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COPA Monitor for Ballad Health
Annual Report

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Introduction and Background

A Certificate of Public Advantage (COPA) was approved by the Tennessee Department of Health (TDH) since it was the department's opinion that the benefits to the public outweighed disadvantages attributable to a reduction in competition that could result from the merger of Mountain States Health Alliance (MS) and Wellmont Health System (WM) into a new company named Ballad Health. With the issuance of the COPA, TDH and the Attorney General's Office became responsible for regulating and actively supervising Ballad Health to ensure the merger provided a public advantage. In effect, competition was replaced with regulation.

A Terms of Certification (TOC) document was developed and signed as part of the COPA process, which outlines the procedure for active supervision of Ballad Health by the state of Tennessee. One critical piece of active supervision is the computation of four Sub-Indices which, when combined, comprise the Index. The purpose of this Index is to objectively determine whether there is a continuing public advantage and to protect the interests of the public in the region by tracking progress in four categories: 1) Population Health; 2) Access to Health Services; 3) Economic; and 4) Other. The Index score is to be computed annually for at least 10 years with the first computation occurring at the end of the first full fiscal year as a merged system, which will be June 30, 2019. The merger occurred February 1, 2018, and for the first five months of the merger, which ended June 30, 2018, baseline information was established by Ballad Health and TDH. In subsequent years, an index score will be computed.

In addition to the objective evaluation system by which TDH will track the public advantage provided by Ballad Health, there are other elements of active supervision. The active supervision structure includes three distinct roles: 1) COPA Compliance Office; 2) Local Advisory Council; 3) COPA Monitor. The COPA Monitor reviews COPA Compliance Office complaints; conducts audits; reviews reports from the Compliance Office, Local Advisory Council, and Ballad Health; and makes recommendations to the Commissioner of Health, TDH, and the Attorney General. The TOC states among other things that the COPA Monitor will be responsible for evaluating the continued public advantage of the COPA and is required to write an annual report. The COPA Monitor's annual report will include without limitation the following: the Index score, updates on compliance with the COPA and the TOC, status of existing corrective actions, any recommended enforcement mechanisms, if necessary, any additional findings, and any other information requested by the Commissioner, TDH and the Attorney General.

Index Scores

Ballad Health has submitted to TDH its three-year Plans (Plans) for Behavioral Health, Children's Services, Rural Health, Health Research and Graduate Medical Education, Population Health, and Health Information Exchange. TDH has approved the plans for Behavioral Health, Children's Health and Population Health. Rural Health, Health Research and Graduate Education, and Health Information Exchange are in the final stages of review by TDH. The plans are written with a goal of Ballad Health achieving public advantage as measured by the Index. While the Plans do not require approval by the COPA Monitor, I am in agreement with that approval. The Plans for future years will require more detailed tactics as the standard for scoring becomes more exact and results-oriented.

The TOC requires that Ballad Health invest over 10 years \$308,000,000 in the areas of Access to Healthcare Services, Health Research and Graduate Medical Education, Population Health Improvement, and a Health Information Exchange. The commitment for the year ending June 30, 2019, is \$8,000,000. Primarily, as a result of the startup of this merged organization, it is likely that a part of the year one financial commitment will be delayed but be caught up within the first three years. If Ballad's annual spending in any of the commitment areas is short **by over 15%** of what was agreed to, it constitutes noncompliance with the TOC and may result in the TDH leveling a fine on Ballad Health that can be up to \$1,000,000. However, the COPA Monitor may recommend that due to extenuating circumstances, i.e. the appropriate and necessary focus on infrastructure merging, no fine should be assessed against Ballad Health.

Sub-index scores, except for the Economic sub-index, require the establishment of baseline performance, and scores are to a large extent dependent on maintaining or continually improving performance relative to the baseline performance. Ballad Health's baseline spending, the average amount that Ballad Health has spent in their commitment areas in the years preceding the merger, and most of the baselines for the sub-indices have been established.

