Virginia State Health Commissioner's Annual Decision Regarding the Ballad Health Cooperative Agreement:

for the Period of July 1, 2019 – June 30, 2020

Virginia Department of Health

April 4, 2023

VDH VIRGINIA DEPARTMENT OF HEALTH

To protect the health and promote the well-being of all people in Virginia.

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Commissioner's Annual Decision

This decision and accompanying report are being issued by the Virginia State Health Commissioner (Commissioner) pursuant to Virginia Administrative Code section 12VAC5-221-110(F) of the *Regulations Governing Cooperative Agreements*, which requires the Commissioner to issue an annual written decision, and a basis for that decision, as to whether the benefits of a cooperative agreement continue to outweigh the disadvantages attributable to a reduction in competition. This is the Commissioner's second annual report and decision, intended to satisfy the requirement for the Ballad Health Cooperative Agreement (Cooperative Agreement) covering the period July 1, 2019, through June 30, 2020. The first annual decision is available on the Virginia Department of Health (VDH) website at the link: https://www.vdh.virginia.gov/content/uploads/sites/96/2020/06/2019-VDH-Commissioner's-Annual-Decision.pdf

COVID-19 Pandemic Response

On April 23, 2020, the Commissioner determined "that the emergency created by the COVID-19 pandemic constitutes a 'Material Adverse Event' as defined in the Virginia Order and Letter Authorizing a Cooperative Agreement (Virginia Order or Order). In his letter, the Commissioner temporarily suspended certain conditions and provisions of the Order, as permitted by Condition 49 of the Order. The suspension includes delaying the submission of periodic reporting of quantitative measures until after the emergency period, and an assurance that no new quantitative measures such as those required by Virginia Administrative Code section 12 VAC 5-221-100 would be established. One of the requirements **not** suspended is that Ballad Health (Ballad) must provide to the Commissioner an annual report detailing why the benefits of the merger continued to outweigh the disadvantages for that year, as detailed in 12VAC5-221-100. However, due to the unprecedented nature of the COVID-19 pandemic, and its effects on the healthcare system, the Commissioner agreed that Ballad's annual report for fiscal year 2020 would address only the eight-month timeframe of July 1, 2019 through February 29, 2020, which was the reporting period just prior to the Governor's March 12, 2020 Executive Order 51 declaring a state of emergency due to the pandemic. The specific reporting timeframe was chosen to allow for an appropriate comparative analysis of the fiscal year's data relative to the prior year, as well as to serve as a comparative timeframe for future years not impacted by the pandemic.

Content of the Report

This report constitutes the Commissioner's annual assessment determining whether the benefits of the Cooperative Agreement continued to outweigh the disadvantages covering Ballad's Fiscal Year (FY) 2020. As previously mentioned, this assessment is based on Ballad's performance over the first eight months of Ballad's fiscal year 2020, ending February 29, 2020. Information available to the Commissioner about Ballad's subsequent activities will be considered in the appropriate future annual report and assessment.

This report contains the following major components:

- An introduction and brief background on the Cooperative Agreement.
- An overview of VDH's Cooperative Agreement active supervision team.
- Assessment of Ballad's compliance with the Virginia Order's 49 Conditions.
- An overview of Cooperative Agreement complaints and feedback from the public.
- VDH's annual determination as to whether or not the benefits of the Cooperative Agreement continue to outweigh the disadvantages.

