

September 14, 2017

BY EMAIL ONLY (erik.bodin@vdh.virginia.gov)

Mr. Erik O. Bodin, Director
Office of Licensure and Certification
9960 Mayland Drive, Suite 401
Henrico, VA 23233-1485

Re: Revised Virginia Commitments dated September 1, 2017

Dear Mr. Bodin,

On behalf of Mountain States Health Alliance and Wellmont Health System, I write regarding the document entitled "Revised New Health System Virginia Commitments Dated September 1, 2017" (the "September 1 Virginia Commitments") submitted to your office on September 1, 2017. The September 1 Virginia Commitments were originally deemed by the Applicants to be Proprietary, but the Applicants now remove the Proprietary designation from this document. The September 1 Virginia Commitments should now be considered non-proprietary information. For your convenience and clarity, I have attached a copy of the September 1 Virginia Commitments with the "Proprietary" label removed.

Please contact me if you have any questions.

Sincerely,



Jennifer Light McGrath

cc: Peter Boswell
Allyson K. Tysinger

Revised New Health System Virginia Commitments Dated September 1, 2017

1. **Commitment***: In order to ensure pricing is not increased as a result of the elimination of inpatient competition for the majority of consumers covered by third party commercial insurance, pricing will increase by less with the merger than if the merger were not to occur. For all Principal Payers¹, the New Health System will reduce existing commercial contracting for fixed rate increases by 50% for the second full fiscal year commencing after the closing date of the New Health System. Fixed rate increases are defined as provisions in commercial contracts that specify the rate of increase between one year and the next which include annual inflators tied to external indices or contractually-specified rates of increase in reimbursement. Applicants represent that the fiscal year for the New Health System will end on June 30, and that the fiscal year will not change until after the second full year commencing after the closing date of the New Health System.²

**NOTE: Revisions to Commitments 1 and 2 may be forthcoming in order to align payer Commitments in Virginia and Tennessee. We are sensitive to the timeframe for the Commissioner's review, and this will be determined as soon as possible.*

Timing: First full fiscal year following the first contract year after the formation of the New Health System.

¹ For purposes of this Application, "Principal Payers" are defined as those commercial payers and governmental payers with negotiated rates who provide more than two percent (2%) of the New Health System's total net revenue. (All of a payer's revenue shall be considered in calculating the revenue percentage even if the payer has more than one contract with the New Health System.) The proposed commitments would not apply to traditional Medicare or any other payers that provide two percent (2%) or less of the New Health System's net revenue. In addition to the aforementioned Principal Payers, all Medicare Advantage plans, Medicaid managed care plans, and TriCare plans will be considered as Principal Payers for purposes of the rate cap and pricing commitments. Notwithstanding any provision to the contrary, the limitation on rate increases applicable to insurers providing coverage on behalf of governmental payers (i.e., Medicare Advantage Plans or Medicaid Plans) does not apply if the adjustments are tied to actions made by government entities, including but not limited to, market basket adjustments, adjustments tied to area wage index, or other governmentally imposed rate adjustments. The limitations on pricing committed to by the parties are intended to ensure price increases beyond the limits imposed by the Cooperative Agreement (COPA) do not occur as a result of increased market concentration resulting from the merger transaction. The price limits imposed by the Cooperative Agreement (COPA) are not intended to interfere with government-imposed pricing which would occur with or without the creation of the New Health System. To the degree pricing for insurers providing coverage on behalf of governmental payers is tied contractually to Medicare rates (i.e., a percent of Medicare), the Cooperative Agreement (COPA) is not intended to interfere with such pricing relationships. The intent is to ensure future pricing is not increased as a result of the merger transaction.

² For purposes of these commitments, the Commissioner shall not appoint an individual as his or her delegate if such person has a conflict of interest. If the Commissioner appoints an entity as his or her delegate, such as the Southwest Virginia Healthcare Authority, the entity must take steps to assure that no person involved with the entity in its role as the Commissioner's delegate has a conflict of interest. Notwithstanding anything herein to the contrary, the Commissioner shall retain the final authority with respect to conclusions reached by the Commonwealth or actions to be taken by the Commonwealth.

Amount: The estimated annual savings to consumers for the combination of Commitments 1 and 2 are \$10 million in lower health care costs annually.³

2. **Commitment:** To ensure the Cooperative Agreement protects consumers from pricing increases that could otherwise result from the elimination of competition, a limit on pricing growth is applied for each year to restrain pricing growth to below the national hospital consumer price index. Effective on the closing date of the merger, the New Health System will commit to not adjust hospital negotiated rates by more than the hospital Consumer Price Index for the previous year minus 0.25%, while New Health System negotiated rates for physician and non-hospital outpatient services will not increase by more than the medical care Consumer Price Index minus 0.25%. This is a ceiling in rate adjustments; nothing herein establishes these adjustments as the floor on rates. To the extent, if any, that the Applicants negotiate contracts with Principal Payers between October 10, 2016 and the closing date of the merger and such contracts include fixed rate increases in excess of the hospital Consumer Price Index for hospital inpatient and outpatient services and the medical care Consumer Price Index for physician and non-hospital outpatient services compared with previous contracts with the same payer, no later than one month following the closing date, New Health System will rollback its rates to what they would have been if the negotiated rates of increase had been no more than the above-referenced Consumer Price Index changes. Applicants represent that their current contracts with Anthem for nongovernmental patients will not expire prior to the now-expected date of the rate increase commitment becoming effective, i.e., July 1, 2018.

