

October 13, 2020

303 Med Tech Parkway  
Suite 300  
Johnson City, TN 37604  
tel 423.302.3423  
fax 423.302.3447

[balladhealth.org](http://balladhealth.org)

**By Email Transmission**

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

RE: Waiver Request for Actions Related to Ballad Health Cardiology Program

Dear Commissioner Piercey:

Ballad Health ("Ballad") hereby requests a waiver of Section 5.05(e) under the Terms of Certification (the "TOC") regarding certain changes to its cardiology program necessary to ensure appropriate care for patients of the Geographic Service Area.

Ballad's hospitals in Johnson City, Kingsport, and Bristol, together with the combined Ballad cardiology services (CVA Heart Institute or "CVA") and Ballad Health Medical Associates Heart and Vascular Care ("BHMA"), provide the majority of cardiology services for persons throughout the region, including those who are uninsured or are covered by Medicaid.

Ballad requests a waiver for the following actions related to its cardiology program:

1. the granting of privileges at Johnson City Medical Center ("JCMC") to certain cardiologists affiliated with CVA who serve patients in the greater Johnson City community's service area;
2. the hiring by BHMA of one (1) electrophysiologist ("EP") in Johnson City, and the granting of privileges to practice at JCMC;
3. the hiring by CVA of one (1) interventional cardiologist in Bristol, Tennessee, and the granting of privileges for the interventional cardiologist to practice at Bristol Regional Medical Center ("BRMC");
4. the hiring by CVA of one (1) interventional cardiologist and one (1) non-invasive cardiologist in Kingsport, Tennessee, and the granting of privileges for those two (2) cardiologists to practice at HVMC;
5. the hiring by CVA of one (1) cardiothoracic surgeon in Kingsport, Tennessee, and the granting of privileges to such surgeon at Holston Valley Medical Center ("HVMC") and, for cross coverage purposes, at BRMC and JCMC;

6. the granting of privileges at HVMC and JCMC for coverage purposes to a cardiothoracic surgeon who has been previously approved by your office to be hired by CVA in Bristol, Tennessee, with privileges at BRMC; and
7. the granting of privileges at HVMC and BRMC for coverage purposes to cardiothoracic surgeons who may periodically need to cross cover for patients at HVMC and BRMC.

Although these actions may require a waiver under Section 5.05(e) of the TOC with respect to the 35% rule, some of these actions also implicate other provisions of the TOC which require open medical staff and prohibit restrictions against physicians to see their patients.

#### **A. WAIVER REQUEST FOR SPECIFIC ACTIONS**

##### **1. Granting of privileges to cardiologists affiliated with CVA who serve patients in the greater Johnson City community's service area**

Ballad hereby requests a waiver from Section 5.05(e) of the TOC so that Ballad can comply with the mandatory requirements of Sections 4.03(a)(i), 5.02(i), 5.05(d), and 5.05(f) (full service tertiary referral hospital, open medical staff, and prohibitions against restricting physicians from treating patients with whom they have a physician-patient relationship). There is tension between the requirements of equal access to the medical staff and the 35% rule of the TOC which Ballad seeks to reconcile in the interest of preserving the physician-patient relationship. In addition to preserving patients' rights, this would ensure Ballad meets the open staff and access requirements for certain CVA cardiology physicians at JCMC who serve patients originating from the service area of JCMC.

As required under Section 4.03(a)(i), JCMC is a tertiary referral hospital, and must be able to receive referrals for all tertiary services offered by the hospital. Along with HVMC and BRMC, JCMC offers well recognized high quality heart and vascular care, and must be able, under the provision of the COPA to provide these services to all patients who need such tertiary services. In order for JCMC to serve as a tertiary referral hospital, all patients needing such services should be able to access physicians they have an established relationship with. Such access should be equal for patients, irrespective of the specialist they have chosen. We believe this was the intent of the access provisions of the TOC and the provisions ensuring all tertiary services are provided to all patients equally in geographic proximity to the tertiary hospital. JCMC is the closest tertiary facility to Greene County, Unicoi County, Johnson County and Carter County, (which are some of the communities served by CVA), making it the most convenient and logical place for patients who reside in the service area. In Ballad's view, any patient in the JCMC service area with a physician-patient relationship with a cardiologist should not be required to choose between their tertiary hospital or their cardiologist. For many patients, such a choice could have implications beyond cardiology. For instance, if a patient from the service area needs a cardiology admission, but cannot be treated by their cardiologist at JCMC, the patient may then have to choose to utilize another tertiary hospital in the region where the cardiologist practices, but the patient's other specialists do not. Thus, the "full service tertiary referral hospital" designation becomes impaired. It is not truly full service for that patient if they cannot access their physicians. While it could be argued that these patients chose the CVA cardiologist knowing that the doctors did not have privileges at JCMC, it has also been made clear to the patients through various provisions of the TOC (Sections 5.02(i), 5.05(d) and 5.05(f)) that this inappropriate barrier to access due to the previous competitive issues between Wellmont and

MSHA would be removed, and their full access to their physicians would be restored due to the result of the merger creating Ballard. As stipulated herein, the provisions of the TOC requiring equal access to all physicians through the requirement of an open medical staff and the prohibition on restricting physician access to their patients applies directly to cardiology, as cardiology was the only service previously closed by Wellmont and MSHA.

The board of directors of Ballard has taken the appropriate steps to open the medical staff pursuant to the TOC. However, if a physician applies for privileges, and meets all the medical staff requirements, including a recommendation for the granting of privileges by the elected medical staff credentials committee and executive committee, the term “open medical staff” would have no meaning. A medical staff can only be open if all qualified physicians are granted the privileges they seek for the purpose of caring for their patients in the setting of their choice in accordance with the medical staff bylaws. Various plain language provisions of the TOC support this position, given the TOC requirements for an open medical staff combined with the prohibition from restricting doctors from caring for their patients admitted to a COPA hospital. To that end, certain CVA cardiologists reached the conclusion that, in order to provide the best care at the location most appropriate for their patients, they must have active privileges at JCMC.

