

## **CERTIFICATE OF PUBLIC ADVANTAGE**

This Certificate of Public Advantage is being issued as of the 31st day of January, 2018, by the Tennessee Department of Health (the "Department") to Ballad Health, a Tennessee nonprofit public benefit corporation ("Ballad") and the common parent entity of Applicants Mountain States Health Alliance, a Tennessee nonprofit public benefit corporation, and Wellmont Health System, a Tennessee nonprofit public benefit corporation (the "Applicants" or "Parties").

**WHEREAS**, the Tennessee General Assembly has enacted the Hospital Cooperation Act of 1993, as amended, Tenn. Code Ann. §§ 68-11-1303, *et seq.* (the "Act"), which establishes that "it is the policy of this State, in certain instances, to displace competition among hospitals with regulation... and to actively supervise that regulation to the fullest extent required by law, in order to promote cooperation and coordination among hospitals in the provision of health services and to provide state action immunity from federal and state antitrust law to the fullest extent possible to those hospitals issued a certificate of public advantage"; and

**WHEREAS**, the Act authorizes hospitals to enter into cooperative agreements with other hospitals in this State and to apply to the Department for a Certificate of Public Advantage governing that cooperative agreement; and

**WHEREAS**, the Act further authorizes the Department to issue a Certificate of Public Advantage for a cooperative agreement if the Department determines, after consultation with and agreement from the Attorney General, that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from such agreement; and

**WHEREAS**, on February 15, 2016, the Parties entered into a "Master Affiliation Agreement and Plan of Integration By and Between Wellmont Health System and Mountain States Health Alliance" (the "Cooperative Agreement") whereby the Parties agreed to merge and establish a single parent company (Ballad) that would oversee all of the assets and operations of the previously separate Parties and all of their respective affiliates; and

**WHEREAS**, on February 16, 2016, the Parties submitted an Application (the "Application") to the Department for the issuance of a Certificate of Public Advantage governing the Cooperative Agreement; and

**WHEREAS**, on September 18, 2017, the Board of Wellmont adopted a resolution approving the Terms of Certification Governing the Certificate of Public Advantage Issued to Ballad Health Pursuant to the Cooperative Agreement, including all Exhibits and Addendum 1 attached thereto (the "TOC"); and

**WHEREAS**, on September 19, 2017, the Board of Mountain States also adopted a resolution approving the TOC; and

**WHEREAS**, on September 19, 2017, the Commissioner of the Tennessee Department of Health, having determined, after consultation with the Tennessee Attorney General and based on the

record compiled in the matter and the applicable law and regulations, that the Application, in conjunction with the active supervision regulatory structure outlined in the TOC, demonstrated by clear and convincing evidence that the likely benefits resulting from the Cooperative Agreement outweigh any disadvantages attributable to a reduction in competition that may result from the Cooperative Agreement, granted the Application with conditions; and

**WHEREAS**, the granting of the Application was subject to the following conditions:

- The Parties and the Department shall establish the Baseline Spending amounts required for Exhibit B in the September 18, 2017 final draft of the proposed TOC;
- At the Closing, the Parties shall execute the TOC in accordance with Section 9.13 of the TOC;
- At the Closing, each Party shall submit an Issuance Certificate in accordance with the requirements of Section 9.13 of the TOC;
- The Closing shall occur by the deadline set forth in Section 9.13 of the TOC; and

**WHEREAS**, the Parties have met all these conditions to the satisfaction of the Department;

**THEREFORE**, the Department hereby issues this **CERTIFICATE OF PUBLIC ADVANTAGE** (this "COPA") to Ballad Health pursuant to the Cooperative Agreement, subject to the following conditions:

- This COPA is subject to the active and continuing supervision and oversight by the Department and the Tennessee Attorney General;
- This COPA is governed by the applicable statute and regulations, and the TOC, which is specifically incorporated herein;
- This COPA is subject to at least an annual review by the Department pursuant to Tenn. Code Ann. § 68-11-1303(g);
- Pursuant to Tenn. Code Ann. § 68-11-1303(g), this COPA is subject to modification if at any time the Department determines that the likely benefits resulting from the Cooperative Agreement no longer outweigh any disadvantages attributable to any potential reduction in competition that may result from the Cooperative Agreement;
- This COPA is subject to termination if the Department determines that the benefits resulting from the Cooperative Agreement no longer outweigh any disadvantages attributable to a reduction in competition that may result from the Cooperative Agreement, and modification of the COPA is not obtained;
- In the event of termination, this COPA remains in full force and effect until Ballad has submitted, the Department has approved and Ballad has completed a plan of separation, and the Department's active supervision shall continue until such time as the Department issues an official written determination that the plan of separation has been completed;
- Nothing in this COPA exempts Ballad from compliance with laws governing certificates of need;

- Nothing in this COPA shall be deemed to grant Ballad the authority to operate as a health maintenance organization, preferred provider organization or insurer without obtaining an appropriate license from the Tennessee Department of Commerce and Insurance; and
- Nothing in this COPA shall be deemed to grant Ballad the authority to negotiate terms, prices or reimbursement rates with insurers, health maintenance organizations, or preferred provider organizations otherwise prohibited under federal or state antitrust laws.

**ISSUED** this 31<sup>st</sup> day of January, 2018.

BY:

  
\_\_\_\_\_  
JOHN J. DREYZEHNER, MD, MPH, FACOEM  
Commissioner, Tennessee Department of Health

