

**COPA Local Advisory Council**

**Minutes**

**July 29, 2020 – 2:00 p.m. EDT**

**Via WebEx**

(a full recording of the meeting is available here:

<https://tngov.webex.com/recording-service/sites/tngov/recording/play/c592150c5e774d26a9ae051d182ac3c3> )

Members Present – online: Dennis Phillips, Chair; Dr. Linda Latimer, Vice Chair; Wallace Boyd; Tom Wennogle; Dr. Karen Shelton; and Dr. Brenda White Wright.

Members Present - by phone: Rep. David Hawk

Tennessee Department of Health (TDH) Staff Present: Jeff Ockerman, Director, Division of Health Planning; Judi Knecht, Population Health Program Manager, Division of Health Planning

Others Present: Larry Fitzgerald, COPA Monitor; Karen Guske, COPA Compliance Officer.

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CALL TO ORDER

The meeting was called to order by Chairman Phillips at 2:16 p.m.

TDH REPORT-OUT

Ms. Knecht reported that there was \$0.00 in the Population Health Initiatives Fund.

Ms. Knecht listed the Division of Health Planning's COPA-related activities since the last LAC meeting: The LAC held its Annual Public Hearing on January 7, 2020; the LAC published the LAC 2020 Annual Report one month later, in February; the COPA Monitor published his Annual Report in March, and TDH's Department Annual Report was published in April.

Ms. Knecht also reported that the State had suspended certain provisions of the Terms of Certification (TOC) to allow Ballad Health to respond to the COVID-19 pandemic. Ms. Knecht stated that the suspension was in effect during the State's "period of public emergency" as defined by Governor Lee's Executive Orders. She referred the LAC members to the State's COPA Webpage for more information.

COPA COMPLIANCE OFFICER REPORT OUT

Ms. Guske introduced herself. She then stated that since the last LAC meeting several reports were submitted by Ballad Health to TDH including the FY 2020 Q1 and Q2 Quarterly Reports, and monthly quality reports through March 2020. Ms. Guske restated that due to COVID-19, several provisions of the TOC had been suspended in March, including the requirement to submit periodic reports. Ms. Guske reported that her office had received two COPA complaints this calendar year that were investigated and resolved. She stated that there were other complaints, about quality of care, for example, that were not deemed to be COPA-related and therefore, were redirected. She confirmed that her office follows up on those referred complaints to make sure that the appropriate department has responded.

Dr. Shelton asked if the complaints from the public hearing had been addressed. Mr. Fitzgerald answered that Ballad Health's management was given a copy of the hearing's transcript to respond to and that so far, likely due to the interruptions caused by the pandemic, they have not provided

responses. Dr. Shelton stated she was particularly interested in the response to a complaint that patients were being sued for unpaid bills.

Dr. Latimer stated that it would be helpful for the public to know the difference between merely venting and true COPA complaints and that the LAC should ensure that the state is following up on COPA complaints. She stated that currently the public and the LAC are not sure if the complaints are being investigated and asked that the LAC get that information.

Ms. Guske, at the request of the Chair, gave a summary of the two complaints she'd received this year (one concerned a contract negotiation, the other concerned the termination of an employee). She confirmed that after investigations both complaints had been determined not to be violations of the TOC.

#### COPA MONITOR REPORT OUT

Mr. Fitzgerald introduced himself, summarized his typical activities related to his role, and explained that his role includes reviewing commercial payor contracts, verifying that price increases do not exceed the cap allowed under the TOC, meeting with health care leaders in the community, conducting investigations, and giving recommendations to the Department of Health and the Office of the Attorney General.

Mr. Fitzgerald stated that he was prepared to answer the LAC's question from last year regarding the concern that doctors were leaving the area as a consequence of the merger and changes implemented by Ballad Health. He reported that, after reviewing employment records for the four years prior to the merger and comparing them to the one year subsequent to the merger date and interviewing employed and independent physicians, the following themes emerged: 1) physicians believe that the community wants choice; 2) physicians don't believe their voices are being heard by Ballad Health; and 3) independent providers desire to partner with Ballad Health more than is happening. He stated that 83 physicians (26 independent and 57 employed) left the area in 2018.

