

COPA MONITOR ANNUAL REPORT

YEAR ENDED JUNE 30, 2019

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## **INTRODUCTION AND BACKGROUND**

A Certificate of Public Advantage (COPA) was granted by the Tennessee Department of Health (TDH) when it determined that the benefits outweighed the public disadvantages associated with a reduction in competition that could result from the merger of Mountain States Health Alliance (MS) and the Wellmont System (WM) into a new company named Ballad Health. With the issuance of the COPA, TDH and the Attorney General's Office became responsible for regulating and actively supervising Ballad Health to ensure the merger provided a public advantage. In effect, competition was replaced with regulation.

A Terms of Certification (TOC) document was negotiated and signed as part of the COPA process that outlines the procedure for active supervision of Ballad Health by the state of Tennessee. That oversight includes the computation of a numerical score for four Sub-Indices that, when combined, represent the Index, a composite score. The purpose of this Index is to provide an objective evaluation of whether there is a continuing public advantage from the merger by tracking progress in four categories: 1) Population Health; 2) Access to Health Services; 3) Economic; 4) Other. This Index is to be computed annually for 10 years. In this report, I have provided to the TDH my recommended Index score for the (fiscal) year ending June 30, 2019, the first full year under the TOC.

The TDH will consider the Index score; Ballad Health's degree of compliance with the TOC; Ballad Health's performance trends; and, other factors to make an annual determination of the ongoing public advantage of Ballad Health to the Northeast Tennessee and Southwest Virginia regions.

In addition to the objective evaluation system by which TDH will track the ongoing public advantage provided by Ballad Health, there are other elements of active supervision. The active supervision structure includes three distinct functions: 1) COPA Compliance Office; 2) Local Advisory Council; 3) COPA Monitor. The COPA Monitor is responsible for evaluating the continued public advantage of the COPA by monitoring Ballad Health's compliance with the TOC, and by collaborating with the TDH to evaluate performance against the Index. The COPA Monitor conducts audits; reviews reports from the Compliance Office, Local Advisory Council, and Ballad Health; and makes recommendations to the Commissioner of Health, the TDH, and the Attorney General. This report is the second COPA Monitor Annual Report that, pursuant to the TOC, includes the following: the Index score, updates on compliance with the COPA and the TOC, status of existing corrective actions, any recommended enforcement mechanisms, if necessary, any additional findings, and any other information requested by the Commissioner, TDH and the Attorney General.

## INDEX SCORE

As part of the TDH's exercise of active supervision, it uses an Index to annually track demonstration of ongoing public advantage. The Index consists of four Sub-Indices that correspond to categories of potential benefits and potential disadvantages from the Ballad Health merger.

### Economic Sub-Index

The Economic Sub-Index annually results in either a pass or fail score. It consists of measures to verify a minimization of economic disadvantages resulting from a reduction in competition or degree of compliance with the TOC. To determine the pass or fail score, the most significant considerations are discussed below (Note: the summary below is not an all-inclusive list of the considerations for the Economic Sub-Index pass or fail score).

- Commercial payor contracting
  - a. Ballad Health is required to limit annual increases in the amount payors pay for services that were provided for their enrollees to a maximum amount as defined in the TOC. Ballad Health must negotiate in good faith with any payor with business in the Ballad Health service area. Ballad Health cannot limit in any manner the contracting by any provider that is independent of Ballad Health.
  - b. Ballad Health did not negotiate any new payor contracts in fiscal year 2019, nor did it renegotiate any existing payor contracts. Thus the provisions limiting increases for the amount to pay for services provided by Ballad Health in fiscal year 2019 were not applied. No payor or provider brought to the COPA Monitor's attention any violation by Ballad Health of the TOC provisions relating to payor contracting.

Ballad Health effectuated an increase to its inpatient and outpatient charges in fiscal year 2019. The COPA Monitor reviewed the charge increase and concluded that it was compliant with the TOC.

- Ballad Health must provide the TDH and the COPA Monitor a list of competitors for ancillary services and post-acute care services on a quarterly basis. The lists of competitors were provided each quarter.
- Discharged patients must be given a choice of a Ballad Health provider and independent providers for ancillary and post-acute care services. There are some exceptions to this provision when Ballad Health is providing services under the provisions of a risk-based, value-based, or shared-savings payor contract. Ballad Health has a process in place at each hospital to distribute a list of all providers, owned and independent, of outpatient and post-acute services to patients when they are admitted.

