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July 1, 2021

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

The Honorable Herbert H. Slatery
Attorney General and Reporter State of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207

RE: Notice regarding Ballad Health's Year 2 (Fiscal Year 2020) Monetary Commitment

Dear Commissioner Piercey and General Slatery,

In March of 2020, Tennessee temporarily suspended certain provisions of the Terms of Certification (TOC) due to the COVID-19 Pandemic state of emergency. The Monetary Obligations in Article Three were among the temporarily suspended provisions.

The TOC contemplated the possibility of a materially adverse event, which due to the global pandemic, occurred. The Department provided a thoughtful path forward through its suspension of certain provisions in recognition of the need for Ballad Health (Ballad) to focus its resources on the response to the threat to the health of our region. As cited above, the monetary obligations, which are aggregate over a 10 year period, and which provide for annual targets, were suspended. This suspension did not, however, provide for how to reconcile the annual spending commitment in the event the spending targets were suspended mid-year. In good faith, Ballad and the State agreed to pro-rate the spending through the first 8 months of the 2020 fiscal year in order to determine what spending would apply through the day of the suspension. While this approach is somewhat arbitrary, it was the most logical way to "stop the clock". The only mechanism in the TOC for calculating the spend is an annual calculation, and will, of course require some reconciliation.

Notwithstanding the suspension of the requirement for Ballad to spend dollars toward the plans, Ballad nevertheless continued to spend dollars. We felt, and still feel, that these initiatives are important, and we did not want to lose momentum. Many of these initiatives, while underway, have not hit full stride yet, at which time the spending will continue to pace upward. Given that Ballad continued to spend even when the requirement was suspended, we do hope the State would agree our team has acted in good faith toward the desired goals of the TOC.

Also, while perhaps not relevant at this time to the plan spending reconciliation process, it is notable that as Ballad continued to spend on these plans, we also made an *annual incremental commitment* during FY2020 of more than \$30 million toward nursing and clinical salary increases which were not planned (we added another \$20 million to this annual incremental investment in FY2021). Ballad Health's annual cash flow, which includes federal support, and is currently projected at \$200 million, is \$130 million below our original projections pre-merger. This is due to a combination of the effect of the

pandemic, our good faith efforts to reduce the total cost of health care by more than \$200 million annually through reduced readmissions, reduced low acuity admissions, reduced low acuity ER visits, and our permanent and incremental investment into our clinical staff. We project a similar gap in the coming year's budget, made more significant by a shift in payment policies related to outpatient services which disadvantages hospitals.

In context, Ballard has made major investment in the plan spending, and in the quality and sustainability of health care which has had a material impact on our cash flow.

During the first eight months of FY20, prior to the suspension of the related TOC provisions, Ballard experienced a gap in the "prorated" spending, which is outlined in Exhibit B of the TOC in five (5) of the six (6) Health Plans as provided in the table below. Ballard *exceeded* the prorated spending target in the Population Health Plan. While Ballard was below the prorated spending target in the Health Research/Graduate Medical Education (HR/GME) Plan as provided in the table below, the gap did not exceed the 15% cushion per Section 3.01(a). To repeat, there is no provision in the TOC for "proration" of spending, but for purposes of helping to come to a reconciliation on the annual spend target, Ballard agreed to use this methodology. For the purpose of getting to final reconciliation of the spending, Ballard will use these numbers to establish the notification of our spending for the pro-rated period, and we propose a path forward to help the State and Ballard with final conclusion of the year's calculation.

Health Plan Commitment and Spend for the 8-months of FY20 (amounts not rounded for presentation)

COPA Plan	FY20 COPA Commitment	Final Post-Audit FY20 Actual "Pro-Rata" Plan Spend	FY20 Spending Excess (Gap)
Behavioral Health	\$ 2,666,667	\$ 1,434,602	\$ (1,232,065)
Children's Health	\$ 1,333,333	\$ 746,038	\$ (587,296)
Rural Health	\$ 2,000,000	\$ 1,330,224	\$ (669,776)
HIE	\$ 666,667	\$ 25,430	\$ (641,237)
Total spending gap, and cure amount	\$ 6,666,667	\$ 3,536,294	\$ (3,130,374)
HR/GME	\$ 4,000,000	\$ 3,590,697	\$ (409,303)
Population Health	\$ 1,333,333	\$ 2,070,489	\$ 737,156

As earlier stated, notwithstanding the temporary suspension, Ballard continued to spend on many of the items within the six health plans. Ballard understands that there has not yet been an opportunity to reconcile spend during the period of suspension but certainly, it is Ballard's expectation that we will be given credit for that spend, which was done in good faith.

Ballad remains committed to working with you to ensure compliance with the terms and conditions of the TOC. In order to show good faith, now that the eight month period has been finalized and it will take some time to reconcile spend not required during the ongoing suspension period, Ballard proposes to place \$3,130,374 into a Board designated fund. Removal of funds requires CFO approval. In addition, Ballard will work with TDH on the reconciliation mentioned above and on revising Exhibit B (Monetary Commitments) in light of the suspension period and the financial impact from the pandemic.

Ballad is grateful and very appreciative of the state's ongoing support over the last year. While we believe the worst of COVID-19 is hopefully behind us, many challenges remain. In addition to treating the continued COVID-19 cases, Ballad will also continue to educate our community on the benefits of the vaccine and encourage them to be vaccinated.

Sincerely,



Alan Levine
Chairman & CEO

CC: Janet M. Kleinfelter
Tennessee Deputy Attorney General

Judi Knecht, Interim COPA Director
Tennessee Department of Health

Jeff Ockerman
Tennessee Department of Health

Larry Fitzgerald
Tennessee COPA Monitor

The Honorable Norman Oliver, MD, MA,
Commissioner, Virginia Department of Health

Allyson Tysinger
Virginia Senior Assistant Attorney General

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Virginia Department of Health

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