This provision only applies to contracts with negotiated rates and does not apply to Medicare or other non-negotiated rates or adjustments set by CMS or other governmental payers. The New Health System agrees that contract structures may include rates being tied to a percentage of Medicare, or may establish base rates with annual inflators or quality incentives. The New Health System will not refuse to enter into any of these types of structures on the basis of the structure and will negotiate the rate structure in good faith. For purposes of calculating rate increases and comparison with the relevant Index, baseline rates for an expiring contract will be used to compare with newly negotiated rates for the first year of the relevant new contract. For comparison with the relevant Index, new contract provisions governing specified annual rate increases or set rates of change or formulas based on annual inflation indices may also be used as an alternative to calculated changes. Subject to the Commissioner's approval, the foregoing commitment shall not apply in the event of natural disaster or other extraordinary circumstances beyond the New Health System's control that result in an increase of total annual expenses per adjusted admission in excess of 250 basis points over the current applicable consumer price index. If following such approval, the New Health System and a Principal Payer are unable to reach agreement on a negotiated rate, New Health System agrees to mediation⁴ as a process to resolve any disputes. The New Health System shall timely notify the

³ This estimate is nonbinding. To the extent, however, that there is a dispute on the New Health Systems compliance with these rate of increase commitments, the estimate may be used as a tool to interpret what the commitment means.

⁴ Nothing herein is intended to override dispute resolution provisions that may be parts of binding contracts between New Health System (in its own name or as a successor to the Applicants) and any payer.

Commissioner of any mediation occurring pursuant to this commitment if the payer has insureds (or members) in the Commonwealth of Virginia, and shall offer updates to the Commissioner on the progress of such mediation.

Timing: Subsequent contract years.

Amount: The estimated annual savings to consumers for the combination of Commitments 1 and 2 are \$10 million in lower health care costs annually.

Metric: Easily verifiable.

3. **REVISED Commitment:** In order to minimize any adverse impact on the ability of insurance companies to contract with the hospitals, and while this Cooperative Agreement ensures open access and choice for all consumers to choose any hospital in the region, it also remains the intent of the Cooperative Agreement that consumers and businesses enjoy a competitive market for insurance. As such, the New Health System will continue to negotiate in good faith with Principal Payers to include the New Health System in health plans offered in the Geographic Service Area on commercially reasonable terms and rates (subject to the limitations herein). The New Health System will not unreasonably refuse to negotiate with potential new entrants to the market or with insurers that do not meet the definition of “Principal Payer”, as long as the payer has demonstrable experience, a reputation for fair-dealing and timely payment, and negotiates in good faith. New Health System will resolve through mediation any disputes as to whether this commitment applies to the proposed terms of a health plan contract. The New Health System shall timely notify the Commissioner of any mediation occurring pursuant to this commitment if the payer has insureds (or members) in the Commonwealth of Virginia, and shall offer to the Commissioner updates on the progress of such mediation.

Timing: Immediately upon closing of the merger and then upon expiration of existing contracts or with contracts with any new payers coming into area, and ongoing.

Amount: No cost.

Metric: Complaints from payers and credible report by the New Health System.

4. **Commitment:** In order to ensure providers in the region not affiliated with the New Health System may continue to operate competitively, and to ensure new provider entrants to the market are not disadvantaged by the New Health System, the New Health System will not require as a condition of entering into a contract that it shall be the exclusive network provider to any health plan, including any commercial, Medicare Advantage or managed Medicaid insurer. Nothing herein shall be construed as to impede the discretion of the payers in the market from designating the New Health System (or components thereof), as an exclusive network provider in all or part of the New Health System’s service area.

Timing: Immediately upon closing of the merger and then upon expiration of existing contracts or with contracts with any new payers coming into area, and ongoing.

Amount: No cost.

Metric: Easily verifiable.

5. **REVISED Commitment:** In order to improve quality for patients, ensure seamless access to needed patient information, and to support the efforts of the local physician community to access needed information in order to provide high quality patient care, the New Health System will participate meaningfully in a regional health information exchange or a cooperative arrangement whereby privacy protected health information may be shared with community-based providers for the purpose of providing seamless patient care. In addition, the New Health System will participate in the Commonwealth's ConnectVirginia health information exchange, in particular ConnectVirginia's Emergency Department Care Coordination Program and Immunization Registry. In addition, the New Health System will participate in Virginia's Prescription Monitoring Program.

Timing: No later than 36 months after closing.

Amount: Up to \$6 million over 10 years.

Metric: The New Health System shall report annually to the Commissioner on mileposts toward meeting this commitment.

6. **Commitment:** In order to enhance quality and decrease the total cost of care, the New Health System will collaborate in good faith with independent physician groups to develop a local, region-wide, clinical services network to share data, best practices and efforts to improve outcomes for patients and to deliver such outcomes at the highest possible value.

