



**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

ANDREW JOHNSON TOWER, 5TH FLOOR
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243

BILL LEE
GOVERNOR

RALPH ALVARADO, MD, FACP
COMMISSIONER

September 5, 2024

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

RE: Ballad Health's ("Ballad") Fiscal Year 2023 ("FY23") Monetary Commitment

Mr. Levine,

This letter addresses the FY23 spending requirements of Ballad under Article III of the Fourth Amended and Restated Terms of Certification, dated July 1, 2023 ("TOC"). We will summarize herein as of June 30, 2023 the creditable spending by Ballad under each of the Spending Plans; the amounts that will carry forward to subsequent fiscal years; and we will issue shortfall determinations for FY23 and any balances that must be retained in board-designated funds required by findings for previous fiscal years and other Corrective Actions required for Noncompliance under Section 6.05 of the TOC.

FY23 is the third year under the TOC that Ballad has not met its Baseline Spending as required by TOC Section 3.01(b), although we recognize that the shortfall has diminished in each of the last three years. We note that the Baseline Spending shortfall for FY23 occurred in the same plan areas as in FY22. We thank Ballad for the valuable projects and expenditures it continues to pursue under Baseline Spending initiatives. We also appreciate the efforts Ballad staff have expended in explaining to us their understanding and the process utilized to address the Baseline Spending obligations under TOC Section 3.01(b). As you know, the Department must find that the Baseline Spending obligation has been satisfied, and we will continue to work with Ballad to clarify its obligations under the TOC.

Baseline Spending is a calculated level of historical spend which assures that the Aggregate Spending Commitment is met through incremental expenditures and not satisfied by the reduction of previously existing spending levels. We do not interpret the failure to meet Baseline Spending as independent Noncompliance under the TOC nor will prior year Baseline Spending deficits be directly carried over as aggregate shortages in Baseline Spending to future years, but the shortfall in Baseline Spending will reduce the amount of spend creditable towards the Monetary Obligations in any year in which the Baseline Spending is not met. The

Tennessee COPA Monitor (“Monitor”) advised us that he asked the Ballad internal audit department to audit both Baseline Spending and incremental spending attributed to each of the six (6) approved Spending Plans required under Article III. The Monitor then reviewed with Ballad the work performed by the Ballad internal audit department and made requests for additional documentation. Based upon his efforts, the Monitor reports:

Baseline Spending

Baseline Spending was satisfied in FY23 for four (4) of the Spending Plans. However, for the other Spending Plans, Baseline Spending was deficient in the amounts shown below:

Rural Health Services	Baseline Deficit (\$ 584,672)
Region-Wide Health Information Exchange (“HIE”)	(\$ 277,568)

Therefore, in order to calculate the creditable expenditures under the Spending Plans, we will reduce the otherwise qualified and creditable expenditures for FY23 by the Baseline Deficit listed above.

Spending Plans for FY23

Based upon the work of the Ballad internal audit department and validation by the Monitor, the chart below sets forth the amounts of excess or shortfall spending during FY23:

	Total Spending Commitment	FY23 Commitment (per <u>Exhibit B</u> of TOC)	Actual Plan Spend for FY23	FY23 Plan Spend Excess/(Short fall)
Behavioral Health Services	\$ 85,000,000	\$ 12,000,000	\$ 7,879,724	(\$4,120,276)
Children’s Services	\$ 27,000,000	\$ 4,000,000	\$ 5,177,674	\$1,177,674
Rural Health Services	\$ 28,000,000	\$ 4,000,000	\$ 5,590,484	\$1,590,484
Health Research & Graduate Medical Education (“HR/GME”)	\$ 85,000,000	\$ 11,000,000	\$ 10,553,049	(\$ 446,951)
Population Health Improvement	\$ 75,000,000	\$ 11,000,000	\$ 11,810,020	\$ 810,020
HIE Plan	\$ 8,000,000	\$ 1,000,000	\$ 297,135	(\$ 702,865)

Therefore, for three (3) of the Spending Plans, namely Behavioral Health, HR/GME and HIE Plan, Ballard did not meet its commitment and obligation for Plan Spend in FY23 as expressed in Exhibit B of the TOC. Ballard did not notify us as required by TOC Section 6.05 of any potential or actual shortfalls in any of the Spending Plans. Under Section 3.01(a) of the TOC, the shortfall for the HR/GME Plan was no more than fifteen percent (15%) of the Monetary Commitment required for FY23 and therefore did not constitute Noncompliance under the TOC. Further, under the February 1, 2024, Ballard FY22 Spending Letter (“FY22 Spending Letter”), the HR/GME Plan had a Spend Excess carried to FY23 that significantly exceeds the shortfall of the HR/GME Plan for the FY23 Plan Spend requirements. Because this situation involved a shortfall of less than 15% and because the Spend Excess exceeded the shortfall, we will decline to treat the lack of notice as noncompliance at this time. But, as a reminder, Section 6.05 requires notice of potential or actual shortfalls.

