true with much of Ballad's spending pursuant to the CA/TOC, the spending proposed in this instance fits within more than one area for which Ballad committed spending. The problems that Ballad hopes the proposed program will address are part of the social determinants for health care and could be characterized as population health spending. This spending can also be characterized as research spending. It can also be characterized as education spending. And certainly, it furthers access in rural communities, and likely could impact services for children. Thus, this spending could be applied to any one of the plans. From Ballad's perspective, this is a structural concern with the plans themselves, which we hope to work with the states to address in the next iteration of plan development.

Focusing on the social determinants of health care is work that Ballad has undertaken to do under the CA and COPA. There is empirical and anecdotal evidence that poverty, homelessness, poor diet, limited resources that prevent patients obtaining prescribed

medicines or other therapies, and stress correlate with poor outcomes, and ultimately higher health care costs from readmissions and avoidable complications. Addressing the social determinants of health care is the focus of Ballad's Strong Families initiative which will commence with the Strong Starts program. Ballad has elected not to characterize the spending on the proposed medical/legal partnership program as population health since its plans for that area will likely consume all of the funding allocated for population health. Under the current structure for how dollars are counted toward the plans, if it is determined that spending in a specific plan will hit the maximum, it is likely the spending will be discontinued beyond that amount for that specific plan. We do hope to address this in the next iteration of plan development in partnership with the states. This, in our opinion, is an unintended consequence of the structure created with the multiple plans and the silo effect of the spending. The reality is that much of the spending crosses multiple plans. Nonetheless, in this particular case, under the structure that exists today, we are required to choose which plan we wish to apply this spending toward.

The research that Ballad contemplates for its research spending is not principally bench research in laboratories. In addition to robust clinical trials, and translational research, Ballad will support research initiatives which are related to improving the human condition and which can be translatable to the market place or to the knowledge base for services. The translatable nature of learning related to social determinants of health care is an area of high interest nationally. Mitigating the negative consequences that adverse social determinants have on health care is a primary area of focus. Demographic characteristics of Ballad's service area make it a good "laboratory" for conducting this research since there are high rates of poverty, low levels of educational attainment, high levels of substance abuse, and other factors recognized as affecting the risk of developing health problems and affecting the probability of obtaining optimal outcomes in treating those health problems. Several examples of various types of research are ongoing in the region. For instance, Ballad Health's support was the necessary factor for the creation of the Center for Rural Health and Research at ETSU. Ballad's $15 million commitment was matched by the Legislature in Tennessee with $8 million (10-year calculation). The funding from Tennessee is recurring. Already, within one year, the federal government, through HRSA, has designated ETSU as a national rural health research center, alongside University of North Carolina, University of Kentucky, University of South Carolina, and other prominent schools – with ETSU being the only non-land grant institution included in the designation. This designation came with funding on top of the funds from Ballad and the State of Tennessee. The first such grant is tied to research related to addiction. Additionally, Ballad has funded the creation of the Strong Brain Institute/Center for Trauma Informed Care at ETSU. This center will create curriculum for degree programs, and conduct programs and research on mitigating the effects of Adverse Childhood Experiences (in this case, Ballad credits the funding toward the HR/GME plan, yet the benefit is for the care of children, and also impacts Behavioral Care – again crossing multiple plan boundaries and further revealing why we remain concerned about the silo effect of the funding related to the plans). Ballad is working with ETSU on the

development of a longitudinal study exploring the current state of expecting mothers in the region with an emphasis on mothers who are addicted, and children achieving kindergarten readiness. In addition, Ballad, ETSU, and Humana are partnering on a project related to perinatal care and telehealth to expand the reach of access across the region. Ballad is also engaged with Vanderbilt University on a study related to the impact of home care for those suffering post-stroke. In addition, there are numerous studies associated with the Level 1 Trauma Center focusing on the risk factors for trauma in the aged, and oncology centers across the region are focusing on improved and novel treatment regimens for pediatric and adult patients. As with many of the cross functional relationships with the plans, Ballad could not reasonably foresee the full universe of ideas such as the development of the medical/legal partnership program. This is simply the nature of the free market of ideas which cannot be centrally planned for.

As is true with many research ventures, opportunities arise on an ongoing basis to participate in innovation and translatable concepts. This may come in the way of new grant opportunities defined by federal or state governments, or problem areas which researchers or communities wish to study. In this case, Virginia Tech's Pamplin College of Business has been included in the project. There will be metrics for measuring outcomes, metrics developed in conjunction with Ballad's dedicated research staff and which are consistent with accepted research standards. It is expected that the results of the project will be prepared for publication and will be presented in accordance with accepted professional standards for such articles.

Finally, again, while this program crosses multiple plan boundaries, we choose to apply it to the HR/GME plan for the additional reason that this spending is justifiable solely as education spending. The law students who will participate in this program are enrolled in an accredited law school; the program is a formal education program with a syllabus, course objectives, required reading, evaluated performance, and experiences consistent with State Bar and American Bar Association standards for clinical training programs. Certainly, Ballad is committed to training physicians, nurses, aides, and all manner of allied health personnel. Indeed, initiatives to that end are included in the existing plan and considerable effort has been expended on expanding or initiating such programs including Dentistry, Nursing, Nurse Practitioners, Physicians, and Physician Assistants. The fact that many lawyers practice in settings having nothing to do with health care or patient care does not mean that no lawyers practice in health care settings. Indeed, the discussion above shows that there is a national organization for medical/legal partnerships and some physicians believe that access to legal assistance is essential for them to do their jobs.