Timing: No later than 36 months after closing.

Metric: The New Health System shall report to the Commissioner on the mileposts toward meeting this commitment.

7. **REVISED Commitment:** In order to enhance quality, improve cost-efficiency and reduce unnecessary utilization of hospital services, for all Principal Payers, the New Health System will include provisions for improved quality and other value-based incentives based on the unique priorities and timelines agreed upon by each payer and the New Health System. The New Health System will partner with the Virginia DMAS to develop, pilot, or implement value-based payment programs in the region as appropriate, including programs allowing the New Health System to accept direct capitation from DMAS for the Medicaid enrollees in the Geographic Service Area.

Timing: Immediately upon closing of the merger and ongoing.

Amount: No incremental cost.

Metric: Annual report and complaints, if any, from payers.

8. **Commitment:** In order to enhance quality of patient care through greater transparency, improve utilization of hospital resources, and to ensure the population health of the region is consistent with goals established by the Authority, the New Health System will establish annual priorities related to quality improvement and publicly report these quality measures in an easy to understand manner for use by patients, employers and insurers. Such reporting shall include posting of quality measures and actual performance on New Health System’s website accessible to the public. The New Health System shall report such data timely so the public can easily evaluate the performance of the New Health System as compared to its competitors, and ensure consumers retain the option to seek services where the quality is demonstrably the highest. In addition, the New Health System will timely report and include on its web site its performance compared to the Medicare quality measures including readmission statistics. The New Health System will give notice to the Authority of the metrics the New Health System is prioritizing, and will, in good faith, include input from the Authority in establishing or modifying its priorities.

Timing: Annually, based upon when the New Health System establishes its annual quality goals.

Metric: Compliance with commitment as agreed upon and modified subsequently.

9. **REVISED Commitment:** In order to prevent low income patients who are uninsured from being adversely impacted, the NHS shall adopt a charity care policy for the hospitals that is compliant with applicable law, that is more charitable than the existing policies of both Applicants, and that is consistent with the 501 (r) rule. The NHS shall furnish a copy of its policies relating to charity care to the Commissioner no later than the end of the third (3rd) month following the closing of the merger. Thereafter, New Health System shall furnish to the Commissioner a copy of any revisions to such policies immediately upon the effective date of such revisions. These policies shall provide for the full write-off of amounts owed for services by patients with incomes at or below two hundred twenty-five percent (225%) of the federal poverty level. In addition to increasing the 100% discount for services at 225% of Federal Poverty Level, the NHS also agrees that for patients who are between 225% and 400% of the federal poverty guidelines but whose account balance (after all insurances have processed or uninsured discount has been applied) is equal to or greater than 50% of the patient’s total annual household income, the maximum a patient would be expected to pay to settle an account balance would be 15% of household income. The New Health System shall inform the public of its charity care and discounting policies in accordance with all applicable laws and shall post such policies on its publicly accessible web site and on the separate web sites for all provider components that are part of the New Health System.

Timing: Policy adopted within 3 months of closing, with implementation immediately thereafter and ongoing.

Amount: Extent of additional cost is unknown but is not immaterial.

Metric: Charity care costs as measured in cost of care furnished. For hospital services the number will be taken from the Form 990, Schedule H, Line 7a “Financial Assistance at Cost” (from the Community Benefit Section). New Health System’s annual report to the Commissioner shall also include data on the number of individuals receiving uncompensated care and compare that number to prior fiscal years when the New Health System was in operation. The cost for charity care for nonhospital services may be estimated using the cost to charge ratio aggregated for all nonhospital services.

10. **REVISED Commitment:** In order to ensure low income patients are not adversely impacted due to pricing, uninsured or underinsured individuals who do not qualify under the charity care policy will receive a discount off hospital charges based on their ability to pay. This discount will comply with Section 501(r) of the Internal Revenue Code, and the rules and regulations relating to that Section governing not for-profit organizations, and payment provisions will be based on the specific circumstances of each individual/family. The New Health System will seek to connect individuals to coverage when possible.

“Uninsured” patients are those with no level of insurance or third-party assistance to assist with meeting his/her payment obligations. “Underinsured” patients shall mean insured patients who receive Eligible Health Care Services that are determined to be non-covered services.” These patients will not be charged more than amounts generally billed (AGB) to individuals who have insurance covering such care in case of Emergency or other Medically Necessary Services.” AGB percentage is determined using the look-back method utilizing the lowest percentage for all facilities per the IRS regulatory guidelines set forth in 501(r). Emergency Services are defined in accordance with the definition of “Emergency Medical Conditions” in Section 1867 of the Social Security Act (42 U.S.C. 1395dd). Medically Necessary Services are defined by Medicare as services of items reasonable and necessary for the diagnosis or treatment of illness or injury and are Services not included in the list of “particular services excluded from coverage” in 42 CFR § 411.15). Financial assistance eligibility will be determined by a review of the Application for Financial Assistance, documents to support the Application for Financial Assistance (i.e. income verification documentation), and verification of assets. Financial assistance determinations are based on National Poverty Guidelines for the applicable year. The New Health System shall adhere to the IRS regulatory guidelines set forth in Section 501(r) of the Internal Revenue Code.