Cooperative Agreement - Introduction and Background

Virginia Code § 15.2-5384.1

In 2015, the General Assembly enacted Virginia Code §15.2-5384.1 to permit cooperative agreements that are beneficial to the citizens served by the Southwest Virginia Health Authority (Health Authority).[1] The localities in the geographic area served by the Health Authority include all counties or cities in the LENOWISCO (Lee County, Scott County, Wise County, and the City of Norton) and Cumberland Plateau (Buchanan County, Dickenson County, Russell County, and Tazewell County) Planning District Commissions, Smyth County, Washington County, and the City of Bristol. A cooperative agreement is defined as "an agreement among two or more hospitals for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services, and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals."[2]

Pursuant to §15.2-5384.1, a Cooperative Agreement was entered into by Mountain States Health Alliance and Wellmont Health System. The resulting formation of Ballad Health was allowed by the Commonwealth with certain heretofore illusive goals in mind related to population health. Improvement in the region's overall population health can only be realized through the combined improvements in several critical areas of focus. The following areas were identified as being critical to the residents of southwest Virginia:

1. Residents of Ballad's Virginia Geographic Service Area (GSA) face complex barriers to accessing health care services, including the fact that the area is almost entirely rural.
2. Ballad's Virginia GSA has long-standing population health challenges.
3. Substance misuse rates and barriers to treatment in Ballad's Virginia GSA surpass those of other regions in Virginia and nationwide.
4. Challenges to sustained and widespread economic and workforce development place financial constraints on residents and local businesses in Ballad's Virginia GSA.
5. There is an identified need for collaboration across all health care providers to ensure continuity of care for the region and its residents.
6. Innovative payment and delivery models are necessary requisites to providing affordable, timely, and equitable access to care.

These six areas form the basis of many of the Conditions imposed on the approval of the Cooperative Agreement and remain a focus in the continuous review of the Cooperative Agreement. In effect, the 49 Conditions placed on the Cooperative Agreement are an attempt to create positive change in the areas listed above, especially as they relate to maintaining and improving medical access and accessibility.

[1] Va. Code § 15.2-5384.1(A)
[2] Va. Code § 15.2-5369

Conditional Approval of the Cooperative Agreement

On October 30, 2017, the Virginia Order was issued, approving with conditions the application for a cooperative agreement filed by Mountain States Health Alliance (Mountain States) and Wellmont Health System (Wellmont). The Virginia Order and its Conditions (Conditions) govern the Cooperative Agreement in conjunction with Virginia Code § 15.2-5384.1 and Virginia's Regulations Governing Cooperative Agreements (12VAC5-221-10 et seq.). Similar to Ballad's Certificate of Public Advantage (COPA) in Tennessee, the intent of the Virginia Order is to supplant competition with a regulatory program to permit cooperative agreements that are beneficial to citizens served by the Health Authority, and to invest in the Commissioner the authority to approve cooperative agreements recommended by the Health Authority and the duty of active supervision to ensure compliance with the provisions of the cooperative agreements that have been approved.

The Commissioner approved the application for a cooperative agreement subject to Ballad's compliance with the Conditions. The Commissioner found that if Ballad complied with the Conditions, the benefits from the Cooperative Agreement would be likely to outweigh the disadvantages resulting from the reduction in competition. The Virginia Order can be found online at: https://www.vdh.virginia.gov/content/uploads/sites/96/2017/10/Order-and-letter-authorizing-a-cooperative-agreement.pdf.

Active Supervision of the Cooperative Agreement

Active Supervision Staff

Pursuant to Virginia Code § 15.2-5384.1(G), the cooperative agreement is entrusted to the Commissioner for active and continuing supervision to ensure compliance with the terms of the cooperative agreement. The Commissioner has assigned primary responsibility for the Commonwealth's ongoing active supervision efforts to the Cooperative Agreement Division of the Office of Licensure and Certification (OLC). Two full-time positions are dedicated solely to cooperative agreement functions, with one located in southwest Virginia. These positions are supported directly at OLC by the Director of the Division of Certificate of Public Need, Managed Care Health Insurance Plans, and the Cooperative Agreement; and the OLC Director. The VDH Deputy Commissioner for Governmental and Regulatory Affairs is the Commissioner's point person for ensuring active supervision of the Cooperative Agreement; he is assisted by the Commissioner's Senior Policy Advisor and Senior Policy Analyst.

