

STATE OF TENNESSEE

Office of the Attorney General



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March 31, 2020

**BY EMAIL TRANSMISSION AND U.S. MAIL**

Alan Levine  
Chairman & CEO  
Ballad Health  
303 Med Tech Parkway  
Johnson City, TN 37604

Re: Suspension of TOC Provisions in Response to Notice of Force Majeure Event

Dear Mr. Levine:

We are in receipt of your notice pursuant to Article 1 of the Terms of Certification ("TOC") of a Force Majeure Event and resulting Material Adverse Event due to the COVID-19 Pandemic. The TOC defines a Force Majeure event as "any failure or delay by a COPA party to fulfill or perform any of the Terms and Conditions when and to the extent such failure or delay is caused by or results from an act beyond such COPA Party's reasonable control, including, without limitation, . . . (g) any national or regional emergency." On March 12, 2020, Governor Bill Lee issued Executive Order No. 14 declaring a state of emergency in Tennessee to facilitate the treatment and containment of the COVID-19 pandemic. Thereafter, on March 13, 2020, President Trump issued a declaration proclaiming that the COVID-19 outbreak in the United States constitutes a national emergency beginning March 1, 2020. We agree that these declarations of state and national emergencies due to the COVID-19 pandemic constitute a "Force Majeure Event" for purposes of the TOC.

Pursuant to Article Eight of the TOC, we have determined that Ballad's compliance with the following provisions of the TOC should be temporarily suspended:

- Article Three: Monetary Obligations
  - Sections 3.02 – 3.05 Monetary Commitments; however, Ballad will be required to submit updated plans upon timeframes TBD

- Section 3.07 – Facility Maintenance and Capital Expenditures
- Section 3.08(b) – Employee Pay/Benefits Equalization
- Section 3/08(c) – Career Development
- Section 308(d) – Employee Retention/Termination/Severance
- Article Four: Non-Monetary Obligations
  - Section 4.02(c) – Data Collection: Reports to the Department
  - Section 4.02(d) – Quality Reporting to the Public
  - Section 4.03(c) – Deletion or Repurposing of Other Service Lines of Non-Hospital Facilities
  - Section 4.05 – Bond Issuance and Indebtedness
- Article Five: Managed Care Contracts and Pricing Limitations
  - Section 5.04 – Competing Services
  - Section 5.05(e) – 35% Rule
  - Section 5.06 – Vendor Contracts; but only for purposes of obtaining necessary supplies to deal with the public emergency
  - Addendum One – but only to the extent that payors agree to voluntarily prepay or otherwise financially support Ballads public emergency relief efforts.

Additionally, to the extent that any physician services are obtained during the period of the public emergency, Ballad should attempt to negotiate temporary arrangements to the greatest extent possible.

- Article Six: Active Supervision
  - Section 6.04 – Reporting Requirements

Ballad’s compliance with these provisions is temporarily suspended only during the period of public emergency and a reasonable recovery period thereafter. The “period of public emergency” is defined as that time period during which there is a Governor’s Executive Order declaring a state of emergency in effect, and the “reasonable recovery period” will be determined on a term-by-term basis upon the conclusion of the public emergency. Additionally, this temporary suspension does not in any way effect or otherwise constitute a waiver of Ballad’s obligations and commitments under the TOC, including but not limited to, Ballad’s aggregate spending commitments set forth in Section 3.01 of the TOC.

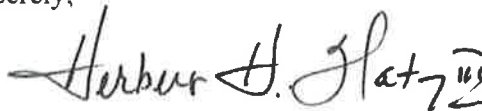
We have further determined that Ballad’s score for FY20 for purposes of determining ongoing public advantage will be based on its performance through March 1, 2020.

We are all aware of the unprecedented scope and impact that the COVID-Pandemic is having on our communities, and in particular health care providers and the delivery of health services and we recognize and appreciate the crucial role that Ballad has assumed and we look forward to continuing to work with Ballad through this challenge.

Sincerely,



LISA PIERCEY, MD, MBA, FAAP  
Commissioner  
Tennessee Department of Health



HERBERT H. SLATTERY III  
Attorney General and Reporter

cc:

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