The Population Health sub-index accounts for 50% of the total Index score. The Population Health score is built around the Tennessee Big Four health issues of tobacco use, obesity, physical inactivity, and substance abuse, which are all behaviors that directly influence the top 10 leading causes of death in Tennessee. A specific example of a measure to be scored is the percentage of adult smokers in the 21 county service area served by Ballad Health. The statewide average is 22.6%. To achieve a passing score on this one measure, over time Ballad Health will need to execute strategies to reduce the percentage of adult smokers in its service area. The baseline score for a number of the measures were not readily available, so the process of establishing all the baselines is still in progress. The first score will be for the year ending June 30, 2019.

The Access to Health Services sub-index score represents 30% of the total Index score. This sub-index will measure characteristics of the health delivery system, utilization of health services, and consumer satisfaction. The sub-index will answer the questions of: 1) is care available; 2) is the care being delivered at the right time and place; 3) are citizens satisfied with the availability of care. There are 28 measures that comprise the Access to Health Services sub-index. One of

the measures is Patient Satisfaction and Access Surveys and another is population within 10 miles of an urgent care center. The first score will be for the year ending June 30, 2019.

The Quality sub-index is comprised of measures to evaluate the quality of hospital and hospital-related care provided to citizens at three levels: 1) throughout Ballad Health's entire system; 2) throughout Ballad Health's Tennessee service area; 3) at the individual facility level. There are 16 target quality measures which will be used to compute the quality sub-index score and another 83 measures that will be tracked. An example of a target quality measure is surgical site infection rate. Baseline scores were computed for all 16 target quality measures. For the year ending June 30, 2019, the requirement is for Ballad Health to maintain performance on target quality measures, and for each subsequent year, the requirement is to improve performance on target quality measures over the baselines. The first score will be for the year ending June 30, 2019.

The economic sub-index consists of measures to verify a minimization of economic disadvantages resulting from a reduction in competition. The score for the Economic Index is a pass or fail score, and the first scoring period will be the year ending June 30, 2019.

If Ballad Health receives a passing economic sub-index score, the remaining three sub-Indices will be scored. If Ballad Health does not receive a passing economic sub-index score, the Tennessee of Department of Health will determine if the COPA should be continued. A score of 85 or more will be convincing evidence of public advantage. A score of 60 to below 85 indicates that public advantage is not clear and further review and study will be required to determine if the COPA should be modified. A score of less than 60 is convincing evidence that there has been no public advantage, and without compelling circumstances, the COPA would be revoked.

COPA Compliance Office

The COPA Compliance Office has established a process to receive and respond to all complaints related to the COPA. An AlertLine was established that may be called anonymously to register a complaint. The process for filing complaints has been added to the Ballad Health external website and includes a link to an email address for the COPA Compliance Office. All complaints are logged. The process for filing complaints has been communicated to all employees and is a part of new employee orientation. During the period of February 1, 2018, through June 30, 2018, no complaints were filed with the COPA Compliance Office.

The COPA Compliance Office in collaboration with the COPA Monitor has the responsibility to request waivers to the TOC by making a request to the TDH. In the reporting period, six waivers were filed. The TDH approved four, and two are pending. Five of the waivers were requested to permit Ballad Health to provide essential physician coverage at various hospitals. The remaining waiver request submitted (which was granted) was to consolidate Cardiovascular Catheterization Lab operations from the two Kingsport hospitals in order to improve quality of care and be more efficient.

The COPA Compliance Office is achieving the goals set forth in the TOC. The office has established appropriate processes for managing complaints and has prepared high quality reports as required by the TOC. The COPA Compliance Office works well with the COPA Monitor. I would like to see the COPA Compliance officer be better informed on the activities of Ballad Health to permit the officer to manage important issues prospectively rather than retrospectively.

Public Comments and Complaints

Subsequent to June 30, 2018, the COPA Monitor has received complaints related to hospital charges, termination of employees, consolidation of services, and the reduction in the level of care at the Neonatal Intensive Care Unit (NICU) at Holston Valley Medical Center and at the Trauma Centers at Bristol Regional Medical Center and Holston Valley Medical Center. The reduction in the level of care for the NICU and the Trauma Center at Bristol Regional Medical Center are under review by the TDH. The complaints received by the COPA Monitor were each reviewed and resolved without any changes to Ballad Health's operations being recommended.