Cooperative Agreement Active Supervision Committee

The Cooperative Agreement Active Supervision Committee, consisting of community and VDH internal leaders, was assembled by VDH to support active supervision efforts. The committee convenes quarterly or as needed to provide guidance and recommendations on plans, reports, and requests submitted by Ballad, and to provide additional qualitative and quantitative information pertaining to the Cooperative Agreement. The committee includes the following individuals, in addition to the active supervision staff members:

VDH's Deputy Commissioner for Population Health;

VDH's Directors of the Mount Rogers, LENOWISCO, and Cumberland Plateau Health Districts;

VDH's Directors of Family Health Services, Population Health Data, Primary Care and Rural Health, and Social Epidemiology;

Leadership from VDH's partner agencies, including the Department of Medical Assistance Services (DMAS), the Department of Behavioral Health and Developmental Services (DBHDS), and the Department of Social Services (DSS);

A Health Economist within VDH's Office of Health Equity; and

A Rural Health Manager within VDH's Office of Health Equity.

Annual Review of the Cooperative Agreement

Ballad's FY 2020 Annual Report and COPA Compliance Office Report

Pursuant to Virginia Code §15.2-5384.1 and Virginia's Regulations Governing Cooperative Agreements (12VAC5-221-10 et seq.), Ballad is required to annually report to the Commissioner on the extent of the benefits realized and compliance with any terms and conditions contained in the Virginia Order. Ballad submitted its FY 2020 Annual Report and FY 2020 COPA Compliance Office Annual Report on November 25, 2020. The eight-month reporting period for Ballad's FY 2020 Annual Reports covers the timeframe of July 1, 2019, through February 29, 2020. Ballad's 2020 Annual Report, Executive Summary, and COPA Compliance Office Annual Report are available on VDH's Cooperative Agreement website through the following link:

https://www.vdh.virginia.gov/licensure-and-certification/cooperative- agreement/reports-from-ballad-health/

Assessment of Ballad's Compliance with the 49 Conditions of the Virginia Order

The Commissioner's initial review of the application for a cooperative agreement included consideration of 41 commitments made by the applicants. The Virginia Order includes 49 Conditions, largely predicated on these Commitments, which are found in Attachment 2 of the Virginia Order. The Conditions and Commitments are tied to the 14 Reasons given by the Commissioner for granting initial conditional approval of the application for a Cooperative Agreement between Mountain States and Wellmont. The Commissioner found that if the "New Health System," now known as Ballad Health, complied with the Conditions, the benefits from the Cooperative Agreement would be likely to outweigh the disadvantages resulting from the reduction in competition. The Commissioner also declared that if Ballad continues to comply with the 49 Conditions, the Commissioner may determine that the benefits from the cooperative agreement continue to outweigh the disadvantages resulting from the reduction in competition. Therefore, it is necessary to review Ballad's compliance with the 49 Conditions for the year under review.

Condition 1 requires Ballad to maintain existing services and facilities until the effective date of the merger.

Condition 1 applies to the timeframe prior to the merger of Wellmont and Mountain States. The merger was completed prior to the year under review; therefore, the requirements set forth in Condition 1 are no longer reviewable.

Condition 2 declares that the 49 Conditions imposed in the Order are absolute.

Condition 2 does not contain any reviewable requirements applicable to the review period.

Condition 3 provides that Ballad's required spending associated with the six required plans found in Conditions 8, 23, 33, 34, 35, and 36, must be new, incremental, and above Ballad's annual baseline spending levels. Ballad must provide annual baseline spending levels to the Commissioner and Tennessee at the same time.

The development of the six plans listed in Table 1 is required by Conditions 8, 24, 33, 34, 35, and 36. Pursuant to Condition 4, these six plans were submitted to the Commissioner for his review under the requirements of Condition 4 with approval of replacement plans due by June 30, 2021.