- No more than thirty-five percent (35%) of the physicians practicing in a non-rural hospital-based specialty at any Ballard Health, non-rural hospital may be employed by Ballard Health. There are exceptions to the rule, and Ballard Health has requested waivers to the rule that were granted by the TDH. The purpose of the TOC rule is that, “In no event should the number of employed physicians in any specialty reach a level that would materially and adversely affect competition.” Ballard Health has complied with the restriction to the percentage of doctors who can be employed. However, Ballard Health has asked the TDH for changes to this rule, which are currently under consideration.
- Ballard Health cannot place restrictions on vendors from doing business with entities that compete with Ballard Health, which is one of several restrictions with respect to vendors and suppliers. No vendor has filed a complaint with the COPA Monitor that these provisions were violated by Ballard Health.
- Ballard Health is required to provide a copy of the TOC to all payors before any negotiation begins. There was only one negotiation that began in fiscal year 2019, and the payor shared with the COPA Monitor that they had been given a copy of the TOC. The COPA Monitor discussed the provisions related to payor contracting with the payor.

**The COPA Monitor recommends to the TDH that Ballard Health be given a pass score for the Economic Sub - Index.**

### Population Health

It is the intent of the TDH that Ballard Health invests its resources with the goal of improving the overall health status consistent with the regional goals established by the TDH. An improvement in the overall health status of residents in the Ballard Health service area would be a strong objective indicator of public advantage. The Population Health Sub-Index was designed to objectively measure progress toward the goal of improving community health.

According to the TOC, the Population Health Sub-Index is 50% of the Final Score for Ballard Health. The 50 percentage points will be earned in this first full fiscal year based on: 1) writing and obtaining TDH’s approval for the Population Health Plan (35% of the Population Health Sub-Index Score); 2) investing \$1,000,000 in the approved Population Health Plan (25% of the Population Health Sub-Index Score); 3) achieving 65 process measures which are a part of the Population Health Plan (40% of the Population Health Sub-Index Score).

In fiscal year 2019, Ballard Health wrote a Population Health Plan and obtained the TDH’s approval (for 35% of the Population Health Sub-Index Score). A part of the TOC was a requirement to establish a Department of Population Health Improvement, which was included as a part of the Population Health Plan approved by the TDH. Ballard Health started the

Department of Health Improvement and invested over \$900,000 in that department in fiscal year 2019. Additionally, Ballard Health was required to form an Accountable Care Community, and it accomplished that goal in fiscal year 2019. Ballard Health invested \$250,000 in the Accountable Care Community.

Ballad Health exceeded its Population Health spending commitment of \$1,000,000 in fiscal year 2019 (for 25% of the Population Health Sub-Index Score).

The Population Health Plan includes 65 process measures, and Ballard Health achieved 63 of the 65 (for 39% of the Population Health Sub-Index Score). All the measures are included in the FY 2019 Ballard Health Annual report, Attachment 23.

**Based on the above described calculations, which were set out in the TOC, the COPA Monitor recommends the TDH awarding 49 of the 50 possible percentage points for the Population Health Sub-Index.**

#### Access to Care.

To improve the health status of the citizens in the Ballard Health service area, there must be an improvement in access to health care and preventative services. According to the Institute of Medicine, the primary United States government agency responsible for public health research, access to health care means, “the timely use of personal health services to achieve the best health outcomes.” Much of the service area is rural; there is virtually no public transportation, and roads, especially during inclement weather, can be difficult to travel. To objectively measure improvement in access to healthcare and preventive services, an Access to Care Sub-Index was designed. The Access to Care Sub - Index measures the characteristics of the health delivery system as well as the utilization of health services and consumer satisfaction.

The Access to Care Sub-Index is 30% of the Final Score for Ballard Health. For Year One those percentage points are earned by Ballard Health based on maintaining or exceeding baseline performance for 28 target access measures, which are weighted to reflect their importance.

**Based on the application of the Access Sub-Index weights as described in the TOC, the COPA Monitor recommends to the TDH awarding 24 of the 30 possible percentage points for the Access to Care Sub-Index.**

#### Other (Quality)

Quality of care delivered by Ballard Health is an important component of the TDH’s evaluation of public advantage. The Other Sub-Index was designed to measure continuous quality improvement, and it is comprised of measures to evaluate the quality of hospital and hospital-related care provided to the patients Ballard Health serves. The Institute of Medicine has defined the quality of health care as “the degree to which health services for individuals and

populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge.”

The Other Sub-Index measures include metrics on quality and consumer satisfaction around the following domains: performance of key health system divisions; payer performance; employer performance; scale, spread, and sustainability. There are two sets of measures in the Other Sub-Index: 1) The Target Quality Measures, which are 17 measures that Ballad Health should show improvement in quality outcomes on 2) Quality Monitoring Measures, which are 83 measures that Ballad Health is required to report performance on in order to provide a broad overview of system quality.

For the first fiscal year, Ballad Health was required to maintain performance on the Target Quality Measures.

The Other Sub-Index is 20% of the Final Score for Ballad Health. Ballad Health met the required improvement standard for 12 of 17 Target Quality Measures and the reporting standard for all of the Quality Monitoring Measures.