Timing: Immediately upon closing and ongoing.

Metric: Credible report.

11. **Commitment:** In order to demonstrate the New Health System maintains the financial viability to fulfill its commitments of this Cooperative Agreement, and to ensure proper state supervision, any notices of default, technical or otherwise, that the New Health System, or an affiliate, receives under bond or other debt documents, must be furnished to the Authority and the Commonwealth.

Timing: Ongoing.

Amount: No cost.

Metric: Credible report.

12. **REVISED Commitment:** In order to demonstrate the New Health System maintains the financial viability to fulfill its commitments of this Cooperative Agreement, and to ensure proper state supervision, If the New Health System records a liability for a Material Adverse Event which may impair the ability of the New Health System to fulfill the commitments, the New Health System will notify the Commissioner and the Authority within 30 days of making such a determination.

Timing: Ongoing.

Amount: No cost.

Metric: Credible report and easy to determine.

13. **Commitment:** In order to ensure employees are properly recognized for their years of service, and to protect the benefits they have earned over time, the New Health System will honor prior service credit for eligibility and vesting under the employee benefit plans maintained by Wellmont and Mountain States, and will provide all employees credit for accrued vacation and sick leave.

Timing: First year.

Metric: Easily verifiable.

14. **Commitment:** In order to ensure a uniform system of compensation, and to ensure competitiveness of pay for attracting and retaining employees, the New Health System will work as quickly as practicable after completion of the merger to invest up to \$70 million over 10 years addressing differences in salary/pay rates and employee benefit structures between Wellmont and Mountain States. The New Health System will offer competitive compensation and benefits for its employees to support its vision of becoming one of the strongest health systems in the country and one of the best health system employers in the country.

Timing: By the end of the first full fiscal year upon closing of the merger.

Amount: The estimated incremental investment in addressing salary/pay rate differences is approximately \$70 million over 10 years.

Metric: Credible report which shall be provided confidentially in order to preserve a competitive employment environment. Such report will include if there were grievances filed by employees with respect to pay adjustments related to the merger and how the grievances were addressed.

15. **Commitment:** In order to ensure employees are treated fairly in the event there is a facility closure or termination of services related directly and demonstrably to the merger, the New Health System will provide to the Commissioner, within two (2) months of closing, a severance policy addressing how employees will be compensated if they are not retained by the New

Health System or any of its subsidiaries or affiliates. This policy shall not affect termination of employees if the termination was for-cause or related to the routine operation of such facility. The severance policy shall consider several factors, including but not limited to, each individual's position within his/her current organization and years of service. The policy will also address outplacement support to be provided to any such employee. Compliance with this commitment in Virginia shall be judged solely by the Commissioner and corrective action required for noncompliance shall be determined solely by the Commissioner. This provision shall not be construed to create a right of action for any individual employee.

Timing: 5 years.

Amount: Severance cost is estimated to be approximately \$5 million from the closing of the merger to the end of the first full fiscal year after the closing of the merger, attributable mostly to corporate level synergies. Severance cost thereafter is not easily calculable due to unknown variables in the market, including ongoing attrition in the workforce as inpatient hospital use rates continue to decline.

Metric: Confidential annual report for the first five full fiscal years after the closing of the merger reporting on the total number of involuntary employee terminations due to merger-related reductions, the number of such terminations for which severance compensation was paid, and the aggregate cost of such severance compensation. Importantly, it is also recognized that there will be new employment created as the New Health System makes the committed investments in research, academics, new specialties and services and population health. The New Health System may also provide as part of the annual report the number of new jobs created due to such investments, and approximate incremental payroll costs resulting.

16. **Commitment:** In order to invest in the advancement of employees, and to assist employees in achieving growth in their careers, the New Health System will combine the best of both organizations' career development programs in order to ensure maximum opportunity for career enhancement and training.

Timing: No later than 24 months after closing.

Metric: Credible report.

17. **Commitment:** In order to ensure training of physicians and allied health professionals meets the goals and objectives of the health system and the Authority, the New Health System will develop, in partnership with at least its current academic partners, a 10-year plan for post graduate training of physicians, nurse practitioners, and physician assistants and other allied health professionals in Virginia and Tennessee. The plan will include, but not be limited to, how it will address the Authority's goals, how training will be deployed in Virginia and Tennessee based on the assessed needs, clinical capacity and availability of programs. Contingent on continued funding for existing programs from federal and state sources, the New Health System will not reduce or eliminate any medical residency programs or available resident positions presently operated by the Applicants at any Virginia facility provided, however, that such programs may be moved within Virginia, or substituted for residency training in Virginia in other

specialties if that is in the best interests of the patient population in the area. Notwithstanding the foregoing, minor and temporary decreases in the number of full time equivalent residents working at Virginia hospitals may reflect year-to-year variations in residents applying for such training, dropping out of such training, electing to rotate to other hospitals, or transferring to another residency program, and shall not be deemed to violate this agreement.

Timing: 10 years.