The Local Advisory Council held its annual public hearing on February 7, 2019. At this meeting, concern was expressed about the proposed changes to the level of care offered at the NICU and the Trauma Centers at Holston Valley Medical Center and Bristol Regional Medical Center. The concerns are being carefully considered by the Commissioner. The Local Advisory Council has requested in its annual report that the COPA Monitor respond to six concerns. The concerns relate to hospital charges, human resource issues, and the reduction in the level of care at the Bristol Regional Medical Center trauma center. Each request is currently under review by the COPA Monitor.

Ballad Health Annual Report

The TOC requires Ballad Health to submit an annual report. The annual report for the five months ended June 30, 2018, was submitted, and it complied with the requirements of the TOC. It is a comprehensive report covering virtually all of the TOC requirements. The report provides a deep and fairly comprehensive view of quality, patient satisfaction, and financial performance. The report for the five months ending June 30, 2018, was not as complete as future annual reports are expected to be due to the startup work that was necessary and short time period covered.

The formation and operation of the Clinical Council is one of the most significant bodies formed for the success of this endeavor. Its membership consists of active clinicians from the 21 county service area, and its general focus is on quality and efficiency. The council has the potential to positively impact quality of care throughout the service area and be a key voice in a communication strategy. The COPA Monitor attended one meeting of the clinical council and plans to continue to attend one meeting annually.

The Annual report includes a comprehensive section on the 16 target-quality indicators and the 83 quality-monitoring indicators. For the 16 target indicators, Ballad Health is above the baseline

for 80% of them. This data is also on the Ballad Health website. There is transparency of the quality indicators.

The Annual Report includes a complete report on the Accountable Care Community that Ballad Health has organized. Ballad Health will fund and take a lead role in the governance of this multi-stakeholder Accountable Care Community which will serve as an integrator of multiple efforts across the region and organize around the pursuit of a limited number of complex population health challenges, such as third-grade reading improvement, reduction in teen pregnancy, tobacco use, etc. Much like the Clinical Council, it has the potential to impact in a strong and sustaining manner the health status in the community, and by so doing, the public advantage.

Financial statements for the 12 months ending June 30, 2018, are included in the Annual Report. There is a comparison of selected Ballad Health statistics to Fitch, Standard and Poors, and to Moody's median statistics for comparable hospitals. It should be noted that in FY18, Ballad Health incurred significant one-time merger costs, and a major focus of management was integration.

Local Advisory Council

The Local Advisory Council (LAC) is one of the three parts of the active supervision structure required by the TOC. It has three primary duties: 1) recommend to TDH how funds in the Population Health Initiatives Fund should be invested; 2) host an annual public hearing to allow a formal process for the public to comment on Ballad Health's Annual Report and the ongoing performance of Ballad Health; 3) publish the Local Advisory Council Annual Report on community feedback. It has performed all of its functions, and no money was required to be deposited in the Population Health Initiatives Fund for the period ended June 30, 2018. Since February 1, 2018, the LAC has met three times and additionally held one meeting where the public was invited to address the LAC. The public meeting was well attended by 300 - 400 citizens with over 36 speakers. The LAC also received almost 200 written comments. Citizens expressed concerns about the impact on access to care from the reduction in level of care offered at the Trauma Center at Holston Valley Medical Center, (the consolidation of Level I Trauma Centers was preapproved in the TOC), and the proposed reduction in the level of care at the Bristol Regional Medical Center Trauma Center from a Level II to a Level III; and, the consolidation of Holston Valley Medical Center NICU with Johnson City Medical Center NICU. The overwhelming community response was in opposition to the proposed changes although some did speak outside of the hearing in support of the proposed changes.

A second theme expressed by the citizens was the need for improved communications between Ballad Health and the community. Some of the opposition to the proposed trauma center and NICU changes would have been averted had Ballad Health employed an effective and timely process for obtaining community input.