To ensure that cost-savings achieved through the merger of Mountain States and Wellmont are reinvested in the region, Ballad made spending commitments related to each of the six plans required by the Virginia Order. Ballad's plans are available on VDH's Cooperative Agreement Webpage at https://www.vdh.virginia.gov/licensure-and-certification/cooperative-agreement/reports-from-ballad-health/ Ballad's FY 2020 baseline spending levels for each of the six required plans are shown in Table 1.

Table 1. Ballad's Baseline Spending Levels, FY 2020

Plan Title	**Baseline**
Behavioral Health Services, required by Condition 34	$6,631,379
Children's Health Services, required by Condition 35	$4,139,890
Rural Health Services, required by Condition 33	$62,781,535
Health Research & Graduate Medical Education, required by Condition 24	$8,615,303
Population Health Improvement, required by Condition 36	$3,058,977
Region-Wide Health Information Exchange, required by Condition 8	$443,133
Total	**$85,670,217**

Table 2 displays Ballad's spending commitments in FY 2020 for the six plans required by Conditions 8, 23, 33, 34, 35, and 36 of the Virginia Order. The plan spending requirements were suspended by the Commissioner due to the COVID-19 emergency for the last four months of the fiscal year. Therefore, Ballad has reported spending on each plan for the eight-months ended February 29, 2020. VDH has prorated the Commitment amounts for eight months, also reflected in Table 2.

For the eight-month period, Ballad met the required spending level for two plans: the Population Health Improvement Plan and the Health Research & Graduate Medical Education Plan. It fell short on the four remaining plans. Per Condition 17, Ballad must submit a plan to correct its noncompliance with the spending requirements for these four plans. Ballad's leadership team kept VDH informed of its actual and projected spending levels throughout the year. As part of the submission of the final figures, Ballad indicated that the combined shortfall would be added to the Board-designated fund created as part of the corrective action plan for FY 2019.

As shown in Table 2, the total shortfall related to the four plans is $3,130,373, which is the dollar amount Ballad will place into the Board-designated fund, and it will be reflected on Ballad's Balance Sheet. The value of the spending on the two plans that exceeded the commitments cannot be used to offset the shortfalls in the other plans. However, it will be applied to the commitment for next year's respective plan.

Ballad continued to spend money on the required plans during the remaining four months of FY 2020. That spending will be accounted for at a later date and may decrease or increase the value of the Board-designated fund balance.

Additionally, Ballad has informed VDH and the Tennessee Department of Health (TDH) that it intends to submit a proposal to revise the spending schedule that meets the total spending commitment of $308 million. Any modifications to the spending schedule will require approval by the Commissioner.

Table 2. Ballad Health Actual Spending vs. Spending Commitments - FY 2020

Plan Title	**FY 20 Spending Commitment**	**FY 20 8 Months Commitment**	**FY 20 8 Months Actual Spending**	**Spending Excess (Shortfall)**
Behavioral Health Services	$4,000,000	$2,666,667	$1,434,602	($1,232,065)
Children's Services	$2,000,000	$1,333,333	$746,038	($587,295)
Rural Health Services	$3,000,000	$2,000,000	$1,330,224	($669,776)
Population Health Improvement	$2,000,000	$1,333,333	$2,070,489	$737,156
Health Research & Graduate Medical Education	$5,000,000	$3,333,333	$3,590,697	$257,364
Region-Wide Health Information Exchange	$1,000,000	$666,667	$25,430	($641,237)
Column Totals	*$17,000,000*	*$11,333,333*	*$9,197,480*	*($2,135,853)*
Total FY 2020 (8-Month) Shortfall, exclusive of Plans that met the Commitment				**($3,130,373)**

Condition 4 defines the process for review and approval by the Commissioner of all plans and reports required by conditions of the Cooperative Agreement (including the six required plans). It includes the requirements for submission of replacements for the required plans at least every three years, and provides a process for Ballad to request modifications to the approved plans.