**Based on the above considerations and calculations set out in the TOC, the COPA Monitor recommends to the TDH awarding 19 of the 20 possible percentage points for the Other Sub-Index**

Summary of Index Score

The COPA Monitor recommends the following to the TDH for the Index score for fiscal year 2019:

|                    |  |
|--------------------|--|
| Economic Sub-Index | Pass                                   |
| Population Health  | 49 points                              |
| Access to Care     | 24 points                              |
| Other              | <u>19</u> points                       |
| TOTAL              | 92 points out of a possible 100 points |

The Index Score is one consideration that the TDH considers to make its annual determination of public advantage from the operation of Ballad Health. A passing economic index score and a composite score of 92 for the other three sub-indexes is an indication of clear and convincing advantage to the public from the operation of Ballad Health.

**COMPLIANCE WITH THE COPA AND TERMS OF CERTIFICATION**

COPA Compliance Office Review of Possible Violations of COPA and Terms of Certification:

The COPA Compliance Office - Annual Report for FY 2019 discusses five potential violations of the TOC. Each of the potential violations have been resolved in an appropriate manner.

COPA Monitor Review of Possible Violations of the COPA and Terms of Certification:

- Charity Care

The TOC requires that charity care provided by Ballad Health each year must be greater than a base amount increased for inflation. The base amount of charity care is the amount of charity care on IRS Form 990 for fiscal year 2017. If the charity care provided by Ballad Health in any year does not meet the required amount, the COPA Monitor may waive the noncompliance with the charity care requirement. The amount of charity care provided in fiscal year 2019 was below the minimum amount required by the TOC. There were several reasons the charity care was below the required amount for fiscal year 2019. The most material reason was that the Commonwealth of Virginia expanded its Medicaid program; therefore, a number of Virginia residents who obtained health care at a Ballad Health facility in fiscal year 2019 and were previously uninsured now were covered by Medicaid. If the residents had obtained the same health care services in fiscal year 2017, the care would have been classified as charity care. Additionally, the Commonwealth of Virginia increased the amount paid by Medicaid for services, and thus the loss Ballad Health incurred for treating Virginia Medicaid patients was reduced. These are the main reasons why charity care was reduced. Based on these unforeseen changes, and other related changes, The COPA Monitor waived the Ballad Health charity care requirement for fiscal year 2019.

- Monetary Obligations

The TOC requires that Ballad Health spend a minimum of \$308,000,000 over ten years on initiatives for expanded access to healthcare services, health research and graduate education, population health improvement, and a region-wide health information exchange. Only new and incremental capital expenditures and operating expenses paid by Ballad Health pursuant to state approved plans count toward satisfaction of the spending commitments. The fiscal year 2019 commitment as set out in the TOC was \$4,000,000. Ballad Health did not spend \$4,000,000 in fiscal year 2019 as required by the TOC. The state did not approve the plans before fiscal year 2019 began, so Ballad Health did not have a full year to spend the money required by the TOC in fiscal year 2019. The State has the right to take remedial action against Ballad Health due to the investment shortfall. However, since the plans were not approved before the fiscal year started, it is the COPA Monitor's recommendation that the State not impose a remedial contribution.

## **CORRECTIVE ACTIONS**

Please see the COPA Compliance Office Annual Report for FY 2019 for the list of potential violations of the TOC and corrective actions taken by Ballad Health.

## **ENFORCEMENT MECHANISMS**

The COPA Monitor does not recommend the administration of any enforcement mechanisms based on Ballad Health's FY 2019 performance.

## **COPA LOCAL ADVISORY COUNCIL (LAC) 2019 ANNUAL REPORT**

The 2019 LAC Annual Report included six recommendations for the COPA Monitor. Five of the six have been resolved, and conclusions for the final recommendation will be summarized by the COPA Monitor at the April 2019 meeting of the LAC.

The LAC recommendations to the COPA Monitor were on the topics stated below. The COPA Monitor's conclusions follow.

- Citizens reported price increases for a variety of conditions and services.

Conclusion: The average increase to charges effectuated September 1, 2018, was in Compliance with the Terms of Certification.

- Several employees expressed concern over staffing changes.

Conclusion: Ballad Health has complied with the provisions in the Terms of Certification as they relate to employees. While Ballad Health has complied, it does have nursing shortages like virtually all hospitals in America, which can lead to a feeling among some employees that the staffing ratios have been changed.

- Several complaints were made concerning a reduction in nursing specialty training and recognition (salary differentials), caps being placed on salaried positions, unequal changes in performance raises and bonuses, and changes to shift differential.