CVA is a comprehensive group of practicing cardiologists spanning most specialties in cardiology, ranging from non-interventional to cardiovascular surgery. Prior to its affiliation with Wellmont Health System, CVA was an independent group and its current structure came from the alignment of multiple independent cardiologists which chose to affiliate with a hospital system some years ago. CVA’s coverage area is broad, with the provision of services spanning the entire region, including Johnson City, Bristol, Kingsport, Elizabethton, Greeneville, Abingdon and several other rural communities. There are more than 40 physicians affiliated with CVA in various specialties and located in community-based practices throughout the region, including in Johnson City, Kingsport and Bristol. CVA is active in research, teaching and clinical trials, with international acclaim for advanced interventional procedures. Pursuant to contract, each physician practicing within CVA is governed by the physician’s license, and the clinical decisions made in consultation with patients are between the physician and the patient.

CVA’s structure includes committees led by physicians, from Quality to Care Integration, and CVA’s practice style is to ensure patients are provided care at the setting most appropriate for the patient depending upon the patient’s clinical, familial and spiritual needs. While certain actions by CVA related to administrative matters may require the sole member’s agreement, the direction of clinical decisions is not among those which require, nor include, input from the sole member, Ballard.

Cardiologists affiliated with CVA have been practicing in Johnson City for more than twenty years, preceding the creation of CVA, and they have developed a large patient following from the region served by JCMC. There are twelve (12) CVA physicians currently practicing in Johnson City. Despite the large number of patients they serve in Johnson City, CVA only has two (2) cardiologists on the medical staff at JCMC - both of whom hold “affiliate” status. By granting medical staff privileges at JCMC to certain CVA physicians, Ballard seeks to promote patient choice and allow patients in the region to be cared for by the cardiologists they have chosen in the care setting chosen by the patient.

Further, for patient continuity of care purposes, coverage and call relationships at hospitals with advanced cardiology programs generally are shared within an affiliated group of physicians with known

competencies and complementary skills. These physicians have chosen to work together in a cohesive group. This is the general structure of most community based medical groups across the country, and is the case due in large part to the necessary call and cross coverage issues. This is especially true in the practice of cardiology, where the issues are complex and intertwined between distinct subspecialties within the groups and which require cardiologists to collaborate closely, trusting the skills and expertise of the specialized colleagues who cover for them. For example, due to the consolidation of cardiac catheterization services at JCMC with the closure of the cardiac catheterization lab at Greeneville Community Hospital East (resulting from low volumes, and as set forth in the February 2020 waiver request submitted to DOH), Dr. Jack Whitaker will continue covering Greeneville Community Hospital, but will do his interventional work at JCMC, providing a continuity of care for his patients. As a practicing physician, Dr. Whitaker requires cross coverage with his partners for continuity of care purposes, where in some cases patients may need advanced interventional services he and his partners are capable of providing and then together providing ongoing follow-up care. In order for this coverage to be provided, the physicians must have privileges to practice at the hospital. It would be too much for one physician to provide 24/7/365 coverage without the benefit of his/her partners to support and cross cover. Beyond the hospital, the follow up for the patients is relevant, as they are served by the same group of doctors rather than being shuffled from group to group. CVA, in particular, is structured in such a manner – with multiple subspecialties within the group providing varying levels of expertise and availability of cross provision of service to a patient. The unique structure of CVA is credited, in large part, for the international acclaim for the care provided, making Ballad a preferred site for trials in cardiology, international participation in teaching and top rankings for the Ballad Cardiovascular programs. Several of the waivers requested in this letter flow from Dr. Whitaker's relocation of services to a location with higher volumes, better and more consistent access as set forth in the February 2020 waiver request and the need for cross coverage arrangements for his patients.

Some immediate examples of how patient care is negatively impacted because CVA physicians do not hold Medical Staff privileges at JCMC are as follows:

- Cardiac Care for Veterans: The Mountain Home Veterans Administration Hospital ("VA Hospital"), which is located on the campus adjoining JCMC, chose CVA to provide cardiology services for veterans served in the region, and the contract between CVA and the VA Hospital was recently renewed. Pursuant to this agreement, CVA, mainly through Drs. Luff and Helton, covers all of the cardiology services at the VA Hospital. If a patient at the VA Hospital needs to be admitted to JCMC for the provision of services not available at the VA Hospital, Drs. Luff, Helton, and their colleagues would not consistently be able to provide continuity of care for their Veteran patients in the absence of having privileges to practice at JCMC. The patient must be transferred to Holston Valley in order to receive care from the cardiologist, despite that JCMC provides the needed service right next door to the VA Hospital. Further, if a VA patient has multiple specialists which cover JCMC, but do not practice at HVMC or BRMC, the patient then would have his/her physician-patient relationships disrupted. Ballad's view is that the guiding principle should be minimal disruption to the established physician-patient relationship, and the most convenient transfer possible for the patient.
- Ballad is in receipt of written complaints from patients (attached) who chose CVA cardiologists practicing in Johnson City as their primary cardiology provider. In one such case, the patient cites the need for a procedure, but only wants the procedure done at the hospital in her community.

The patient claims she does not want to go to HVMC or BRMC when the hospital in her community is capable of providing the procedure. The patient insists that the doctors in her community are qualified to serve her needs, but are precluded from doing so by the fact the doctors do not have privileges at JCMC. In other cases, patients have cited that if they come to the Emergency Department at JCMC during a cardiac emergency, their physician-patient relationship is disrupted because their chosen cardiologist is not permitted to be consulted due to not having privileges at JCMC. Finally, if a patient is hospitalized for a condition, and needs a cardiology consult, the attending physician cannot consult the patient's own cardiologist. The patient, already potentially in distress, cannot be seen by a cardiologist they have trusted and chosen. In each of these cases, it is challenging for a patient to understand why they are not permitted to be seen by their own cardiologist. In each of these cases, the cardiologists have long-standing practices in Johnson City and have long-term physician-patient relationships. As more fully described below, the patients who have taken the time to inquire have shared their concerns that they were under the impression the merger creating Ballad Health would solve the issue of the medical staffs being closed for economic reasons.