Amount: Combination of commitments 17 and 18 total \$85 million.

Metric: Annually, the New Health System will report to the Commissioner: the number of accredited resident positions for each residency program operated in Virginia and the number of such positions that are filled, and shall furnish copies of the relevant pages of the Medicare cost reports showing the number of full time equivalent residents. An annual report shall also include a description of any affiliation agreements moving resident “slots” from one hospital to another pursuant to Medicare rules, resident programs moved from one hospital to another, and new programs started. No later than June 30, 2018, the New Health System will furnish to the Commissioner a plan for medical residency training programs and other health care professional training. The plan shall set forth the targeted number of persons to be trained by physician specialty or health care professional category, the location(s) of such training, the schedule for starting such training, and the expected gross annual expenditure relating to such training. It is acknowledged that the service area for the New Health System extends across state boundaries and patients, employees, and vendors freely cross those state lines. Accordingly, the Commissioner will not apply a fixed ratio to determine whether each year’s expenditure under commitments number 17 and 18 is appropriately shared in by Virginia. On the other hand, the Commissioner will review expenditures made pursuant to this commitment for appropriate inclusion of Virginia sites and/or demonstrable benefit to Virginia residents and businesses.

18. **Commitment:** In order to help create opportunities for investment in research in partnership with Virginia’s academic institutions, the New Health System is committed to collaborating with the academic institutions to compete for research opportunities. The New Health System will work closely with current academic partners to develop and implement a 10-year plan for investment in research and growth in the research enterprise in Virginia and Tennessee service area. The plan will include, but not be limited to, how it will address the Authority’s goals, how research will be deployed in Virginia and Tennessee based on the needs and opportunities, capacity and competitiveness of the proposals.

Timing: 10 years.

Amount: Combination of commitments 17 and 18 total \$85 million.

Metric: Report in year one and dollars spent thereafter. The New Health System will present a plan for research expenditures for full fiscal years two and three starting after the closing of the merger no later than the end of the first fiscal year after the merger. Thereafter, the New Health System must update its plan to address subsequent fiscal years no later than the end of

the period for which the prior plan ends up to the end of the ninth full fiscal year after the closing of the merger. The annual report should include a description of research topics, the entities engaged in the research, the principal researcher(s) who is/are responsible for each project, any grant money applied for or expected, and the anticipated expenditures. Annual reports for full fiscal years three and through ten should report on the outcome of previously reported research projects including references to any published results. The Commissioner will review expenditures made pursuant to this commitment for appropriate inclusion of Virginia sites and/or demonstrable benefit to Virginia residents and businesses.

19. **Commitment:** In order to enhance hospital quality, improve cost-efficiency, improve the utilization of hospital-related services, and to enhance opportunities in research, the New Health System will adopt a Common Clinical IT Platform as soon as reasonably practical after the formation of the New Health System. The New Health System will make access to the IT Platform available on reasonable terms to all physicians in the service area. This fully integrated medical information system will allow for better coordinated care between patients and their doctors, hospitals, and post-acute care and outpatient services and facilitate the move to value-based contracting. Subject to confidentiality laws and rules, the New Health System will grant reasonable access to the data collected in its Common Clinical IT Platform to researchers with credible credentials who have entered into Business Associate Agreements for the purpose of conducting research in partnership with the New Health System.

Timing: Implementation No later than 48 months after closing.

Amount: Up to \$150 million.

Metric: Implementation of promised system with mileposts along the way. The mileposts shall be proposed by New Health System no later than three months after the closing of the merger or June 30, 2017, whichever is later. The New Health System will report in each annual report its progress toward implementing the Common Clinical IT Platform, and after implementation, any material enhancements or changes. The New Health System will also include in the annual report the researchers (by individual or by group for those working together) who have entered into Business Associate Agreements for purposes of conducting research.

20. **REVISED Commitment:** In order to preserve traditionally hospital-based services in geographical proximity to the communities in the Geographic Service Area served by such facilities, to ensure access to care, and to improve the utilization of hospital resources and equipment, all hospitals in operation at the effective date of the merger will remain operational as clinical and health care institutions for at least five years. “Clinical and health care institutions” may include, but are not limited to acute care hospitals, behavioral health hospitals, rehabilitation hospitals, freestanding emergency rooms, surgery centers, skilled nursing facilities, assisted living centers and any combination thereof. Immediately from the effective date of the merger and during the life of the Cooperative Agreement, the New Health System will continue to provide access to health care services in the community, which may include continued operation of the hospital, new services as defined by the New Health System, and other investment in outpatient health care and preventive services based on the demonstrated need of the community. The New

Health System may adjust scope of services or repurpose hospital facilities. In the event that the New Health System repurposes any acute care hospital, it will continue to provide essential services in the county where currently located. For purposes of this commitment, the following services are considered “essential services”:

- Emergency room stabilization for patients;
- Emergent obstetrical care;
- Outpatient diagnostics needed to support emergency stabilization of patients;
- Rotating clinic or telemedicine access to specialty care consultants as needed in the community and based on physician availability;
- Helicopter or high acuity transport to tertiary care centers;
- Mobile health services for preventive screenings, such as mammography, cardiovascular and other screenings;
- Primary care services, including lab services;
- Physical therapy rehabilitation services;
- Care coordination service;
- Access to a behavioral health network of services through a coordinated system of care; and
- Community-based education, prevention and disease management services for prioritized programs of emphasis based on goals established in collaboration with the Commonwealth and the Authority.

