



**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

December 15, 2021

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

**RE: Waiver Requests for Neurology in Washington County, Tennessee**

Dear Mr. Levine,

This letter is in response to your November 12, 2021 request for a waiver under Section 5.05(e) of the Second Amended and Restated Terms of Certification, dated April 27, 2021 (“TOC”) in which you ask that the Tennessee Department of Health (“TDH”) grant Ballad Health (“Ballad”) i) an additional employed neurologist in Washington County to see patients in both the inpatient and clinic setting; and ii) retroactive approval for the relocation of one (1) neurologist (Dr. Niebauer) from Abingdon, Virginia to Washington County, Tennessee.

TDH recognizes the needs of patients for physicians trained in neurology and the difficulty of recruiting and retaining qualified professionals in a specialty under such demand. Ballad’s letter states that independent neurologists in the community choose to provide only outpatient services and do not maintain staff privileges nor cover inpatient consults nor ER call. Your letter further describes the patient care concerns relating to the current number of neurologists in the community, including long wait times, and asserts that the current community needs assessment demonstrates the need for additional neurologists in Washington County. Finally, your letter states that Ballad, through its affiliate BHMA, currently employs two (2) neurologists who practice exclusively in the hospital setting in Washington County, Tennessee (the ‘neuro-hospitalists”).

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 Washington County. In the interest of continued access to services, TDH waived the limitation for specific hospital-based specialties listed in Section 5.02(h). Neurologists are not among the listed specialties. Further, upon

issuance of the TOC in accordance with a list provided to TDH by Ballard of each specialty in which Ballard exceeded this 35% percentage limitation, TDH waived the limitation on employed neurologists at several Ballard hospitals, but Ballard did not request waiver for neurologists for any hospital in Washington County, Tennessee. Yet, upon a finding that waiver requests by Ballard 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 subsequently exempted specific specialties and waived limitation to the percentages of employed physicians within stated specialties from time to time.

In addition, under the provisions of the March 31, 2020 letter from the Office of the Attorney General and TDH and the clarifying letter of December 3, 2021, the provisions of Section 5.05(e) are temporarily suspended during the period of public emergency and until June 30, 2022 as a reasonable recovery period thereafter, so that the hiring of these neurologists would not violate this provision of the TOC. However, after June 30, 2022, these hires could result in immediate noncompliance, and we understand that Ballard wishes these waivers to be permanent.

Based upon the facts presented in your letter, I understand that Ballard employs, including Dr. Niebauer, 100% of the neurologists practicing at the COPA hospitals in Washington County, Tennessee and that Ballard would be in noncompliance with the provisions of Section 5.05(e) of the TOC were it not for the temporary suspension of the March 2020 letter.

Nevertheless, when reviewing these waiver requests, TDH weighed the serious patient access and outcome implications associated with not having enough neurologists to meet demand against the potential downsides of denying these waiver requests. Accordingly, I have determined that the likely benefits of these waivers outweigh the potential adverse impacts. **Therefore, the request to waive Section 5.05(e) of the TOC on a permanent basis to allow Ballard to hire one (1) neurologist in Washington County, Tennessee is granted.**

Further, notwithstanding Ballard's failure to report the relocation of a neurologist, prior to the temporary suspension period, which placed Ballard in violation of its obligations under the TOC, TDH has not received any complaints from the patient or physician community regarding access to neurology care in either Abingdon, Virginia or Washington County, Tennessee, nor have any other concerns come to my attention. Therefore, **I approve the permanent increase of one additional (1) employed neurologist (Dr. Niebauer) in Washington County, Tennessee effective as of late 2018.** I find that these waivers support the COPA goal of improving access to care for residents in the region.

Finally, in addition to the requested waivers, **I approve the permanent increase of the percentage of approved Ballard employed neurologists practicing at JCMC to 100%.**

As a condition of this waiver, Ballard is required to notify TDH before either of the neuro-

hospitalists alters their practice to see patients outside of the COPA hospitals and seek additional waivers under Section 5.05(e) of the TOC.

In addition, the Department notes that under TOC sections 5.05(d) and 5.05(f) Ballard is required to provide open medical staffs at its hospitals and, as a condition for these waivers, Ballard shall notify TDH if any independent neurologists apply for staff privileges in Washington County, Tennessee and the outcome of that application.

Thank you for your continuing efforts to serve the needs of your patients. TDH is confident that granting these waiver requests will provide benefits to residents in the region in the form of improved access and outcomes. 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: The Honorable Norman Oliver, State Health Commissioner  
Virginia Department of Health

Tim Belisle, General Counsel  
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer  
Ballad Health

Karen Guske, COPA Compliance Officer  
Ballad Health

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

Allyson Tysinger  
Virginia Senior Assistant Attorney General

Kevin Meyer  
COPA Analyst, Virginia Department of Health

Larry Fitzgerald  
COPA Monitor

Janet M. Kleinfelter, Deputy Attorney General  
State of Tennessee

Jim Mathis, COPA Director  
Tennessee Department of Health

Judi Knecht, Population Health Program Manager  
Tennessee Department of Health

Claire C. Haltom  
Baker Donelson PC