For the first eight-months of FY2020, Ballad submitted all reports in compliance with the various Conditions of the Virginia Order, as required by Condition 4. The requirement for these submissions was suspended beginning March 2020. Replacement versions of the six required plans were not due during the review period. Ballad did not avail itself of the option to request plan amendments during the period.

Condition 5 requires Ballad to comply with all provisions contained in Article V, and Addendum 1, of the "Terms of Certification" related to the Tennessee COPA dated September 18, 2017. Article V deals with managed care contracts and pricing limitations. Also included is a requirement that limits Ballad's employment of physician specialists in non-rural areas (the "35% Rule"). Addendum 1 sets pricing limitations for Ballad's managed care contracts and describes the methodology for testing for compliance with contracting terms and excess payments from payors. Testing is performed by Ballad each year and submitted to the Tennessee COPA Monitor for review.

For the eight-month period, VDH's Cooperative Agreement Monitor, Tennessee COPA Monitor, and Health Authority Monitor reviewed Ballad's testing of its compliance with these provisions. This team determined that Ballad was in compliance with Article V and Addendum 1 for the first eight months of FY 2020.

The COPA Monitor's 2020 annual report can be found online: https://www.tn.gov/content/dam/tn/health/documents/copa/FY20-COPA-Monitor-ANNUAL-REPORT.pdf

During the period, Ballad's patients continued to benefit from charges at employed physician clinics that were reduced 17 percent the previous year, and Ballad's uninsured discount was raised to 77 percent. Ballad also continued adjusting charges to align those inherited from the legacy systems; this multi-year effort will result system-wide, uniform pricing.

Condition 6 requires Ballad to negotiate in good faith with all existing and potential payers; provide a copy of the Cooperative Agreement conditions to all managed care payers prior to negotiation; and possibly offer mediation and arbitration during contract negotiations.

For the eight-month period, Ballad updated VDH regularly on the status of payer negotiations. According to Addendum 1 to Ballad's FY 2020 Annual Report, filed November 30, 2020, Ballad finalized five contracts during the period, which are summarized below.

Table 3. Ballad Health Finalized Payor Contracts - FY 2020

Payor	Product	Entity	Effective Date
BlueCross Blue Shield TN	TennCare	Overmountain Recovery	2/13/2020
Cigna Commercial	Behavioral Health	Ballad Health Medical Associates (TN)	10/24/2019
Cigna Commercial	Behavioral Health	Ballad Health Medical Associates (VA)	10/24/2019
BlueCross Blue Shield TN	Medicare Advantage CSNP	Ballad Health	1/1/2020
Provider Network of America (PNOA)	Commercial	Ballad Health	2/1/2020

The finalized contracts were reviewed by the monitors and found to be compliant with Conditions 6, 7, and 42 of the Order, and with Addendum 1 of the TOC.

There is no indication that Ballad failed to negotiate in good faith with any payer. Ballad routinely provides a copy of the Cooperative Agreement to managed care payers prior to

negotiation. No negotiations between Ballad and a payer required mediation or arbitration during the period under review. Ballad submitted an attestation of compliance from the Chief Executive Officer and Chief Financial Officer, as required.

Condition 7 prohibits Ballad from requiring a payor to contract with Ballad as the exclusive network provider for any health plan. It does not prohibit a payor from choosing to designate Ballad as an exclusive provider.

During the review period, Ballad did not require a payer to contract with Ballad as the exclusive network provider for any health plan.

Condition 8 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a regional health information exchange (HIE) plan and other specified health improvement programs; and requires Ballad to spend a minimum of $8,000,000 in new, incremental, plan-related costs over 10 years.

Ballad's first three-year Regional Health Information Exchange Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

According to Ballad's Amended Annual Report filed on May 19, 2021, Ballad established an HIE Interoperability Steering Committee during FY 2020 that first met in December 2019. The Steering Committee did not meet again during the reporting period.