These issues have been building for the past several years since the merger was closed, and work has been done to meet the requirements contained within the TOC to ensure patients can be seen at the hospital of their choice by the physicians of their choice. Sections 5.02(i), 5.05(d) and 5.05(f), in each section's plain language, and taken together, require an open medical staff permitting any qualified physician meeting medical staff requirements to be granted equal access, and that no action shall be taken to restrict the ability of physicians to see their patients admitted to a COPA hospital. The examples above are the very reasons why these provisions are important. As more fully described below, the economic and competitive issues between legacy health systems led to such challenges, and the intended outcome of the merger was to break down these barriers. As planned and required in the TOC, Ballad Health did immediately open the medical staffs of all the hospitals upon the closing of the merger, thus permitting any physician to apply for privileges to care for their patients. This benefit applied to all physicians, including many who were previously not permitted to be granted privileges at BRMC and HVMC. The choice of whether to practice at any or all of the three tertiary hospitals is now the choice of the physicians and their groups, and likely will be considered based on the needs of their patients, patient convenience and the desire of the particular group to serve a larger part of the region. CVA began making plans for the needs of their patients, and other independent cardiology groups determined their own strategies. One such group, Karing Hearts, has, with the help of Ballad, recruited new doctors into the region, serving areas such as Elizabethton and Unicoi County. Because of the open medical staffs, these groups are free to practice at any hospital they deem appropriate for their patients. Similarly, CVA has been planning for the needs of their patients, and to ensure proper coverage for their patients. The result in the case of CVA is that certain CVA physicians made application to JCMC for privileges after such time as the provisions contained within Section 5.05(e) were suspended as a result of the letter dated March 31, 2020 issued by Commissioner Piercey and Attorney General Slatery. The following physicians applied for medical staff privileges at JCMC, and the JCMC Medical Staff Executive Committee, *a majority of which are independently practicing physicians*, approved such privileges:

- Dr. Whitaker sought medical staff privileges at JCMC in order to move his elective interventional work due to the closure of the Cath Lab at GCH, as set forth in the February 2020 waiver request submitted to the Tennessee Department of Health ("TDH").

- Dr. O’Roark, who is currently covering patients in Greeneville, sought medical staff privileges to see his patients at JCMC who request (or require) services at this Ballad facility. His practice at JCMC is expected to be at 0.3 FTE or below. Importantly, the patient and traffic flow from Greeneville is naturally to JCMC due to the distance and ease of access relative to HVMC. This is true in all specialties.
- Dr. Chang, who has practiced interventional cardiology for more than 20 years in Johnson City, sought medical staff privileges to see his patients at JCMC who request (or require) services at this Ballad facility. His practice at JCMC is expected to be at 0.5 FTE or below.
- Dr. Counts, who has practiced in Johnson City for many years, sought medical staff privileges to see his patients at JCMC who request (or require) services at this Ballad facility. His practice at JCMC is expected to be at 0.8 FTE or below.
- Dr. Luff and Dr. Helton focus on veteran patients at the VA Hospital, which has contracted with CVA to provide cardiology services. Drs. Luff and Helton would only perform occasional cardiology services at JCMC when the services could not be performed at the VA Hospital. Their combined practice at JCMC is expected to be at 0.5 FTE or below.
- Drs. Kyker and Shafiei have requested courtesy privileges at JCMC for electrophysiology only.

The independent medical staff at JCMC recommended that medical staff privileges be granted for the CVA physicians, and Ballad expects to allow these CVA physicians to provide cardiology services at JCMC if:

- the procedure is necessary due to the cross-coverage arrangement with Dr. Whitaker and outlying physicians in rural communities (which would include any future physicians added in Greeneville or in rural communities);
- the patient is a VA Hospital patient in need of services offered at JCMC that are unavailable at the VA Hospital;
- the patient expressly requests that the physician perform services at JCMC;
- a physician requests that the cardiology consult or procedure be performed by a CVA-affiliated cardiologist at JCMC; or
- through medical staff requirements, CVA-affiliated physicians are required to take call and care for unassigned patients. The payer mix at JCMC is 76 percent Medicare, Medicaid and Self-pay, with only 21 percent of the mix being commercial. Coverage of the uninsured, Medicaid and Medicare for the emergency department is generally required of physicians by the medical staff as a condition of maintaining privileges in order to ensure access for low income patients.

While the plain language of the TOC clearly require an open medical staff, equal access for all physicians and that physicians may not be restricted from caring for their patients admitted to a COPA hospital, the 35 percent rule contained within Section 5.05(e) requires Ballad to seek a waiver from the 35 percent rule. Absent this waiver, Ballad cannot comply with the multiple provisions of the TOC designed to

ensure patients have access to the physicians and hospitals of their choosing. Ballard currently employs 58 percent of the cardiologists at JCMC, and hereby seeks a waiver of the 35% rule for the physicians listed above to maintain privileges at JCMC.

## **2. Hiring by BHMA of one (1) EP provider in Johnson City**

Ballad hereby requests a waiver for the hiring by BHMA of one (1) EP provider into its Johnson City practice who would be granted privileges at JCMC. The demand for EP providers in Johnson City exceeds the supply of EP physicians. Currently, there are only two (2) EP providers in Johnson City. Dr. Vijay Ramu with Medical Education Assistance Corporation (“MEAC”), is an EP provider but practices clinically at only 0.6 FTE due to his academic responsibilities at the University.