Conclusion: The changes Ballad Health has made are not in violation of the Terms of Certification. Compensation and benefits are a series of complex practices, and it is possible that a small subset of employees believe they have lost compensation. However, as a result of the compensation

changes made by Ballad Health, remuneration for nursing personnel has increased in fiscal year 2019

- At the public listening session, several attendees stated that physicians are leaving the area due to changes at the hospital.

Conclusion: The COPA Monitor's work on this recommendation is still in progress.

- Members of the public noted that certain proposed health-care delivery changes do not comply with the TOC, including the proposed downgrade of Bristol Regional Medical Center and the relocation of the Wellmont Cancer Center.

Conclusion: It is the COPA Monitor's opinion that the Terms of Certification were not violated for these two changes.

- Several employees mentioned that their pay and benefits had been reduced subsequent to the merger. The TOC requires pay to be equalized across the merged health system. This equalization does not necessarily translate to all salaries and benefits rising to the highest level, nor to all salaries and benefits falling to the lowest level.

Conclusion: It appears that the Terms of Certification have been fulfilled, subject to retrospective testing that can only be done accurately after the changes are fully reflected in the salary and benefit cost of Ballad Health. However the average salary for employees has increased since the merger.

## **ADDITIONAL FINDINGS**

### Site of Service

The charge for clinical care provided in a hospital-based site is more than the charge for the same clinical care provided in a physician-based site. The increased charge in the hospital-based site is necessary because it must meet all the construction and regulatory requirements as if it is a hospital outpatient department. A physician-based site does not have to meet the same standards, so its cost structure is lower. This pricing differential is called the "site of service differential."

Ballad Health closed a physician-based cancer infusion center and moved it to a hospital-based site, Indian Path Hospital. Ballad Health made the move to reduce the cost of infusion drugs. A hospital-based site can buy outpatient drugs through the 340B Drug Pricing Program. The 340B Drug Pricing Program is a US federal government program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations at significantly reduced prices. The drug cost savings to Ballad Health by providing the cancer infusion drugs in a hospital facility is in the millions annually. When Ballad Health reduces cost, the cost of healthcare in the service area is reduced which creates a public advantage. However, the charges to patients and their payors (i.e., insurance companies) in the hospital-based infusion center are substantially higher than the charges for the same services provided in a physician-based site. The increase to patient and payor charges from this move has been the subject of several citizen complaints. Virtually no citizen pays charges, so the increase to charges does not significantly affect the amount a patient actually pays for cancer infusion therapy. The optics of the increase in charges was poorly received by the community, but the financial savings to Ballad Health, and therefore the community, justifies the move.

#### Material Adverse Event

The COPA Compliance Office Annual Report discloses a material adverse event. It states, “A jury returned a verdict against Wellmont Health System in the lawsuit filed by Highlands Physicians, Inc.; that verdict is under appeal.”

#### RECOMMENDATIONS

- In conversations with individuals over the last year about various Ballad Health topics, the COPA Monitor consistently heard concerns about a need for clearer communications. For example, a member of the community in the Ballad Health service area suggested that any communication about clinical matters should be delivered by a physician and not by an administrator. An important aspect of communications is listening. A constant refrain is that community residents do not feel that they are being listened to by Ballad Health. These comments are perceptions and not necessarily reality. **The recommendation is for Ballad Health to look for more ways to actively listen.**
- There have been changes in the Ballad Health service area that were not predictable when the Children’s Health Plan was written. The TOC describes a process for proposing changes to the Plans. **The recommendation is that Ballad Health review the Children’s Health Plan and propose Plan changes to the COPA Monitor as permitted by the TOC.**
- The Ballad Health Annual Report was prepared consistent with the TOC requirements. However, the report contains data that is hard to convert to information without a thorough knowledge about health care. Therefore, to understand such a report is

difficult. **The recommendation is that the state and Ballad Health collaborate to make the 2020 report more understandable for the citizens.**

- Since the Commonwealth of Virginia expanded its Medicaid program to provide coverage for patients who historically had been classified as charity, the Ballad Health charity care has been permanently reduced. It is highly probable that Ballad Health will never provide charity care above the base amount established in the TOC. **The recommendation is to reduce the TOC charity care minimum requirement that reflects the permanent changes made by the Commonwealth of Virginia.**

## **SUMMARY**

Fiscal year 2019 is the first full fiscal year of operations for Ballad Health under the regulations and rules of the COPA and TOC. The recommended Index score of 92 is an indication of clear and convincing advantage to the public from the merger of Ballad Health. There were some potential violations of the TOC, and corrective actions were taken that are included in the COPA Compliance Officer Annual Report.

Note: I have sincerely enjoyed serving as the COPA Monitor for the past 20 months. To my knowledge, this report accurately reflects the requirements for the annual COPA Monitor Report.

Larry L. Fitzgerald  
COPA Monitor