Addendum 1

The public would be significantly disadvantaged if Ballad Health were able to use its monopolistic power to leverage price increases in excess of what it would normally be able to negotiate from non-governmental payers and thus increase the cost of healthcare in the service area. This concern—the ability to increase the cost of healthcare as a result of a reduction in competition—is perhaps the most significant concern in determining public disadvantage. To guard against this possibility, the TOC includes Addendum I, a section designed to restrict the amount of price increases Ballad Health can negotiate from non-governmental payers. Due to the complexity in hospital payments, controlling price increases is difficult, especially for outpatient payments and for commercial payers who have small market share and lack a history of payments to Ballad Health. Addendum 1 currently requires a retrospective review of prices increases and requires that refunds be made by Ballad Health if it is determined retrospectively that the prices increases they have received are in excess of the maximum price increase allowed. Because it will require a significant amount of time and resources to conduct Addendum I's retrospective review to ensure Ballad Health's compliance, I am recommending that TDH continue to review and assess the application of Addendum I, and modify it if necessary, in order to achieve the following goals:

- Provide a high degree of certainty that Ballad Health has not negotiated prices above the cap currently in Addendum 1;
- Provide the assurance of acceptable price increases such that it represents real-time active supervision; and
- Provide a method that does not require significant time and resources to administer.

Other COPA Monitor Activities

The Copa Monitor was appointed as of June 1, 2018. I have focused on forming mutually respectful, professional relationships with Ballad Health leadership, TDH, Attorney General's office, other consultants, political delegation, and representatives in Virginia. I have made an on-site visit to Ballad Health's corporate office 2 to 3 days of every month except December. I have toured the major facilities owned by Ballad Health. I have focused on specific topics such as the percentage of employed doctors, charity care, capital, NICU, Trauma, baseline spending and revenue offset, and plans Ballad Health wrote for TDH approval.

The TOC standard for capital investment is that Ballad Health shall maintain plant, equipment, and technology at a level consistent with industry norms for similarly-sized systems. The standard is subjective, but based on my experience, I believed strongly that the three year capital budget investment plan did not meet the TOC standard. After extensive discussion and analysis, Ballad Health has increased their three year capital budget to an amount I believe meets the TOC standard.

The TOC requires that in order to prevent low income patients who are uninsured from being adversely impacted from the merger, Ballad Health will adopt a charity care policy that is

identical to, or more charitable than, the legacy charity care policies, and to be consistent with the Internal Revenue Service’s 501 (r) rule. Ballard Health has adopted policies consistent with the TOC requirements.

The TOC requires that annual charity care be disclosed in the Ballard Health Annual Report, and the amount reported was \$80,011,773. It also requires that Ballard Health provide charity care greater in each subsequent year. The COPA Monitor can waive this requirement due to extenuating circumstances. The base year was the twelve months ending June 30, 2017, and the first year to be measured against the base year is the year ending June 30, 2019. Effective January 1, 2019, the state of Virginia expanded its Medicaid program to include individuals over 18 and below 65 who do not have income in excess of the state’s standard to qualify for Medicaid coverage. Because Virginia expanded its Medicaid Program, it is likely the Ballard Health charity care will drop for the year ending June 30, 2019.

I met with the leadership responsible for the development of the Ballard Health revenue cycle function to review their processes for qualifying citizens for charity care under their policies. Based on my on-site review, I concluded that the operational processes followed by Ballard Health are appropriate and consistent with processes followed by other hospitals with similar commitments to charity care. I have not received complaints regarding Ballard Health violating its charity care policies.

When the COPA was issued and the TOC written, it was determined that to help ensure public advantage, Ballard Health was required to invest incremental dollars over ten years as follows:

Expanded Access to Healthcare Services	\$140,000,000
Health Research and Graduate Medical Education	\$ 85,000,000
Population Health Improvement	\$ 75,000,000
Region-wide Health Information Exchange	<u>\$ 8,000,000</u>
Total	\$308,000,000

To ensure investments are above the amounts historically-invested, Ballard Health computed baseline spending amounts in all the categories above. These baseline spending amounts were approved by the department and the COPA Monitor will determine the amount that is actually invested each year. The first year will be the twelve months ending June 30, 2019. The development of plans in each of these areas and making the investments detailed in the plans are both essential to ensure public advantage.