The other EP provider is Dr. Vipul Brahmhatt with BHMA, who also participates in general cardiology call for BHMA. Patients, including new patients, established patients, and patients requiring atrial fibrillation procures, typically must wait at least three (3) months for an appointment with Dr. Brahmhatt because his schedule is so full. From the standpoint of access and quality, the patients will benefit enormously from an additional EP physician who can collaborate with, and cross cover with, Dr. Brahmhatt practicing in close proximity and within the same office.

The addition of another EP provider at BHMA would reduce the time patients must wait for appointments and procedures. Expanded appointment availability would further enhance the continuity of care for patients in the community since EP services are not provided by Karing Hearts Cardiology (“KHC”), a small independent cardiology practice in Johnson City, and are limited at MEAC. Ballard requests a waiver for this hiring to address the demand for EP services in Johnson City to ensure the cardiologists within the busy BHMA group have an adequate number of EP physicians to support their patients within the group.

## **3. Hiring by CVA of one (1) interventional cardiologist in Bristol**

Ballad hereby requests a waiver for the hiring by CVA of one (1) interventional cardiologist into its Bristol practice and for this physician to be granted privileges to practice at BRMC. The demand for cardiology services in the Bristol market, where Ballard employs 100 percent of the cardiologists, has increased due to the following:

- a) An aging population in the region that has increased cardiovascular disease incidence;
- b) An enhanced focus on population health in the region; and
- c) Referring physicians have been highly satisfied with Ballad-affiliated cardiologists given its high-quality, low-cost structure and transition to value-based payment.

In addition, the demand for cardiologists in Bristol is expected to increase in the next year due to existing cardiologists slowing down their practices or retiring. Based on a recent report through May 2020, follow-up appointments are being scheduled two to three months out in Bristol. The addition of another interventional cardiologist would reduce the time patients must wait for appointments and

procedures. Expanded appointment availability would further enhance the continuity of care for patients in the Bristol community.

Ballad already employs 100 percent of the physicians in the cardiology specialties in Bristol and hereby seeks a waiver of the 35% rule in connection with the hiring of an interventional cardiologist to appropriately address the demand for interventional cardiology services in Bristol.

#### **4. Hiring by CVA of one (1) interventional cardiologist and one (1) non-invasive cardiologist in Kingsport**

Ballad hereby requests a waiver for the hiring by CVA of one (1) interventional cardiologist and one (1) non-invasive cardiologist into its Kingsport practice, and for these physicians to be granted privileges to practice at HVMC. The demand for cardiology services in the Kingsport market has increased for the same reasons set forth above with respect to the Bristol market.

Further, the demand for cardiologists in Kingsport is expected to increase in the next year due to existing cardiologists slowing down their practices or retiring. Based on a recent report through May 2020, interventional and non-invasive follow-up appointments are being scheduled approximately 35 days out in Kingsport, and wait times for a non-urgent consult are approximately one (1) month. The addition of another interventional cardiologist and another non-invasive cardiologist would reduce the time patients must wait for appointments and procedures. Expanded appointment availability would further enhance the continuity of care for patients in the Kingsport community.

Ballad already employs 100 percent of the physicians in the cardiology specialties in Kingsport and hereby seeks a waiver of the 35% rule in connection with these hirings to address the demand for interventional cardiology and non-invasive cardiology services in the Kingsport community.

#### **5. Hiring by CVA of one (1) cardiothoracic surgeon in Kingsport, Tennessee, who was granted privileges at HVMC, and, for coverage purposes, at BRMC and JCMC**

Ballad is of the understanding that the State intends to exclude cardiothoracic surgery from the prohibitions of the 35% rule. Since that has not yet been memorialized in a formal modification to the TOC, however, Ballad includes the requests of sections A.5., A.6. and A.7. of this letter in an effort to further demonstrate the necessity for the cardiothoracic changes, and in the event Ballad is mistaken in its understanding of the intent of the State.

Ballad hereby requests a waiver for the hiring by CVA of Dr. Maltais, a cardiothoracic surgeon, in Kingsport, Tennessee, who was granted privileges at HVMC upon the recommendation of the Medical Staff of HVMC. There is an increased demand for cardiothoracic surgeons in Kingsport, where Ballad employs 100 percent of the cardiology specialists. The physician needs assessment for Ballad's service area indicates a need for 12.3 FTE cardiothoracic surgeons in the service area, while the current supply stands at only 7.8. By the State's grant of a waiver of the 35% rule for this hire, as well as the waivers requested in sections 6 and 7 below, Ballad will be able to ensure adequate access to, and coverage of, cardiothoracic services throughout Ballad's service area, all of which are currently provided by Ballad-affiliated surgeons.

Further, Dr. Maltais sought privileges at BRMC and JCMC for coverage purposes, which were granted upon the recommendation of the Medical Staff at BRMC and JCMC. As discussed above, cross-coverage among physicians in the same group is the preferable practice across the country.

Ballad hereby requests a waiver for such hiring to address the demand for cardiothoracic services at HVMC and coverage for the same at BRMC and JCMC.

**6. Granting of privileges at HVMC and JCMC for coverage purposes by a cardiothoracic surgeon who has been previously approved by your office to be hired by CVA in Bristol, Tennessee, with privileges at BRMC**

Ballad granted medical staff privileges at HVMC and JCMC for coverage purposes to Dr. Smith, a cardiothoracic surgeon, upon the recommendation of the Medical Staff of these hospitals. Your office previously approved the hiring of Dr. Smith by CVA in Bristol, Tennessee, with privileges at BRMC, and he began practice there earlier this summer. Unfortunately, Dr. Smith's tenure was short, and he is no longer employed by CVA. CVA intends to proceed with recruitment of a replacement for Dr. Smith.

CVA expects Dr. Smith's replacement to seek privileges at HVMC and JCMC for coverage purposes. As discussed above, cross-coverage among physicians in the same group is the preferable practice across the country for many reasons, including continuity of care. The granting of privileges to this surgeon at HVMC and JCMC will help address the need for cardiothoracic surgery coverage at such hospitals.