In addition, we note the April 19, 2024, findings of the Virginia Department of Health on the Spending Shortfall through Fiscal Year 2023 and Ballard’s May 28, 2024 response to those findings, in which Ballard objects to certain amounts ‘disallowed’ by the Monitors in the HR/GME and the Behavioral Health Plans. Because TOC Section 3.01 requires all spending to be new and incremental pursuant to the approved plans and these material amounts were in excess of amounts previously agreed for projects made available for public review, we are accepting the Monitor’s recommendation to disallow these amounts. We would encourage Ballard to seek prior approval by plan amendments if in the future Ballard believes material overages may present. Further, we note that if the calculation of creditable Baseline Spending were modified as referenced above, some or all of these amounts disallowed on the Spending Plans could have been attributable to the Baseline Spending.

Carryover Excess/Shortfall

Under the FY22 Spending Letter we acknowledged certain excess and shortfall amounts under the Spending Plans that would be carried to FY23. Therefore, combining the Baseline Spending and Spending Plan calculations above with the amounts under the FY2022 Spending Letter, we find that the creditable spend and carryover excess and shortfall at the end of FY23 shall be:

	Baseline Spending deficit for FY23	FY23 Plan Spend Excess/ (Shortfall) (from above)	Excess/(Shor tfall) carried to FY23 (from FY2022 Shortfall Letter)	Excess/(Shortfall) carried to FY24
Behavioral Health Services	-	(\$4,120,276)	(\$3,055,557)	(\$7,175,833)
Children’s Services	-	\$1,177,674	\$ 914,362	\$2,092,036
Rural Health Services	(\$ 584,672)	\$1,590,484	\$7,714,138	\$8,719,950
HR/GME	-	(\$ 446,951)	\$4,583,946	\$4,136,995

Population Health Improvement	-	\$ 810,020	\$7,168,996	\$7,979,016
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HIE Plan	(\$ 277,568)	(\$ 702,865)	(\$ 1,749,147)	(\$2,729,580)
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Therefore, the excess spend in Children’s Services, Rural Health Services, HR/GME and Population Health shall be credited against the annual spending commitments for FY24 under the provisions of Section 3.01(a) of the TOC. However, the entire shortfall for the two (2) Plans noted above, namely Behavioral Health Services and HIE Plan, will carry forward to FY24 as shortfalls in the respective Spending Plans. We encourage Ballard to work with their community to cure this spending shortfall as soon as possible and to notify us of proposed actions.

Corrective Actions for Noncompliance

We have addressed directly with Ballard the issue of Noncompliance for failure to notify us of failure to meet Monetary Commitments for FY23 under Section 6.04(d)(ii) of the TOC. We will defer assessing Corrective Actions for this failure to notify at this time, but any future failures to notify may be dealt with as Noncompliance that requires Corrective Actions.

Under the FY2022 Spending Letter, Ballard was required to maintain in board-designated funds the amount of \$342,000 in board-designated funds for the HIE Plan. Based upon the shortfalls above, we could take multiple actions as listed in TOC Section 6.05(d), including (1) prohibiting payments of bonuses or other incentive compensation above base salary to any executive officer; (2) requiring the COPA Parties to make a remedial contribution in the amount determined by the Department to the Population Health Initiatives Fund; (3) a COPA Modification or other listed actions. However, we recognize that in the other previous spending letters, the September 29, 2020 Notice of noncompliance regarding Ballard Health’s Year 1 (Fiscal Year 2019) Monetary Commitment (“FY19 Spend Letter”) and the August 26, 2021 Ballard Health’s Fiscal Year 2010 Monetary Commitment (“FY20 Spend Letter”) in which shortfalls were found against the Monetary Commitment, Ballard was required to establish board-designated funds as Corrective Action. In addition, we are aware that the Virginia Department of Health has already assessed a deposit into board-designated funds for the two (2) Spending Plans, (Behavioral Health Services and HIE Plan) that are found to be in shortfall for FY23, and we desire that the Monetary Commitment findings of Tennessee and Virginia remain in alignment as much as possible.

Therefore, we require that Ballard establish and maintain on its balance sheet funds in the respective amounts of \$7,175,833 for Behavioral Health Services and \$2,729,580 for HIE Plan as Corrective Action for the FY23 shortfall.

We appreciate Ballad for its commitment to the community as shown by Plan Spend, which for most plans has exceeded its commitment, and we encourage Ballad to increase its Plan Spend for the plans that are in shortfall so that the community can reap the benefit of those expenditures.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Alvarado', with a long horizontal flourish extending to the right.

Ralph Alvarado, MD, FACP
Commissioner

cc: Julie Bennett, Chief Legal Officer
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer
Ballad Health

Karen Seiden, COPA Compliance Officer
Ballad Health

Karen Shelton, MD, Commissioner
Virginia Department of Health

Joe Hilbert, Deputy Commissioner for Governmental and Regulatory Affairs
Virginia Department of Health

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

Kevin Meyer, COPA Analyst
Virginia Department of Health

Allyson Tysinger
Virginia Senior Assistant Attorney General

Joe R. Landsman
Tennessee COPA Monitor

Kevin M. Kreutz, Deputy Attorney General
State of Tennessee

JW Randolph, MPH, Deputy Commissioner Health Strategy and Regulation
Tennessee Department of Health

Elizabeth Jones, Director, Health Planning
Tennessee Department of Health

Jim Mathis, COPA Director
Tennessee Department of Health

Judi Knecht, COPA Assistant Director
Tennessee Department of Health

Claire C. Haltom
Baker Donelson PC