Ballad states that it has "engaged Impact Advisors to conduct a community/market survey and drafted survey content and approach for delivery and follow-up." Ballad also has begun a cost analysis of Epic's Community Connect product that would allow Ballad facilities to connect with non-Ballad hospitals that are also part of Community Connect.

Ballad reports that all seven of its emergency departments in Virginia participate in the ConnectVirginia Emergency Department Care Coordination (EDCC), the Prescription Drug Monitoring Program (PDMP), the Virginia Immunization program, and other Tennessee and Virginia regulatory programs as required. Ballad reported that there has been no activity related to the development of an HIE Recruitment and Support Plan.

To-date, Ballad has spent more than $200 million implementing the Epic information technology system throughout its facilities. An important benefit of using a single system is the resulting standardization and connectivity between the Ballad system and area physicians. Employed providers have real-time access to information in Epic. EpicCare Link is an optional (add-on) feature that will allow Ballad to share patient data with other area providers who choose to participate. Epic also allows direct access for patients to their own medical information.

Ballad also provides its patient data daily, free of charge, to OnePartner HIE, a sister company to Holston Medical Group (HMG) based in Kingsport, Tennessee. Area providers who subscribe to OnePartner thereby have access to their own patients' Ballad-related medical information, although the access is not available in real-time.

Condition 9 requires Ballad to collaborate in good faith with independent physician groups to develop a regional health information network for sharing data and information to benefit patients of Ballad's service area.

While Ballad maintains an overwhelming majority of the hospital beds in the region, a significant proportion of the region's primary care, behavioral health services, obstetrics care, and other ambulatory services are provided in facilities not owned or operated by Ballad. Pursuant to Condition 9, collaboration with independent physician groups and other clinical providers, community-based organizations, and sectors is critical to coordinating care, improving population health outcomes, increasing access to services, and providing an equitable system of care for each patient and resident of the region. In addition to Ballad's efforts with the STRONG Accountable Care Community (ACC), engaging in meaningful partnerships with other healthcare providers will ensure that patients receive timely access to appropriate services.

Ballad has chosen the Epic information technology system for use throughout the organization. Employed providers have real-time access to information in Epic. The resulting standardization and connectivity between the Ballad system and its affiliated physicians can be extended to independent providers through EpicCare Link and other options, such as the OnePartner HIE. The EpicCare Link add-on will allow Ballad to share patient data with other participating area providers.

Ballad also provides its patient data to OnePartner HIE free of charge. Area providers who are subscribed to OnePartner thereby have access to their own patients' Ballad-related medical information, although the access is not available in real-time.

Evidence is lacking to demonstrate collaboration with independent physician groups on the development of a regional health information network. VDH expects that Ballad will be providing more information in the future on its efforts to ensure independent providers have adequate access to patient data.

Condition 10 requires Ballad to enter into risk-based contracts with "Large Network Payors" so that each has at least one risk-based model component no later than January 1, 2022. At least 30% of Ballad's total health insurance contract revenue must be from risk-based model contracts by January 1, 2021.

According to the November 26, 2019 attestation from Gary Miller, Ballad's COPA Compliance Officer:

Ballad remained "in compliance with the Risk-Based Model Contracting provision requiring "At least one new risk based model contract shall commence no later than January 1, 2020". Ballad Health fulfilled this provision with the addition of L-WHS to the L-MSHA Humana Medicare Advantage 100% Risk Agreement effective July 1, 2019."

This Condition also requires that Ballad work to establish payment models designed to incentivize quality, value, and shared financial alignment in contracts with Large Network Payers. Ballad's FY 2020 Report included the following for the eight-month period:

- Ballad has negotiated five (5) contracts with start dates during the period under review. Six (6) other contracts will begin on or before June 1, 2020.

- These contracts include commercial, Medicare Advantage, Medicaid, TennCare, an Optum Veterans Affairs Community Care Network (VA CCN) contract, an Optum VA CCN behavioral health contract, and behavioral health specific payers designed to incentivize cost reduction and high quality.

