



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
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BILL LEE
GOVERNOR

LISA PIERCEY, MD, MBA, FAAP
COMMISSIONER

September 14, 2021

Alan Levine
Chairman, President and Chief Executive Officer
Ballad Health
303 Med Tech Parkway, Suite 300
Johnson City, TN 37604

RE: Ballad Health's waiver request related to Physical Medicine and Rehabilitation ("PM&R") in Sullivan County, TN

Dear Mr. Levine,

This letter is in response to your August 25, 2021 request for a waiver under Section 5.05(e) of the Second Amended and Restated Terms of Certification ("TOC") so that Ballad Health ("Ballad") may hire an additional psychiatrist ("PM&R physician") in Sullivan County for outpatient services.

The Tennessee Department of Health ("TDH") recognizes that patients benefit from professional rehabilitation services and that more patients may need PM&R services as a result of the increase in the number of COVID-19 cases in the region. Your letter describes the focus of the new PM&R physician as spine and rehabilitation and that the addition of a PM&R physician will significantly reduce wait times for clinic appointments for patients needing to see a pain specialist, potentially reducing unnecessary emergency room visits. You report that the additional employed PM&R physician will not affect independent physicians as they are embedded in orthopedic and neurosurgery clinics.

Section 5.05(e) of the TOC imposes a thirty-five percent (35%) limit on employed physicians practicing in any specialty at the COPA hospitals in Sullivan County, Tennessee. Upon a finding that waiver requests by Ballad are in the interest of continued access to services, and that the number of employed physicians in any specialty has not reached a level that would materially and adversely affect existing competition, TDH has exempted specific specialties and waived limitation to the percentages of employed physicians within stated specialties from time to time. PM&R physicians are not within those excepted specialties nor waived limitations for Sullivan County, as a whole.

As a threshold matter, your letter does not state whether you propose for the PM&R physician to practice at the COPA hospitals in Sullivan County. Also, your letter does not reference any percentage of employed physicians within the PM&R specialty as of the issue date of the TOC but does state that the current percentage of employed physicians within the PM&R specialty already exceeds the permissible maximum under Section 5.05(e) of the TOC.

In addition, under the provisions of the March 31, 2020 letter from the Office of the Attorney General and TDH the provisions of Section 5.05(e) are temporarily suspended during the period of public emergency and a reasonable recovery period thereafter, so the hiring of this PM&R physician would not violate this provision of the TOC. However, once the temporary suspension resulting from the pandemic is lifted, this hire could result in immediate noncompliance, and we understand that Ballard wishes this waiver to be permanent.

Therefore, based upon the information contained in your letter and our review of Ballard's 2019 provider needs assessment report, and exacerbated by the growing post-COVID service demands, TDH has determined that the region has a need for this additional PM&R physician to provide continued access to services. Additionally, because your request only addresses outpatient services, TDH finds that the waiver in this instance would not materially and adversely affect existing competition. Accordingly, I have determined that the likely benefits of this waiver outweigh the potential adverse impacts. **Therefore, I approve Ballard's request to add a psychiatrist in outpatient Physical Medicine and Rehabilitation service in Sullivan County, Tennessee on a permanent basis.**

Thank you for your continuing efforts to serve the needs of your patients. While TDH takes our supervision role under the COPA very seriously, we also see ourselves as partners with Ballard Health in working through the various issues that will invariably arise in this unprecedented process. Ballard's success is imperative to the residents of Northeast Tennessee and Southwest Virginia, and we want to do our part to help make that success possible.

Please let my staff know if you have any additional questions or need further clarification.

Sincerely,



Lisa Piercey, MD, MBA, FAAP
Commissioner

cc: Tim Belisle, General Counsel
Ballad Health

Claire C. Haltom, Shareholder

Baker Donelson PC

Karen Guske, SVP, COPA Compliance Officer,
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer
Ballad Health

Erik Bodin, Office of Licensure and Certification
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Larry Fitzgerald
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Janet M. Kleinfelter, Deputy Attorney General
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Judi Knecht, Population Health Program Manager
Tennessee Department of Health