If the New Health System becomes the primary health service partner of the Lee County Hospital Authority, the New Health System will be responsible for essential services as outlined above.

Timing: Ongoing.

Amount: The net cost varies depending on annual operating losses. The current annual operating losses for the predecessors of the New Health System for Virginia hospitals that are losing money are approximately \$11 million.

Metric: Each year, the operating results for the Virginia hospitals and sites furnishing “essential services” as defined above will be reported to the Commissioner. The annual report to the Commonwealth will also outline services provided in each community by the hospitals or other sites furnishing “essential services” as specified in this commitment.

21. **Commitment:** In order to ensure preservation of hospital facilities and tertiary services in geographical proximity to the communities traditionally served by those facilities, the New Health System will maintain, for the Virginia and Tennessee service areas, a minimum of the three full-service tertiary referral hospitals located in Johnson City, Kingsport, and Bristol, to ensure higher-level services are available in close proximity to where the population lives.

Timing: Immediately upon closing of the merger and ongoing.

Amount: Not applicable.

Metric: Easily verifiable. The New Health System must report immediately to the Commissioner the closing of any of the above referenced three full-service tertiary referral hospitals and must also report any reduction in the capability of any of the three tertiary referrals hospitals so that they can no longer be credibly viewed as tertiary referral hospitals.

22. **Commitment:** In order to ensure choice of providers for consumers and to ensure physicians are free to practice medicine without any adverse effect from the merger, the New Health System will maintain an open medical staff at all facilities, subject to the rules and conditions of the organized medical staff of each facility. Exceptions may be made for certain hospital departments or services as determined by the New Health System’s Board of Directors or the hospital board if the hospital board is acting as the ultimate fiduciary body.

Timing: Immediate upon closing of the merger and ongoing, subject to current contractual obligations.

Amount: No cost.

Metric: Easily verifiable.

23. **Commitment:** In order to ensure physicians and patients maintain their choice of facilities, and to ensure independent physicians can maintain their independent practice of medicine, the New Health System will not require independent physicians to practice exclusively at the New Health System’s hospitals and other facilities.

Timing: Immediate upon closing of the merger and ongoing.

Amount: No cost.

Metric: Easily verifiable.

24. **Commitment:** The New Health System will not take steps to prohibit independent physicians from participating in health plans and health networks of their choice.

Timing: Immediate upon closing of the merger and ongoing.

Amount: No cost.

Metric: Easily verifiable.

25. **REVISED Commitment:** In order to enhance access to services for patients, and to ensure robust choices remain in the market for physicians in the various specialties needed throughout the region, the New Health System will (i) commit to the development of a comprehensive physician/physician extender needs assessment and recruitment plan every three years in each community served by the New Health System. The New Health System will consult with the

Authority in development of the plan. (ii) The New Health System will employ physicians and physician extenders primarily in underserved areas and locations where needs are not being met, and where independent physician groups are not interested in, or capable of, adding such specialties or expanding. (iii) The New Health System will promote recruitment and retention of pediatric sub-specialists in accordance with the Niswonger Children’s Hospital physician needs assessment.

Timing: Every 3 years, starting within the first full fiscal year.

Amount: Costs of recruitment related to implementation of the recruitment plan shall be part of the \$140 million commitment referenced below in number 26. Expenditures incurred in the development of the community needs assessment and the recruitment plan shall not be credited toward that \$140 million commitment.

Metric: Credible evidence of recruitment plan, which identifies needs and priorities. The first community needs assessment and physician/physician extender recruitment plan shall be presented to the Commissioner no later than in the annual report submitted after the end of the first full fiscal year after closing of the merger, and thereafter at three (3) year intervals (or more frequently if the plan is amended). In each annual report, the New Health System shall report on progress toward its recruitment goals including the number of recruited physicians by specialty, and related data such as recruitment efforts, interviews conducted, and the number of offers extended. To the extent that physician needs identified in the plan are not met in 600 days or more (measured at the end of each full fiscal year), the New Health System shall include an explanation of the feasibility of meeting the plan for the unfilled position(s), additional steps, if any, that management believes are appropriate to take, and consideration of alternatives such as building relationships with centers of excellence to improve the availability of the missing specialty to patients in the region. In order to preserve competition, this annual reporting requirement will be treated as confidential.

26. **Commitment:** Enhancing healthcare services:

- a. In an effort to enhance treatment of substance abuse in the region, the New Health System will create new capacity for residential addiction recovery services serving the people of Southwest Virginia and Tennessee.
- b. Because improved mental health services is a priority of the Authority and the law, the New Health System will develop community-based mental health resources, such as mobile health crisis management teams and intensive outpatient treatment and addiction resources for adults, children, and adolescents designed to minimize inpatient psychiatric admissions, incarceration and other out-of-home placements throughout the Virginia and Tennessee service area.
- c. As part of the priority of preserving hospital services in geographical proximity to the communities traditionally served by the facilities, and to ensure access to care, the New Health System will develop pediatric specialty centers and Emergency Rooms in Kingsport and Bristol with further deployment of pediatric telemedicine and rotating specialty clinics in rural hospitals to ensure quick diagnosis and treatment in the right setting in close proximity to patients’ homes.

