



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
ANDREW JOHNSON TOWER, 5TH FLOOR
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

BILL LEE
GOVERNOR

LISA PIERCEY, MD, MBA, FAAP
COMMISSIONER

September 29, 2020

Mr. Alan Levine
Executive Chairman, President, and CEO
Ballad Health
400 N. State of Franklin Road
Johnson City, TN 37604

RE: Notice of noncompliance regarding Ballad Health's Year 1 (Fiscal Year 2019) Monetary Commitment

Dear Mr. Levine:

The purpose of this letter is to provide notice of Ballad Health's noncompliance with its Year 1 Monetary Commitments pursuant to Section 6.05(a) of the Terms of Certification (TOC). The Tennessee Department of Health (TDH or the Department) and the Attorney General have determined that Ballad Health is not in compliance with the annual spending commitments in three of the four spending categories for FY 2019. The TOC defines "Noncompliance" in part, as, "...failure by (Ballad Health) to fulfill or perform any monetary obligation." *See* Article I.

While Ballad Health management has informed the COPA Monitor of its expected spending shortfalls, Ballad has not officially notified TDH that a Noncompliance had occurred as required under Section 6.04(d)(ii) of the TOC.

As set forth in the TOC, Ballad Health's monetary commitments and obligations over the ten (10) fiscal years beginning July 1, 2018 are \$308,000,000. For Fiscal Year 2019, (Year 1), Ballad Health's monetary obligation is \$4,000,000 across four (4) spending categories: Behavioral Health, Children's Health, Rural Health, and Population Health.

Based on the detailed information provided in the attached appendix, TDH and the Attorney General have made the following determinations for FY 2019 spending:

- 1) The shortfall associated with the implementation of Ballad Health's Behavioral Health Plan did not exceed the fifteen percent (15%) margin of error that is permitted in the TOC. Therefore, this spending shortfall does not constitute a Noncompliance at this time.
- 2) The shortfall associated with the implementation of Ballad Health's Children's Health Plan exceeded the fifteen percent (15%) permitted in the TOC and, therefore constitutes a Noncompliance. However, because TDH did not formally approve such a plan until March 5, 2019, the Department and the Attorney General believe that Ballad Health should only be held accountable for a Noncompliance attributable to that portion of the year for which an approved plan was in place.
- 3) The shortfall associated with the implementation of Ballad Health's Rural Health Plan will not be counted against Ballad Health because the plan was formally approved by TDH after FY 2019. Therefore, the spending shortfall for Rural Health does not constitute a Noncompliance at this time.

In accordance with Section 6.05(a)-(c) of the TOC, TDH and the Attorney General propose the following to cure the Noncompliance related to the FY 19 Children's Health spending shortfall:

- Ballad Health shall establish an escrow account in the amount of \$239,000 to be spent on new and incremental capital expenditures and operating expenses pursuant to a revised Children's Health Plan.
- Ballad Health shall submit a revised Children's Health Plan to TDH that shall account for the spending of the escrowed money and the remaining monetary obligation and commitment for FY 2019 through FY 2021 (Year 1- Year 3).

These proposed remedies do not create a new financial obligation to Ballad Health; but instead, require Ballad Health to reflect its unmet contractual obligations on its balance sheet and provide a level of accountability and transparency that is necessary for the State to actively supervise and enforce the COPA. Additionally, TDH and the Attorney General reiterate the requirement that for Ballad Health to ultimately be in compliance with the TOC, the *entire* spending required for each plan category from FY 2019 through FY 2021 must be fulfilled by June 3, 2021.

Please let us know if you have any questions or need further clarification.

Sincerely,



Lisa Piercey, MD, MBA, FAAP
Commissioner
Tennessee Department of Health



Herbert H. Slatery
Attorney General and Reporter

cc: The Honorable Norman Oliver, State Health Commissioner
Virginia Department of Health

Tim Belisle, General Counsel
Ballad Health

Claire C. Haltom
Baker Donelson PC

Tony Keck, Executive VP and Chief Population Health Officer
Ballad Health

Karen Guske, COPA Compliance Officer
Ballad Health

Erik Bodin, Office of Licensure and Certification
Commonwealth of Virginia

Larry Fitzgerald
COPA Monitor

Janet M. Kleinfelter, Deputy Attorney General
State of Tennessee

Judi Knecht, Division of Health Planning
Tennessee Department of Health

Jeff Ockerman
Tennessee Department of Health

APPENDIX

As set forth in Sections 3.01 through 3.05 of the TOC, Ballard Health's spending commitment over the ten (10) fiscal years beginning July 1, 2018 is \$308,000,000. According to the monetary commitments table set forth in Exhibit B to the Amended and Restated TOC, Ballard Health's monetary obligation for Fiscal Year 2019 (Year 1) is \$4,000,000, across four (4) spending categories: Behavioral Health, Children's Health, Rural Health, and Population Health.

Below is a table comparing Ballard Health's FY 2019 spending commitment with its actual spending in those three categories.

Table 1 - Ballard Health Monetary Commitment vs. Actual Spending - FY 2019 (Year 1)

	FY 2019 Spending Commitment	FY 2019 Actual Spending	FY 2019 Spending Excess (Shortfall)
Behavioral Health Services	\$1,000,000	\$960,000	(\$40,000)
Children's Services	1,000,000	33,000	(967,000)
Rural Health Services	1,000,000	412,000	(588,000)
Subtotal			(1,595,000)
Population Health Improvement	1,000,000	1,650,000	650,000

Below is a table of Ballard Health's full Monetary Commitment for each of the first three (3) years (FY 2019-2021).

Table 2 - Ballard Health Monetary Commitment for FY 2019-2021 (Years 1-3)

	FY 2019 Spending Commitment	FY 2020 Spending Commitment	FY 2021 Spending Commitment
Behavioral Health Services	\$1,000,000	\$4,000,000	\$10,000,000
Children's Services	1,000,000	2,000,000	3,000,000
Rural Health Services	1,000,000	3,000,000	3,000,000
Population Health Improvement	1,000,000	6,000,000	9,000,000
HR/GME		2,000,000	5,000,000
HIE		1,000,000	1,000,000
TOTAL	4,000,000	18,000,000	31,000,000
Three Year Total: \$53,000,000			