Ballad provided the required summary of value-based and risk-based payments.

Condition 11 Requires Ballad to work with the Virginia Department of Medical Assistance Services (DMAS) to develop and implement value-based payment (VBP) programs in the region, and enter into certain Medicaid Managed Care Organizations (MMCOs) contracts.

For the period under review, VDH has not been notified by DMAS of any issues of non-compliance or failure to engage as required.

Condition 12 sets forth requirements and standards for Ballad to develop a quality improvement program, including designation and monitoring of outcomes and measures, for the benefit of the residents of southwest Virginia. Ballad must also periodically report data to the Commissioner and TAP for review, and make the data accessible to the public.

Throughout the reporting period, Ballad submitted periodic quality data as required.

From Ballad's Amended Annual Report:

> *Through clinical leadership and participation by physicians and team members throughout the system, Ballad exceeded the 2017 baseline in 13 of 17 key quality measures as of February 29, 2020. Under the leadership of Amit Vashist, MD, Senior Vice President and Chief Clinical Officer, the organization continues towards its goal of a zero harm culture within the system. The health system achieved reductions in the following metrics for FY20: 87 percent in post-operative acute kidney injuries requiring dialysis across the system; 41 percent in CAUTI infections; 49 percent in-hospital falls with hip fracture rate, and 26 percent in postoperative respiratory failure rates.*

Ballad also highlighted recognition it received for its quality efforts:

> *U.S. News and World Report named [Bristol Regional Medical Center], [Holston Valley Medical Center], and [Johnson City Medical Center] as top-performing hospitals in Tennessee. HVMC was identified as a top-performer in Heart Failure, Abdominal Aortic Aneurysm Repair, and Knee Replacement. JCMC was identified as a top-performing hospital in Heart Failure, Hip Replacement and COPD. BRMC was identified as a top-performer in Heart Failure and COPD.*

Ballad's quality reporting to VDH contains current data that reflect the most recent applicable period (month, months, or year). One standard report is the "Summary of Quality Indicators" (Summary), which is included in Ballad's Amended Annual Report as Attachment 2, located on page 53. Ballad's baseline targets are derived from Hospital Compare data for 2017, and provide constant comparative figures on which improvement can be seen over time.

For the eight-month review period, Ballad met or exceeded the baseline for 13 out of 17 measures, and compares favorably to the 12 in the prior year (FY2019). However, when the

data are compared year-over-year, Ballad fared the same or better on only 9 of the 17 measures.

Ballad's data collection efforts allow Ballad and VDH to consider Ballad's current performance data; and compare Ballad's performance over time based on Ballad's own historic data, as well as against peer group data compiled and consolidated by a third-party vendor. This contrasts with data from other sources, including the Centers for Medicare and Medicaid Services (CMS), which rely on data that is several years old and often do not reflect recent changes in the healthcare arena.

For this reporting period, Ballad is not meeting its own targets for several metrics. Ballad has demonstrated to VDH that it is focusing a great deal of attention and energy on the areas where it is not meeting its targets. VDH has been able to actively monitor Ballad's efforts through review of monthly data submissions, monthly meetings between the state's monitors and Ballad leadership, and reporting during quarterly meetings between VDH, TDH, and Ballad. The states' monitors have also attended meetings of Ballad's Clinical Council, which is described on Ballad's website as "a leading model of physician partnership for clinical transformation and outcomes improvement." The Clinical Council seeks out and addresses quality issues within Ballad, with an ultimate goal of becoming a zero harm organization.

Condition 13 requires all Ballad hospitals to maintain accreditation acceptable to the Centers for Medicare and Medicaid Services (CMS); and to report and correct any deficiencies promptly.

Ballad has maintained compliance during the FY 2020 reporting period. Ballad reported issues of potential or actual non-compliance and remedied any deficiencies promptly.