Timing: The plan will be developed no later than 24 months after closing and will include a time schedule for implementing the plan and expenditures under the plan.

Amount: \$140 million over 10 years including physician recruitment referenced in number 25 above.

Metric: The New Health System will include in the annual report for the second full fiscal year the plan for enhancing healthcare services, and in that report and each following, shall include in the annual report progress in implementing the plan and expenditures made.

27. **REVISED Commitment:** To enhance population health status consistent with the regional health goals established by the Authority and the Virginia Department of Health, the New Health System will invest not less than \$75 million over ten years in population health improvement for the Geographic Service Area. Of this amount, the New Health System will commit to spending an amount necessary to support the creation of a new, regional Accountable Care Community. The New Health System will take the lead to formally establish this ACC within 12 months of the close of the merger, and its membership will include members of the New Health System, the Authority, and other local, state or federal agencies, payers, service providers and community groups from Virginia and Tennessee who wish to participate. Within 12 months after the Commissioner has approved the priority population health measures to be included in the Quantitative Measures, and after consultation with the ACC, the New Health System will submit to the Commissioner plans to improve the scores of the regional population on these measures. The submission of these plans, the process measures associated with the implementation of each plan, and the achievement of population health improvement for each measure, will be evaluated according to the index scoring methodology described in the New Health System's Quantitative Measures and Scoring Mechanism.

Timing: 10 years.

Amount: \$75 million.

Metric: The New Health System will establish and track long-term outcome goals similar to those developed in Healthy People 2020 and consistent with the health plans of Virginia and Tennessee, and will be evaluated based on whether expenditures made are consistent with the plan established by the collaborative between the states, including the Authority, and the New Health System.

Discussion: The expenditures of \$75 million throughout the region have the greatest positive impact only if those dollars are spent in a prioritized way in collaboration with the state health plan and the regional priorities as established by the Authority, and in partnership with efforts already underway through community based assets.

28. **Commitment:** In support of the Authority's role in promoting population health improvement under the Commonwealth's Cooperative Agreement with the New Health System, the New Health System shall reimburse the Authority for costs associated with the various planning efforts cited above in an amount up to \$75,000 annually, with CPI increases each year. No

reimbursable costs shall be paid toward compensation for any member of the Authority's Board or Directors.

Timing: Annual.

Amount: Up to \$75,000 annually as part of the \$75 million for population health improvement, with annual CPI increases.

Metric: Reimbursement is made or is not made. All amounts paid to the Authority shall be included in the annual report submitted to the Commissioner.

29. **REVISED Commitment:** Best practice governance of the New Health System is critical to the success of the efforts outlined in the Cooperative Agreement. As such, the Board of Directors of the New Health System will operate such that each Board member must exercise the Duty of Care, Loyalty and Obedience to the New Health System required by law, and all Board members must adhere to the strict fiduciary policies established by the Board. It is recognized that governance of the New Health System should reflect the region, including both Virginia and Tennessee. As such, the New Health System makes the following commitments related to governance:

- At closing, two members of an 11-member Board of Directors will be Virginia residents;
- The New Health System will ensure membership from Virginia on the following Board committees, with full voting privileges: Finance, Audit and Compliance, Quality, Community Benefit/Population Health, and Workforce; and
- The New Health System will ensure that not less than 30 percent of the composition of the Community Benefit/Population Health committee will reside in Virginia (committee will be the Board committee responsible for the oversight of the compliance of the Cooperative Agreement).

Timing: Ongoing.

Amount: No dollar cost.

Metric: Easily verifiable.

30. **REVISED Commitment:** The New Health System expects that the conditions under which the Cooperative Agreement is granted will be set forth in an order issued by the Commissioner, and it is expected an annual report will be required. Any report will be attested to by the appropriate leadership of the New Health System, including the Senior Executive.

Timing: Annual.

Amount: No material cost.

Metric: Receipt of compliant report.

31. **Commitment:** The New Health System will provide information on a quarterly basis of the key financial metrics and the balance sheet comparing performance to the similar prior year period and year to date. This information will be provided on the same timetable as what is publicly reported through EMMA (Electronic Municipal Market Access).

Timing: Annual and quarterly.

Amount: No material cost.

Metric: Easily verified.

32. **Commitment:** The New Health System will adhere to Exhibit 12.1 setting forth relevant considerations and the process for closing a facility should it be necessary. This policy will remain in effect unless the change is agreed to by the Commissioner.

Timing: If closing a facility is considered.

Amount:

Metric: Annual report will provide evidence of compliance with policy.