Ballad employs 100 percent of the cardiology specialists in Kingsport and 100 percent of the cardiothoracic specialists in Johnson City and hereby seeks a waiver for the granting of privileges for cross coverage purposes to Dr. Smith's replacement at HVMC and JCMC.

**7. Seeking of privileges at HVMC and BRMC for coverage purposes by certain other cardiothoracic surgeons for coverage purposes**

Finally, Ballad expects to grant medical staff privileges at HVMC and BRMC to certain cardiothoracic surgeons who may need to provide cross coverage periodically. TDH has previously provided temporary cross coverage waivers for these surgeons. As discussed above, the granting of privileges to these surgeons will help address the need for cardiothoracic surgery coverage at HVMC and BRMC, and Ballad hereby seeks a permanent waiver for such privileges.

**B. DISCUSSION OF THE TOC AND OPEN MEDICAL STAFF**

**1. Pre-Merger and Need for Open Medical Staff**

During the run-up to the merger that created Ballad, one of the key reasons many in the community articulated support for the merger was to alleviate the artificial restriction of access to services which existed for patients due to competitive issues between Wellmont Health System ("Wellmont") and Mountain States Health Alliance ("MSHA"). Patients were routinely deprived of their choice of access to the full spectrum of cardiac care provided by the physician of their choice - a problem which continues to affect patients in Johnson City today and is something the TOC was intended to correct. Actions

taken by Ballard, as described below, have solved this problem in Bristol and Kingsport, but the problem continues for Johnson City.

Hospital medical staffs are typically closed for quality of care reasons due to volume-related issues or for improved integration of services. In addition to these reasons, however, in the case of Wellmont and MSHA prior to the merger, competition also weighed heavily in some medical staff decisions, despite the potentially negative impact a closed medical staff could have on continuity of care for some patients.

CVA is a comprehensive group of practicing cardiologists spanning most specialties in cardiology, ranging from non-interventional to cardiovascular surgery to an international academic training program for endovascular services which has attracted students and recognition from throughout the world, including prestigious institutions such as Harvard and from throughout Europe. Prior to the merger, CVA was affiliated with Wellmont. CVA's coverage area is broad, with the provision of services spanning the entire region, including Johnson City, Bristol, Kingsport, Elizabethton, Greeneville, Abingdon and several other rural communities. Prior to the merger, and due to the competitive dynamics that existed between the two health systems, Wellmont closed its medical staff for cardiology, only permitting CVA physicians to hold Wellmont privileges. Similar to Wellmont's closing of its medical staffs, MSHA closed its medical staff at JCMC – limiting privileges to practice at JCMC to only MSHA-employed cardiology specialists, and two independent cardiology groups then practicing in Johnson City. The CVA doctors, for mostly competitive reasons, were blocked from the medical staff at JCMC. As a result, CVA cardiologists with long-time practices in Johnson City would see their patients in their Johnson City offices, and then refer patients needing tertiary care to Kingsport's HVMC. If a patient chose to stay at JCMC, then the CVA cardiologist would have to refer the patient to another, unaffiliated, cardiologist. Thus, the patient's choice was severely limited – they were forced to choose between their community hospital or their chosen, and trusted, cardiologist.

Similar to CVA, since the MSHA-affiliated cardiologists in the Kingsport and Bristol service areas did not have privileges at HVMC or BRMC, they could not follow their patients to those hospitals. To provide continuity of care, physicians would have to treat their Kingsport and Bristol residents in Johnson City, which was not the closest hospital. The cardiologists associated with MSHA (located in Kingsport, Abingdon and Johnson City), would provide community-based cardiology services in those communities where the doctors practiced. However, if patients needed tertiary levels of care, the patients would generally be transferred to JCMC. This was true, even if the patients resided in Kingsport's or Bristol's service areas, where HVMC and BRMC are the closest hospitals, respectively. In each case, BRMC and HVMC provided the same tertiary services as JCMC, but for competitive reasons the cardiologists affiliated with MSHA would not refer patients to Wellmont-affiliated hospitals unless the patient specifically requested. In those cases, the patient would have to request a CVA cardiologist.

## **2. Terms of Certification and Open Medical Staff**

Certain provisions of the TOC requiring the opening of the Ballard Medical Staffs were specifically included in the TOC to remove artificial restrictions on doctors' ability to follow their patients that existed in the Wellmont and MSHA competitive environment prior to the merger and to restore patient choice.

a. Terms of Certification Requiring Open Medical Staff

TDH and Ballard agreed to certain provisions in the TOC where the clear intent is to have open Medical Staffs and to remove arbitrary restrictions regarding physicians' ability to see their patients. The following provisions of the TOC require an open Medical Staff:

- *Section 5.02(i): "The New Health System shall not restrict the ability of physicians to see their patients admitted to a COPA Hospital."*
- *Section 5.05(d): "The New Health System shall provide an open medical staff offering equal access to all qualified physicians according to the criteria of the Joint Commission and the medical staff bylaws."*
- *Section 5.05(f): "The New Health System shall provide an open medical staff at each NHS Entity, ensuring equal access to all qualified physicians in the Geographic Service Area according to the criteria of the Joint Commission and the medical staff bylaws of each such entity."*
- *Section 4.03(a): "During the COPA Term, the New Health System shall maintain in operation as full-service tertiary referral hospitals Johnson City Medical Center, Holston Valley Medical Center and Bristol Regional Medical Center."*