A proposal has been submitted to the TDH requesting approval to downgrade the level of care for the Neonatal Intensive Care Unit at Holston Valley Medical Center and the consolidation of these services at Johnson City Medical Center in their Niswonger Children’s Hospital. Johnson City Medical Center has been designated by the state as a regional perinatal center. The plan contemplates leveraging the Niswonger Children’s Hospital consolidated resources to provide coordinated, efficient care to babies born at any Ballard Health facility. The plan was developed by a multidisciplinary group of Ballard Health professionals to evaluate the quality and safety of newborn care provided at all facilities and to recommend a model that would improve

coordination of care and efficiencies across the service area. The COPA Monitor has reviewed all the submitted materials, held meetings with management to gather more information, and attended the public meeting. The COPA Monitor made a recommendation regarding Ballad Health's proposed plan to TDH, which will be considered with recommendations from other parties. There are some community members in the region who have expressed dissatisfaction with the Ballad Health proposal. The TDH decision is pending.

Summary

The COPA Monitor annual report covers the first reporting period which ended June 30, 2018. However, most of the topics in the report are from activities after that time period. Ballad Health was granted an effective monopoly of acute care in inpatient beds the region, and instead of being controlled by competition, it is regulated by TDH and the Attorney General's Office as well as by the Department of Health in Virginia with the objective of maintaining public advantage. If Ballad Health is not able to demonstrate continued public advantage in both states, it is possible that either or both states would revoke the COPA. Ballad Health has made major progress since the merger effective date of February 1, 2018. It has accomplished the majority of the startup activities including writing three year plans for Behavioral Health, Children's Services, Rural Health Services, Health Research and Graduate Medical Education, Population Health Improvement, and Region-Wide Health Information Exchange. It has established baselines for spending and quality metrics. It has proposed a major delivery system change with the NICU proposal. It has established new policies such as charity care. At the same time it accomplished these goals, it was managing a newly-merged company with revenues of over \$2B in an environment of rapid change at the local, state, and federal levels. There is much to be done to demonstrate continued public advantage, but I believe Ballad Health has begun this journey successfully.

Focus for next 12 months

I will continue with regular responsibilities as required by the TOC. Additionally, the first sub-index and Index score will be reported. I will provide a deep review to ensure the reported numbers are accurate. Also, I will report on the incremental spending for the Plans as well as the salary and benefit equalization. I will need to establish a system to monitor the spending in such a manner that someone else can replicate the work even if there is employee turnover at Ballad Health. The TOC has a 10 year term, and during that time, there is likely to be turnover with key individuals.

Additional items:

- Prepare recommendations to TDH for changes to the 35% rule which limits the employment of physicians
- Prepare a report on adherence to the Addendum 1 for the 17 months ending June 30, 2019, and propose to the TDH an improved Addendum 1 starting with year 2 which is a real-time approval of rate increases to non-governmental payers and which requires less time and overhead expense to administer by Ballad Health

- Continue with a monthly on-site visit
- Continue maintaining respectful professional relationships with the Ballad Health team and community with an emphasis on meeting individually with Ballad Health Board members
- Work with others to bring closer consistency between Tennessee Terms of Certification and Virginia Cooperative Agreement requirements for monitoring and reporting for Ballad Health

Recommendations

Ballad Health should determine how to communicate effectively with its community of 21 counties over an area about the size of New Jersey, which is no small task. In spite of its efforts, communication has been ineffective. Many of the citizen concerns expressed at the LAC public meeting would have been averted had communications been effective. I request that consideration be given to either utilizing external resources (or ensuring that they're fully part of the process if already engaged) for communication activities, specifically any communication that is printed or written in a public media. All communication vehicles should be used. Utilization of the LAC and the Clinical Council as tactics in effective communications should be considered.

The COPA Compliance Officer is not included in standing executive leadership meetings. Thus, the COPA Compliance Officer is not involved in discussions and decisions that have an impact on the COPA or TOC. If the COPA Compliance Officer is not included as a partner and active executive leader, this part of the active supervision may be negatively impacted. I recommend that management embrace the COPA Compliance Officer as an active member of executive leadership and the role be included in all executive leadership meetings and activities.