33. **Commitment:** The New Health System shall create, together with the Southwest Virginia Health Authority, a Joint Task Force comprised of four members, two from the New Health System and two from the Southwest Virginia Health Authority. The Task Force shall meet at least annually to guide the collaboration between the Authority and the New Health System, and to track the progress of the New Health System toward meeting the commitments of the Cooperative Agreement and shall report such progress to the Authority. The Task Force shall be chaired by a member of the Authority. The members appointed by the Authority may not have a conflict of interest.

Timing: Immediate upon closing of the merger.

Amount: No cost.

Metric: Creation of a Joint Task Force.

CONTINUING ORIGINAL APPLICATION COMMITMENTS UNCHANGED BY THE SOUTHWEST VIRGINIA HEALTH AUTHORITY

34. The New Health System will not engage in “most favored nation” pricing with any health plans.
35. The New Health System will not engage in exclusive contracting for physician services, except for certain hospital-based physicians as determined by the Board of Directors.

NEW COMMITMENTS

36. In order to support access to needed services and benefit Virginia Medicaid patients, where it offers addiction recovery services serving Virginia residents, the New Health System will participate in the Virginia DMAS Addiction and Recovery Treatment Services Program.

Timing: As soon as practicable

Metric: Easily verifiable

37. In order to ensure that physician leadership is the core of the Ballad Health clinical enterprise, we commit to implement a Physician Clinical Council according to established plans and policies as described in the Application.

Timing: Within six months after closing

Amount: Minimal cost

Metric: Annual reporting of activities and progress

38. In order to ensure that Virginia Medicaid patients will continue to be served by the New Health System, (a) the New Health System will continue to treat VA Medicaid beneficiaries in Tennessee hospitals and other NHS facilities, and (b) the New Health System will accept and participate in all Medicaid managed care plans such as Medallion Three, CCC, and Medicaid Plus.

Timing: Immediately upon closing of the merger.

Amount: No cost.

Metric: Easily verifiable.

A. Revision of Commitments – Recommendations by the Authority to the Commissioner

These commitments have been negotiated and drafted with the intent of them remaining in place for ten (10) years. Nevertheless, there may be changes in circumstances that arise which affect the feasibility or the meaningfulness of the commitments and which are not possible to foresee presently. For example,⁵ a major structural change to the federal payment system could, depending on how it is implemented, materially change both the needs of the region and the New Health System's ability to meet those needs. Other events which may have a material effect include, but are not limited to, substantial and material reductions in federal

⁵ These are examples only and are not intended to be exclusive basis for amending the agreement, but simply as an illustration of a possible change in circumstances that may have a material impact.

reimbursement, repeal of Certificate of Public Need, labor shortages causing significant and material increases in labor expense, significant reductions in inpatient hospital use rates which cause a material decrease in revenue (and which may be demonstrated to reduce the total cost of care), or an act of God. It is the interest of the Commonwealth that the region's hospitals maintain their financial viability, that they are of sound credit worthiness and that they are capable of reinvesting capital. Accordingly, if the New Health System produces evidence that changes in circumstances have materially affected its ability to meet the commitments and that its inability is not affected by deficiencies in management, either the Commissioner or the New Health System may petition the other to amend the commitments to reduce the burden or cost of the commitments to a level that may be more sustainable. In the event that the New Health System petitions the Commissioner for amendment of the Cooperative Agreement, the Commissioner may require the New Health System to engage an independent consultant to prepare a report validating that the changes in circumstances have adversely affected the New Health System, the extent to which this has occurred, and validating that the changes in circumstances are not related to the effectiveness of management. The cost of such an independent consultant engagement shall not exceed \$250,000 (as adjusted by the CPI from the date of the closing of the merger). The amendment process should not be used to increase the overall level of burden or cost on the New Health System, although the parties acknowledge that depending on the change in circumstance, measuring the change in the level of burden or cost may be subject to reasonable ranges and disagreement of the impact within a range. If either party petitions for amending the commitments and the parties cannot come to agreement, the parties shall agree on a dispute resolution process in order to reach agreement.

B. Ten-Year Review of Cooperative Agreement – Recommendations by the Authority to the Commissioner

Before the end of calendar year 2026, the New Health System and the Commissioner shall review how well the formation and operation of the New Health System has served the overall interests of Virginians and Virginia businesses in the area. That review will consider all the elements set forth in Section 15.2-5384.1, Code of Virginia, and will also consider New Health System's profitability. It is the opinion of the Authority that the citizens of the region and the Commonwealth are well-served when the health system generates the resources necessary to be sustainable, of good credit, and capable of meeting its commitments as a community-based health system in the region. It is the hope of the Authority that the New Health System achieves financial sustainability that exceeds national or regional averages. If, however, it appears negotiated payment rates to the New Health System have increased more rapidly than national or regional averages for comparable health systems, new or additional commitments may be appropriate. Conversely, if the New Health System is unable to attain sufficient profitability notwithstanding effective management, reducing the burden of the commitments would be appropriate. Likewise, if the New Health System is not maintaining its support of population health, subsidizing money-losing services, medical education, research, and physician recruitment, new commitments may be appropriate. In the event that an extension of the existing cooperative agreement or negotiation of a new or amended agreement is not achieved, the Commonwealth should withdraw its support for the cooperative agreement.