The spirit of the above provisions, one of the stated intentions of the TOC, and certainly and most importantly the expectation of patients, was to facilitate patient choice and the ability of physicians to provide continuity of care. Although some related provisions of the TOC are specific to independent physicians (see Section 5.05(b)), the above provisions requiring an open Medical Staff apply to all physicians, including employed physicians. Simply stated, just because a patient who lives in Johnson City chooses a physician who happens to be employed, that patient has no less of a right to access their chosen physician if they need care, are admitted or have an emergency. Further, *the only non-hospital based specialty which was closed prior to the merger was cardiovascular services* – meaning the provisions of the TOC requiring the opening of the medical staff were intended to ensure the cardiovascular services were open, in addition to preventing the possibility of the closure of any other services in the future. Further, JCMC, HVMC, and BRMC must be tertiary referral hospitals for all patients. It is not possible for a hospital to hold itself out as a "referral hospital" if CVA patients cannot be referred to that hospital due to the patient's choice to be cared for by the cardiologist they have an established relationship with. The TOC requires Ballard to allow physicians to follow their patients through the granting of privileges and providing equal access to all physicians. "Equal access" to all physicians is translated quite fairly into "equal access" for patients. If a qualified physician is denied equal access to privileges in a hospital, then that physician's patients are not being treated equally simply due to the employment status of the physician. There is no known public purpose served by such a policy.

Since the merger closed on February 1, 2018, in compliance with the provisions of the TOC, the Medical Staffs of the legacy Wellmont and MSHA hospitals opened and these issues have been resolved in Kingsport and Bristol with respect to cardiology. Ballard took the following actions:

- MSHA-affiliated cardiologists in Abingdon and Kingsport joined CVA;
- Interventional Cardiology services at Indian Path Medical Center in Kingsport were consolidated to HVMC; and
- The Medical Staffs of BRMC, HVMC, and JCMC were opened.

Since Ballard employs 100 percent of the cardiology specialists in Kingsport and Bristol, Ballard was able to open the medical staffs of HVMC and BRMC, consolidate cardiology practices, and provide continuity of care to patients in those markets. Patients in Kingsport and Bristol no longer had to travel to Johnson City to be treated by their cardiologist in a hospital.

Importantly, the opening of the medical staffs at HVMC and BRMC created the opportunity for independent cardiology groups to apply for, and receive, privileges at those hospitals. **This was the benefit created for them by the TOC.** Previously, they were unable to even apply for privileges at those hospitals. Today, they can. It is their choice, and Ballard cannot prevent them from being granted privileges for economic or competitive reasons, whereas prior to the merger, competition was a driving factor for limiting their access. Ballard believes the benefit extended to the independent cardiology groups by the TOC requiring opening of medical staffs was the extent of the intended benefit. Those physicians may expand their practices, obtain privileges, and compete in the market where they previously could not. In fact, in some cases, Ballard has actually funded the expansion of these competing groups in various specialties, including cardiology. The TOC do not guarantee that any physician group, employed or otherwise, be the recipient of patient referrals due to the exclusion of other physicians being permitted to practice. The patient choice is made, and once made, it should be respected. Denial of patient choice which then inures to the benefit of another physician or physician group was not the intent of Ballard. Nor, do we believe, the State.

It would be reasonable to believe the 35% rule was not intended to preclude doctors who live in, and practice in, a community, from treating the full spectrum of their patients' needs in their community hospital. Rather, while we do not know firsthand the precise purpose for the 35% rule, we do believe it is reasonable to conclude it was intended to prevent Ballard from using its resources to employ a large number of physicians in a given specialty, and then using such market power to force competitors from the market. For example, there is one Urology group which covers Johnson City and Bristol, and this group has a dominant market share. Ballard does not employ any adult urologists in Johnson City, Bristol or in Kingsport. The 35% rule would be properly applied to prevent Ballard from becoming disenchanted with the urology group, and then seeking to hire a dominant number of urologists for the purpose of diminishing the independent group's influence. In that instance, the state would have the ability to block Ballard from taking such steps. The 35% rule, combined with other provisions of Section 5.02 and 5.05 of the TOC, would make it impossible for Ballard to do such a thing.

We believe there are clear benefits of language within the TOC which stand as barriers against the abuse of hiring doctors for strictly competitive reasons, and as of yet, none of those barriers has been required to be imposed. In fact, in each case where requested, the state has agreed with Ballard that employment of physicians in certain cases is necessary and an important tool for providing access to care. This is a region of the country with barely a 21 percent commercial payer mix for hospitalization, one of the highest penetrated managed care markets for Medicare in the nation, one of the lowest Medicare Area

Wage Indexes in the nation (providing among the lowest reimbursement in the United States), and this region experiences substantially lower medical inflation than the Consumer Price Index for Medical Services. The investment Ballad makes in providing high quality physicians is a benefit to this region, and such access would not likely be available but for the investment. The majority of specialists practicing in Kingsport, Johnson City and Bristol provide access to a large number of patients originating from rural communities, where the patients suffer from many social determinant issues. That Ballad has been successful employing so many high quality physicians is a benefit to the people in the region. Holston Valley Medical Center's designation for multiple years as a top 50 cardiovascular hospital in America happened during the time when only CVA physicians were permitted to practice there. No independent or competing physicians were permitted on staff, and the quality has been unassailably high. This is not to say the results would not have been the same if competing physicians were allowed on staff. But the reality is, they were not, and HVMC has consistently been among the top 50 cardiovascular hospitals in America. We see no qualitative reason, therefore, to preclude the very doctors who helped HVMC achieve that status from being able to also practice at JCMC.