Mr. Fitzgerald stated that he could not determine that the reason for the loss was due to arbitrary action by Ballad Health's management. He noted that there were likely some job losses associated with the consolidations that were approved by the Department. Ultimately, he found that the evidence was largely anecdotal and therefore inconclusive.

Mr. Fitzgerald stated that more information will be garnered from a provider engagement survey that Ballad Health is required to complete by June 30, 2021. Finally, he stated that he had several recommendations for Ballad as a result of his investigation. (The recommendations are listed on Attachment 1.)

Dr. White Wright asked what would be done with Mr. Fitzgerald's recommendations. Mr. Fitzgerald replied that he would seek and follow TDH's direction. Dr. White Wright asked that TDH let the LAC know how the recommendations will be handled. There was discussion about whether or not the physician's survey would be made public, and Mr. Ockerman stated that it may not be distributed per se, but that it would likely be a public record and accessible upon request. Mr. Wennogle asked if the survey would include comparative numbers or merely absolute numbers. Mr. Fitzgerald answered that he believed a comparison was required by the TOC.

#### OTHER DISCUSSION/NEW BUSINESS

Dr. Shelton asked for details about what TOC provisions were suspended due to the pandemic. Ms. Guske recited the list of provisions The list is available here:

<https://www.tn.gov/content/dam/tn/health/documents/copa/copa-emergency-declaration-memo.pdf>

### ELECTIONS

Chairman Phillips nominated Dr. Latimer, the current Vice Chair, for Chair and Wally Boyd for Secretary. He also recommended that the group delay the nomination of a Vice Chair until a ninth member was added to the council. Chairman Phillips asked members for comments, questions, or concerns. Hearing none, Karen Shelton made a motion to elect Dr. Latimer for the role of Chair for the LAC and Wally Boyd for the role of Secretary for the LAC and to delay the nomination of a Vice Chair. Dr. White Wright seconded the motion. The vote was 6 ayes and 0 nays. The motion was approved.

### 30 MINUTES FOR PUBLIC INPUT

The floor was opened for Public Comment, but no one from the public identified themselves or indicated a desire to comment.

### ANOUNCEMENTS/ADJOURN

Outgoing Chairman Phillips asked if anyone had any final comments before adjournment. Dr. White Wright expressed interest in letting the medical staff at Ballad Health know how much their services are appreciated particularly at this exceptional time. Chairman Phillips agreed and asked TDH how that could be done. Mr. Ockerman suggested TDH staff could draft something along those lines.

Outgoing Chairman Phillips asked Mr. Fitzgerald if he noticed anything that stood out from his interviews with East Tennessee State University (ETSU) medical school physicians. Mr. Fitzgerald explained that he had not spoken with physicians at the school of medicine, but he had spoken with Rusty Lewis, whom he believed was the CEO of the practice plan and Dr. Block. Mr. Fitzgerald stated that Dr. Block hadn't heard specific complaints from the ETSU faculty regarding Ballad, but he did express personal disappointment that the partnership he had hoped would develop, hadn't yet developed. Mr. Fitzgerald explained that he would share the results of these conversations with Commissioner Piercey and Alan Levine.

The outgoing Chair commented that a successful partnership between Ballad and ETSU was one of the strongest selling points for those who endorsed the hospital merger. He discussed that there were many opportunities that could be capitalized on through Ballad and ETSU partnering and expressed concern that these opportunities were being missed.

### MEETING ADJOURNMENT

The meeting adjourned at 3:13 p.m.

**COPA Monitor Recommendations to Ballad Health regarding provider relations and provider retention:**

1. COPA goals would be better reached if there were more partnering with independent groups;
2. Hold an exit conference with every employed doctor who leaves and, if possible, with every independent doctor who leaves the area. Document the findings;
3. Prepare a report for Monitors (and to the states) that is a complete and comprehensive analysis of changes to medical staff, not just a number of doctors that were recruited. It should be a comprehensive report on the changes in numbers that could be evaluated;
4. There needs to be a concerted and organized effort to reach out and talk to independent doctors and report to management. Ballad may be doing this to a certain extent, but it should be done in a formal way with a written report and include physicians with whom Ballad is not comfortable.

