



**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**
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September 14, 2021

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

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

Dear Mr. Levine,

This is in response to your letter dated February 9, 2021, and updated February 18, 2021, in which you ask that the Tennessee Department of Health ("TDH") reconsider requests related to Ballad Health's ("Ballad") Cardiology Program. Your February letters addressed several concerns that we raised in our December 21, 2020 letter responding to your initial cardiology waiver request of October 13, 2020 and provided new information that we found to be highly relevant to our consideration of the waiver request. As a result of this new information, we have reevaluated Ballad's Cardiology Program waiver request and ultimately have made new determinations with respect to that request.

Request #1. Grant a waiver of Section 5.05(e) of the Terms of Certification to allow certain cardiologists affiliated with CVA Heart Institute ("CVA") to see their patients at Johnson City Medical Center ("JCMC")

Section 5.05(e) of the Second Amended and Restated Terms of Certification, April 27, 2021 ("TOC") imposes a thirty-five percent (35%) limit on employed physicians practicing in any specialty at the COPA Hospitals in Washington County. In the interest of continued access to services, TDH waived the requirement for specific specialties upon issuance of the COPA in accordance with a list provided to TDH by Ballad of each specialty in which Ballad exceeded this 35% percentage limitation.

On January 31, 2018, with the execution of the TOC, the maximum percentage of employed cardiologists at JCMC was set at 47.2%. Ballad suggests in its February letters that the methodology used to calculate that percentage "failed to account for an important nuance in the cardiology market," which has resulted in cardiologists who were employed by Ballad as of the date of the

merger being erroneously denied the ability to practice at JCMC.

At the time the JCMC cardiologist calculation was made, Mountain States Health Alliance (“Mountain States”) and Wellmont Health System (“Wellmont”) were competing health systems. We understand that due to the competitive market, Mountain States did not allow cardiologists employed by Wellmont to hold medical staff privileges at JCMC, but once the merger was consummated, the Wellmont employed cardiologists and Mountain States employed cardiologists all became Ballard employed cardiologists. However, when the parties calculated the maximum percentage of employed cardiologists at JCMC in the January 31, 2018 calculation, they failed to take into account that the former Wellmont cardiologists would now be part of Ballard’s cardiology team with staff privileges and the ability to practice at JCMC.

After careful consideration, TDH agrees that the rule set that was followed to calculate the employed cardiologists practicing at JCMC should have included those Ballard Health cardiologists who were formerly employed by Wellmont (CVA) and worked out of offices in Johnson City.

TDH is pleased to have this additional information and Ballard’s proposed remedy for consideration. We believe that the remedy is appropriate given that the TOC required Ballard to grant staff privileges to all qualified physicians. This remedy also supports the COPA goal of improving access to residents in the region. **Accordingly, the request to waive Section 5.05(e) of the TOC to allow the cardiologists affiliated with CVA in Table 1 to see their patients at JCMC is granted under the following condition:**

- Ballard agrees, as stated in your February 2021 letters, not to take any action to block independent cardiologists from taking emergency room (“ER”) call at JCMC, and not to make any change to the ER call schedule at JCMC that would harm the independent cardiologist’s ability to participate in their share of call. Therefore, patients presenting to JCMC without a cardiologist of record, who need a cardiologist, will be allocated among Ballard employed cardiologists, Karing Hearts, and ETSU consistent with the call schedule and this allocation will not be changed during the term of the TOC. Generally, TDH expects that access to all cardiology services at JCMC, including cardiac catheterization lab time, be allocated equitably between Ballard employed and independent cardiologists.

Table 1. CVA cardiologists granted approval to see patients at JCMC

Mark Chang, MD

Marc Counts, MD

Daniel O’Roark, MD

Michael Ponder, MD

Allocated as may be altered from time to time for a total waiver of 1.80 FTE

Request #2. The hiring by Ballard Health Medical Associates Heart and Vascular Care (“BHMA”) of one electrophysiologist (“EP”) in Johnson City and the granting of privileges to practice at JCMC.

EPs, as a subspecialty of cardiologists, were grouped with cardiology to compute the employed doctor percentage of 47.2% on January 31, 2018. Ballard’s February letters establish that there are currently only two EP providers practicing in Johnson City, and that demand for EPs has increased significantly since the issuance of the COPA. Ballard’s letter describes the patient care concerns, including long wait times and physician burnout associated with not being able to add a provider to support Ballard’s overextended EP, as a result of the prohibition set out by Section 5.05(e) of the TOC.

When reviewing the resubmitted waiver request, TDH weighed the serious patient access and outcome implications associated with not having enough EPs to meet demand, against the potential downsides of denying this waiver request. **Therefore, the request to waive Section 5.05(e) of the TOC to allow Ballard to hire one EP in Johnson City is granted.**

Recalculation of Employed Physician Percentages - Cumulative impact of granting these waivers.

Finally, in reviewing Ballard’s Cardiology waiver request, the COPA Monitor discovered an additional oversight in the January 31, 2018 calculation of cardiologists. One independent cardiologist, Dr. Sivagnanam, who was practicing in Johnson City prior to the merger, was not accounted for in those calculations. Table 2 below compares the number and percentage of Ballard-employed cardiologists at various points in time.

Table 2. Numbers (in FTEs) and percentages of cardiologists practicing at JCMC

	Total number of cardiologists (FTEs) practicing at JCMC	Percent of Ballard-employed cardiologists practicing at JCMC
Data used for the 1/31/18 calculation.	13.45	47.2%
Data from 1/31/18 corrected to include a non-Ballad cardiologist. ¹	14.45	43.9%
Data on cardiologists as of 2/18/21 ² .	14.85	42.8%
Data on cardiologists as of the date of this waiver request approval	17.65	51.8%

¹ The COPA Monitor determined that Dr. Sivagnanam was not included in the 1/31/2018 calculation and Ballard has agreed to include this cardiologist in calculations.

² The change in FTEs for cardiologists practicing in Johnson City between January 31, 2018 and February 18, 2021 (date of waiver request) is attributable to the addition of new cardiologists to independent cardiology groups and to other providers changing their practice patterns, retiring, departing, or moving.

As a result of granting these two waiver requests, the percentage of approved Ballad employed cardiologists at practicing at JCMC, will increase from 43.9% to 51.8%.

The Department appreciates the efforts Ballad has taken, to date, to provide recruitment support to independent practices. We encourage continued collaboration and partnership with independent groups in Johnson City and throughout Ballad's service area.

Thank you for submitting the additional information regarding the methodology for the original calculation of employed physician percentages at JCMC and for the additional details regarding the region's EP shortage. The Department is glad for the opportunity to reevaluate this request in light of this additional information, and after careful consideration, we are confident that granting these two waiver requests will provide benefits to resident in the region in the form of improved access and outcomes.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Piercey".

Lisa Piercey, MD, MBA, FAAP
Commissioner

Cc: Tim Belisle, General Counsel
Ballad Health

Claire C. Haltom, Shareholder
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