Just because a profession is not solely dedicated to health care does not bar members of that profession from having a direct role in patient care. A good analogy is to clinical pastoral education for ministers, priests, rabbis, and other faith leaders. Religious leaders can serve in many settings having little or nothing to do with health care such as conducting worship

services and other rites or counseling in nonhealthcare settings. But when theological students are trained in a health care setting, Medicare treats the associated costs as "allowable" education cost if the program is "provider-operated." See http://cpsplittlerock.blogspot.com/2006/12/cms-regulations-relating-to-clinical.html. A key requirement for Medicare to allow educational costs is that the educational program must "enhance the quality of patient care at the provider." 42 C.F.R. 413.85(c)(2). If a minister in training can enhance patient care and be viewed as a legitimate health care education expense, then it necessarily follows that a law student directly involved with health professionals in trying to solve a patient's problems bearing directly on that patient's health must also be viewed as a legitimate health care education expense. (Ballad will not be able to quality for such cost reimbursement not because of the nature of this program but because Ballad is not the "operator" of the proposed program; the Appalachian School of Law is.). Further, Ballad would argue that exposing these law students to this type of practice would presumably enhance the number of lawyers who choose to dedicate some of their practice, or their time, to serving those with health care disparities.

In this instance, it is not necessary to parse the relative importance of the education and research components of the proposed program. Ballad's spending commitment combines research and education. Hence either characterization or both leads to the same conclusion—the costs are legitimate expenditures under the TOC/CA for research and education. Accordingly, Ballad requests the States to approve a revision to the Research/Education Spending Plan to include Ballad's expenditures in support of the proposed medical/legal partnership training program.

COMMONWEALTH of VIRGINIA

Department of Health

M. Norman Oliver, MD, MA
State Health Commissioner

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September 30, 2020

Mr. Alan Levine
Executive Chairman, President, and CEO
Ballad Health
303 Med Tech Parkway, Suite 300
Johnson City, Tennessee 37604

RE: Ballad Health Request to Modify Health Research and Graduate Medical Education Plan

Dear Mr. Levine:

Pursuant to Virginia Code § 15.2-5384(G), the Cooperative Agreement is entrusted to the State Health Commissioner (Commissioner) for active and continuing supervision to ensure compliance with Virginia Code § 15.2-5384.1, the Regulations Governing Cooperative Agreements (12VAC5-221-10 *et seq.*), and the October 30, 2017, Virginia Order and Letter Authorizing a Cooperative Agreement (Virginia Order).

I have reviewed your request to modify the current Health Research and Graduate Medical Education (HR/GME) Plan through the addition of a Medical Legal Partnership (MLP) program. The MLP is a combination academic, research, and service program designed by Virginia Tech's Pamplin College of Business (VT) and the Appalachian School of Law (ASL). The modification includes $2 million from Ballad Health in financial support for the program over 5 years.

I have reviewed your request and associated documentation. Additionally, I have considered the attached Staff Brief and Recommendation prepared by the Office of Licensure and Certification, which summarizes the public benefits of the program in support of the conditions of Virginia Order. The program will:

- increase access to healthcare for citizens with existing obstacles to access,
- increase access to programs addressing social determinants of health,
- support partnerships with two academic partners in Virginia, offering valuable new experiential learning opportunities, and
- provide research opportunities to gain insight into the success of MLP programs in increasing access to healthcare services and improving population health.

Following my review, and with consideration given to the applicable portions of the Virginia Order and record in this matter, I find that the proposed modification to the HR/GME plan and the associated spending commitment will provide benefit to the citizens of the Commonwealth of Virginia, including improved access to healthcare services for currently underserved populations. I, therefore, approve Ballad Health's request to add the MLP to the HR/GME plan; the $2 million in grant funding provided by Ballad Health in support of the program will be applied toward Ballad's plan spending commitments.

If you have any questions, please contact Erik O. Bodin, Director, Division of COPN/MCHIP/Cooperative Agreement at (804) 367-1889, Erik.Bodin@vdh.virginia.gov, or by mail at 9960 Mayland Drive Suite 401, Henrico, Virginia 23233.

Sincerely,

DocuSigned by:
M. Norman Oliver, MD
E9885CE3DE124C6...

M. Norman Oliver, MD, MA
State Health Commissioner

Enclosures

cc: The Hon Terry G. Kilgore, Delegate, Virginia General Assembly and Chair, SWVA
Allyson Tysinger, Senior Assistant Attorney General, Commonwealth of Virginia
Erik O. Bodin, Director, Division of COPN, MCHIP, and CA
Lisa Piercey, MD, MBA, FAAP, Commissioner, Tennessee Department of Health
Janet M. Kleinfelter, Deputy Attorney General, Tennessee Office of the Attorney General
Elizabeth Jones, Acting Director, Division of Health Planning, Tennessee Dept. of Health
Larry L. Fitzgerald, COPA Monitor