



**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

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February 1, 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 2022 ("FY22") Monetary Commitment

Mr. Levine,

This letter addresses the FY22 spending requirements of Ballad under Article III of the Third Amended and Restated Terms of Certification, dated July 1, 2022 ("TOC").

During Ballad's FY22 many spending obligations under Article III of the TOC were suspended by the March 31, 2020 letter Suspension of TOC Provisions in Response to Notice of Force Majeure Event issued at Ballad's request due to the COVID-19 Pandemic ("March 2020 Suspension Letter"). Because of the suspension, we will not be issuing any new or additional shortfall determinations for FY22, but we will summarize herein as of June 30, 2022 the creditable spending Ballad continued notwithstanding the suspension; the amounts that will carry forward to subsequent fiscal years; and the balances that must be retained in board-designated funds required by findings for previous fiscal years. As of the end of FY22 all suspensions under the March 2020 Suspension Letter have ended.

FY22 is a second year under the TOC that Ballad has not met its Baseline Spending as required by TOC Section 3.01(b). However, we are pleased that the Baseline Spending Shortfall for FY22 is smaller than in the prior year. We also commend Ballad for the valuable projects and expenditures under its Baseline Spending initiatives that it continued during the difficult period of the COVID-19 pandemic. We also appreciate the efforts Ballad staff have expended in explaining to us their interpretation and the

process utilized to address the Baseline Spending obligations under TOC Section 3.01(b) and how that interpretation differs from the interpretation of TDH. Nevertheless, for FY22 TDH will continue with its present interpretation but will agree to clarify these issues in any future amendments to the TOC. Finally, we note that the Baseline Spending Shortfall for FY22 occurred in fewer plan areas than in FY21. We encourage Ballad to continue in its progress in reinstating the Baseline Spending levels that occurred prior to the COVID-19 pandemic.

This Baseline Spending component 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”) has 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 FY22 for four (4) of the Spending Plans. However, for the other Spending Plans, Baseline Spending was deficient in the amounts shown on the chart below:

	Annual Baseline Spending Levels	Actual Baseline Spend	Baseline Deficit
Rural Health Services	\$74,374,082	\$69,264,212	(\$5,109,870)
Region-Wide Health Information Exchange (“HIE”)	\$ 452,359	\$ 126,144	(\$ 326,215)

Therefore, in order to calculate the creditable expenditures under the Spending Plans, we will reduce the otherwise qualified and creditable expenditures for FY22 by the Baseline Deficit listed above.

Spending Plans

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 for FY22:

	Total Spending Commitment	FY22 Commitment (per <u>Exhibit B</u> of TOC)	Actual Plan Spend for FY22	FY22 Plan Spend Excess/(Short fall)
Behavioral Health Services	\$ 85,000,000	\$ 9,333,000	\$ 4,317,593	(\$5,015,407)
Children's Services	\$ 27,000,000	\$ 4,667,000	\$ 3,761,303	(\$ 905,697)
Rural Health Services	\$ 28,000,000	\$ 5,000,000	\$20,285,059 ¹	\$15,285,059
Health Research & Graduate Medical Education ("HR/GME")	\$ 85,000,000	\$ 11,000,000	\$ 9,271,952	(\$ 1,728,048)
Population Health Improvement	\$ 75,000,000	\$ 6,667,000	\$ 6,901,261	\$ 234,261
HIE Plan	\$ 8,000,000	\$ 1,333,000	\$ 252,068	(\$ 1,080,932)

Therefore, for four (4) of the Spending Plans, namely Behavioral Health, Children's Services, HR/GME and HIE Plan, Ballad did not meet its commitment and obligation for Plan Spend in FY22 as expressed in Exhibit B of the TOC. This status could be concerning but we acknowledge the suspension of the Monetary Obligations for FY22 and that you have reported to us that the spending levels were impacted by the lingering effects of COVID-19 pandemic.

You notified us in a June 29, 2022, letter Notice regarding Ballad Health's Year 4 (Fiscal Year 2022) Monetary Commitment ("June 2022 Shortfall Notice") that you expected two (2) of the Spending Plans to underspend for the year. No mention was made in the June 2022 Shortfall Notice of the other two (2) plans as would have been required under Section 6.04(d)(ii) of the TOC in a non-suspension year. Nevertheless, in order to permit Ballad opportunity to stabilize and recover spending levels, we will monitor spending

¹ This amount includes the \$12,787,739 credit to the Rural Health Services plan for Lee County Hospital granted by letter dated May 4, 2023.

levels in FY23 and beyond, but we decline to declare Ballard in Noncompliance with the TOC at this time.

Creditable Spend and Carryover Excess/Shortfall

Under the January 27, 2023 letter Ballard Health’s Fiscal Year 2021 Monetary Commitment – Revised letter (“FY2021 Shortfall Letter”) we acknowledged certain excess and certain shortfall amounts under the Spending Plans that would be carried to FY22. Therefore, combining the Baseline Spending and Spending Plan calculations and amounts under the FY2021 Shortfall Letter, we find that the creditable spend and carryover excess and shortfall at the end of FY22 shall be:

	Baseline Spending deficit for FY22	FY22 Plan Spend Excess/ (Shortfall)	Excess/(Shortfall) carried to FY22 (from FY2021 Shortfall Letter)	Excess/(Short fall) carried to FY23
Behavioral Health Services	-	(\$5,015,407)	\$1,959,850	(\$3,055,557)
Children’s Services	-	(\$ 905,697)	\$1,820,059	\$ 914,362
Rural Health Services	(\$5,109,870)	\$15,285,059	(\$2,461,051)	\$7,714,138
HR/GME	-	(\$ 1,728,048)	\$6,311,994	\$4,583,946
Population Health Improvement	-	\$ 234,261	\$6,934,735	\$7,168,996
HIE Plan	(\$ 326,215)	(\$ 1,080,932)	(\$ 342,000)	(\$ 1,749,147)

Therefore, the excess spends in Children’s Services, Rural Health Services, HR/GME and Population Health shall be credited against the annual spending commitments for FY23 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 FY23 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.

Prior Shortfalls

Under the FY2021 Shortfall Letter, Ballard was required to maintain in board-designated funds specified amounts for two (2) Spending Plans: \$ 669,776 for the Rural Health Plan and \$ 342, 000 for the HIE Plan.

Based upon the shortfalls above, we could take multiple actions including requiring Ballard to establish deposits for Behavioral Health Services and increase its deposits for

HIE Plan to the calculated shortfall amounts shown in the above calculation, but we are declining to so direct due to the Spending Plan suspension for this period under the March 2020 Suspension Letter. In addition, because of the excess spend shown above in the Rural Health Services Plan we hereby authorize the release of the \$ 669,776 in board-designated funds for the Rural Health Plan. However, we will not authorize the release of the \$ 342,000 in board-designated funds for the HIE Plan. If shortfalls continue into future years for Plan Spend, we will consider appropriate action under the TOC at that time.

We commend Ballad for its commitment to the community as shown by its continuing spend during the COVID-19 pandemic even under the March 2020 Suspension Letter.

Thank you for your continuing efforts to serve the needs of your patients.

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

Sincerely,



Ralph Alvarado, MD, FACP
Commissioner



Jonathan Skrmetti
Attorney General and Reporter

cc: Julie Bennett, General Counsel
Ballad Health

Marvin Eichorn, EVP, Chief Administrative Officer
Ballad Health

Karen Seiden, COPA Compliance Officer
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