Finally, from an economic and patient geographic standpoint, when Ballad opened the medical staffs of BRMC, HVMC and JCMC, significant changes in referral patterns took place which were both intended and anticipated. As stated above, prior to the merger, patients of legacy MSHA cardiologists along the SW Virginia I-81 corridor would be referred past BRMC to JCMC for tertiary care. Patients from the Wise County MSHA market who needed interventional care would be referred to the MSHA interventional program at Indian Path Community Hospital in Kingsport – and any patient needing tertiary care beyond that would be referred to JCMC. Additionally, any patient from Kingsport presenting at Indian Path would be referred to JCMC for tertiary care. Post-merger, the cardiology program in Kingsport has been consolidated at HVMC, where 100 percent of the cardiologists are CVA-affiliated. All patients originating from that service area, including SW Virginia, are now treated in Kingsport rather than having to travel to JCMC. Similarly, post-merger, patients originating in the service area along the I-81 corridor are now referred to BRMC rather than to JCMC. All the cardiology services at BRMC are affiliated with CVA. The only service area where, depending upon their choice of cardiologist, patients may not be able to access their local tertiary hospital is the area served by JCMC, where CVA patients continue to have to be referred out of their own community. This continues to burden the patients as described herein, but it also places a financial burden on JCMC as patients in the JCMC service area must be treated elsewhere.

b. Process of Granting Privileges

In compliance with the foregoing provisions of the TOC, the process for granting medical staff privileges is a physician-led process and consists of medical decisions by the physician seeking privileges and the Medical Staff of the applicable hospital. The process at JCMC works as follows:

- The physician(s) make application to the Medical Staff.
- The credentials committee of the Medical Staff evaluates the competency and skills of the applicant-physician(s) and determines if the applicant meets the requirements for privileges. Upon its consideration, the credentials committee makes its recommendation to the full Medical Executive Committee of the Medical Staff. The credentials committee is comprised of physicians from multiple specialties and physicians who are “independent”, “employed” and “hospital-based.”

- The Medical Executive Committee then evaluates the recommendation of the credentials committee with respect to the applicant, and then makes its own, independent determination. Upon its decision, a recommendation is then forwarded to the Board of Directors of Ballad for consideration. The Medical Executive Committee is composed of physicians from a variety of specialties and practices. Of the 27 members of the Executive Committee at JCMC, the majority (25) are independent physicians, with 9 being hospital-based physicians. Only 2 are employed physicians. Thus, Ballad-employed doctors are in the significant minority on the Medical Executive Committee.
- The Board of Directors of Ballad (the “Board”), through its Quality, Safety and Service Committee then acts upon the recommendations of the Medical Staff. Importantly, under Sections 5.05 (d) and (f) of the TOC, Ballad must provide an open medical staff offering equal access to all qualified physicians according to the criteria of the Joint Commission and the medical staff bylaws.

Generally, when a licensed practicing physician in the Geographic Service Area determines it is in the best interest of his/her patients to hold privileges at a Ballad hospital, it is the policy of Ballad to stand behind that physician’s medical determination and to permit the physician to obtain medical staff privileges if his/her peers on that hospital’s medical staff determine the physician’s qualifications meet medical staff requirements. This policy applies to all independent and employed physicians.

#### **1. Waiver Under the 35% Rule**

There is tension between the requirements of equal access of open medical staff and the 35% rule of the TOC. Due to the 35% rule, patient choice for cardiology services is still impaired in Johnson City. Today, a patient who lives in Johnson City with an established doctor-patient relationship with a CVA cardiologist practicing in Johnson City cannot be seen by his/her cardiologist at JCMC because the CVA cardiologist is unable to hold privileges at JCMC. This situation impairs the patient’s ability to choose his or her physician and care location and prevents the physician from providing continuity of care. Effectively, JCMC is not a tertiary referral hospital for patients that choose a CVA cardiologist.

Ballad believes that denying privileges to the CVA-affiliated physicians harms competition because independently practicing primary care physicians are denied a choice in their cardiologist. Ballad believes independent primary care physicians in Johnson City would validate that having the option of CVA cardiologists would be a benefit for them and their patients. Further, denying privileges to the CVA-affiliated physicians means patients are forced to choose between their closest tertiary hospital and their cardiologist and other specialists whom they have a doctor-patient relationship in the event the patient has to be hospitalized. For instance, if a patient with multiple comorbidities needs to be admitted to the hospital, the patient must then choose to stay in Johnson City and not be treated by their chosen cardiologist, or travel to HVMC or BRMC where their cardiologist can see them, but their other specialists cannot (since they likely do not practice at those hospitals). Ballad is concerned that the 35% rule imposes an arbitrary limitation on privileges in certain cases when eliminating such issues was an impetus for the merger in the first place. Ballad has heard from many dissatisfied patients who want their local cardiologist to be able to treat them at their local hospital.

Ballad seeks the waivers set forth in this letter in order to comply with the intent of the TOC to allow for patient choice and physician access to hospitals, especially given that the medical staff, independently, have determined the qualifications of the physician-applicants for privileges. Ballad's position is that these duly licensed and regulated physicians have the right to practice their licensed skills at the hospital they determine best for their patients in their medical judgment, and based on their assessment of the patient's total needs – be they convenience, family issues, or the complex issues that arise with patients that have multiple physicians or conditions which require a patient continuity in their care.

By granting the waivers set forth in this letter with respect to JCMC, TDH will allow Ballad to meet three significant objectives of the TOC: to open the medical staffs, to ensure equal access to privileges for all physicians, and to allow patients to be followed by their chosen cardiologists.

\* \* \* \* \*

Ballad hereby respectfully requests waivers under Section 5.05(e) of the TOC for the actions set forth in this letter. Ballad looks forward to discussing these important decisions with you, in addition to forthcoming issues which are relevant to patient choice and quality of care in cardiovascular services. Ballad's highest priority is ensuring that patients can access the high quality of care they need from the physicians they have chosen.

Should you have questions or would like to discuss further, please do not hesitate to contact me.

Sincerely,



Alan Levine  
Chairman & CEO

Attachments (2)

cc: Herbert H. Slatery III  
Tennessee Attorney General

Janet M. Kleinfelter  
Tennessee Deputy Attorney General

Jeff Ockerman  
Tennessee Department of Health

Judi Knecht, Interim COPA Director  
Tennessee Department of Health

Larry Fitzgerald  
Tennessee COPA Monitor

M. Norman Oliver, MD, MA, Commissioner  
Virginia Department of Health

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

Alan Levine, Chairman and Chief Executive Officer  
Ballad Health

Tim Belisle, EVP & General Counsel  
Ballad Health

Karen Guske, SVP COPA Compliance Officer  
Ballad Health

Mr. Alan Levine

June 8, 2020

Executive Chairman, President and Chief Executive Officer

Ballad Health

Dear Mr. Levine,

As residents of Johnson City for more than forty years, my wife and I have been long time patients of Dr. Mark Chang. Dr. Chang has done a plethora of tests for both of us. In addition, he has done catheterizations on both of us. My most recent catheterization was performed at the CVA Heart Center at Holston Valley Hospital. I found the facility to be excellent and the quality of care superb. Based on this review you are probably wondering why I am writing this letter.

We live in Johnson City and we both have recurring heart problems. My wife and I come from families with extensive heart problems. My father, one of fifteen children, died of congestive heart failure, as did five of his brothers before age sixty-five. My wife lost her father to congestive heart failure at sixty-seven. In addition, my wife's brother has had by-pass surgery as have I, my two brothers, about eighteen of my cousins and at least one nephew and niece. So much for the LUCK of the Irish.

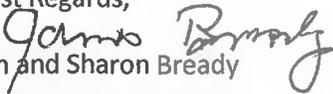
This introductory material is important as it supports our contention that if we have a heart related emergency, Dr. Chang is unable to see us at either hospital in Johnson City. We owe a great deal to Dr. Chang for our present state of health. As a citizen of Johnson City, we assumed that when Wellmont and Mountain States merged we would have access to CVA at the hospitals in Johnson City.

We assumed that if "We Liked Our Doctor We Could Keep Our Doctor"; this apparently is not the case. I find it disconcerting that Ballad has restrictions on patient care predicated on geography or an arcane doctor's hospital privileges program. If we have a heart-related issue, I have been led to believe that Emergency Services transports you to the nearest Emergency Room. For us, this would be the Medical Center. In a crisis neither my wife nor I would have access to Dr. Chang. Most emergency medical situations require immediate attention and Heart conditions probably more so than others. Therefore, as a seamless Medical system with hospitals in at least seven counties, how can approved physicians be denied access to any of the facilities? I have discussed this situation with about a hundred people, including my internist Dr. Forbush. Most are unaware that the situation exists and the people who are knowledgeable are at a loss as to why the situation exists.

I am sure that CVA and Dr. Chang are not the only practices that are being discriminated against. My wife and I believe that this problem needs to be addressed immediately.

Thank you for your attention and consideration of the issue addressed above.

Best Regards,

  
Jim and Sharon Bready  
3406 Honeywood Drive  
Johnson City, TN 37604  
1-423-676-8882



From: Lee Adams  
102 Dogwood Ln  
Johnson City, TN 27604

To: Mr. Alan Levine  
CEO, Ballad Health Systems

Dear Mr. Levine:

I am writing to ask for your assistance in helping us receive our cardiology care at Johnson City Medical Center by our cardiologist, Dr. Mark Chang

My husband and I live in Johnson City and have seen Dr. Chang as our cardiologist for nearly 20 years. I have had intermittent chest pains for years and I am certain there is something wrong with my heart. My husband Bill has severe and complex heart disease. He has had coronary stents, bypass surgery, heart attacks and heart failure. He initially received all of his hospital care and procedures at Johnson City Medical Center under Dr. Chang's care until about 10 years ago. It was at that time that Dr. Chang joined the CVA group and for reasons we do not completely understand has not been allowed to practice in JCMC since. Bill has been hospitalized several times since then and recently, he had a cardiac arrest and very nearly died. We are extremely grateful for the good care he received from all of the capable people who helped him survive that hospitalization at JCMC. But we still do not understand why during this and previous life-threatening hospitalizations, Dr. Chang could not see Bill, review his medical records or have any direct input into his care. My first phone call at the time of this most recent hospitalization was to Dr. Chang to see if he could care for Bill at JCMC. We found it tragic that he could not.

In addition, I have wanted Dr. Chang to do further testing on my heart with a cardiac catheterization but since he can only perform those at Holston Valley Medical Center, I have elected to not have the procedure done and have preferred to be followed in his office. I continue to live with occasional chest pains and my concern that there is something seriously wrong with my heart. I have told Dr. Chang that the minute he is able to work at JCMC, I want him to do my procedure there. I fully support JCMC as a good hospital in my home town and I simply do not want anyone but Dr. Chang to do this procedure on me. This is because we have complete trust in him as an outstanding physician and person.

The current situation is even more frustrating for us because we thought that with the formation of Ballad and the merger of Mountain States Health Alliance and Wellmont, Dr. Chang would be allowed to work here. This is where we all live and where he has practiced for years. We feel very comfortable at JCMC as our home institution. It is just minutes from our home and my husband has been treated there multiple times and our experience at that hospital has always been a positive one. Also we are not familiar with Kingsport or Holston Valley Medical Center. While Dr. Chang speaks very highly of that hospital, we worry about driving to another town and hospital that we do not know at all. Basically, we support and strongly prefer to receive our care near home at JCMC and we very much want Dr. Chang and his group to be able to take care of us here.

Please help Dr. Chang and his group take care of us in our hometown hospital. After all, this is where he has established his practice for over 20 years and where he continues to see many patients like us who want to be cared for by him when we need to be hospitalized. I am certain he is frustrated by many patients like us who ask him regularly why he cannot practice here, even after the formation of Ballad.

This question comes up frequently for me and my friends and other patients of Dr. Chang that we know. If there is anything you can do to help resolve this problem on our behalf, we would greatly appreciate it. Please let us know if there is any more information you need from us or if there is anything else we can do to help correct this terrible situation.

Sincerely,

A handwritten signature in blue ink that reads "Lee & Bill Adams". The signature is written in a cursive style with a large initial 'L'.

Lee and Bill Adams