Condition 14 sets forth the requirements for Ballad to adopt a new charity care policy that reduces or eliminates financial liability for patients with incomes up to 400% of the federal poverty level. The Condition also sets a charity care baseline amount.

Ballad adopted a single updated policy covering its charity care and financial assistance programs required by Conditions 14 and 15. The policy was submitted to VDH and TDH for approval on April 15, 2019. It was revised on May 9, 2019 and adopted by Ballad on May 15, 2019. The uninsured discount from charges at Ballad hospitals is a minimum of 77 percent, meaning the most any patient will be expected to pay out of pocket is 23 percent of charges. Once the maximum out of pocket amount is determined, Ballad determines if the patient qualifies for free care, which is available to patients whose income is up to 225 percent of the federal poverty level; additionally, reduced pricing is available on a sliding scale for those between 225 percent and 400 percent of the federal poverty level.

The Executive Summary of Ballad's Amended Annual Report includes the following information related to Ballad's provision of charity care:

> *Ballad Health spent just more than $60 million in FY20 for Charity and Unreimbursed TennCare & Medicaid. While below the projected baseline from FY17, this significant spending was impacted by the material decline in volumes tied to efforts by Ballad and area physicians related to improving value, an increase in Medicaid reimbursement from TennCare and Virginia Medicaid,*

and the ongoing expansion of Medicaid in Virginia. The volume declines have been further accelerated by the global pandemic, which as with all payor categories, resulted in fewer charity patients in FY20. However, total charity awarded per patient exceeded the FY17 adjusted baseline. Also, Ballad continues to comply with its charity policy, which itself represented an expansion of access for the low-income patient population.

Continued efforts by Ballad to improve the management of chronically ill patients will result in less cost of charity care, as additional efforts to reduce ER utilization and medical admissions benefits patients. This is a benefit of the efforts by Ballad to initiate value based initiatives, such as the recently announced Appalachian Highlands Care Network. Properly deployed, this effort will hopefully result in even more reduction in the cost of charity care – which benefits the taxpayers, the patients and the hospitals. Ballad continues discussion with the states related to the policy objectives of these initiatives.

*Table 4. Ballad Health Self-Reported Charity and Reduced Price Care** - FY 2020*

Base Charity	FY17 Baseline	FY17 Baseline Adjusted by FY18 HIA	FY17 Baseline Adjusted by FY19 HIA	FY17 Baseline Adjusted by FY20 HIA*	FY20 Actual as of 6/30/2020
Charity Care	$ 35,034,403	$ 36,067,918	$ 37,204,057	$ 38,413,189	$ 24,057,056
Unreimbursed TennCare & Medicaid	61,605,896	63,423,270	65,421,103	67,547,289	36,295,389
Total	**$ 96,640,299**	**$ 99,491,188**	**$ 102,625,160**	**$ 105,960,478**	**$ 60,352,445**
			Variance from Baseline		**$ (45,608,033)**
*Hospital Inflation Adjustment (HIA) = CMS		2.95%	3.15%	3.25%	

FY20 results are based on preliminary data and are subject to change until the 990 is filed.
***Table 4 is taken directly from Ballad Health's Annual Report.*

Ballad's charity care total of $60,352,445 is equal to approximately 3% of Ballad's operating revenue for the period. Ballad's new charity care and financial assistance policy complies with the requirements of the Virginia Order, and is generous compared to many non-profit hospitals and systems. Further, Ballad has gone beyond its policy, instituting a policy of presumptive eligibility based on available information, including a patient's address, credit score, and other factors. This results in Ballad offering charity care to patients that have not asked for assistance. VDH has not received any complaints that Ballad is not providing appropriate levels of reduced or free care, or that Ballad is not following its policy.

Condition 15 requires Ballad to develop a policy to provide reduced costs for uninsured and underinsured individuals who do not qualify under the charity care policy. Ballad also must seek to connect individuals to coverage, when possible.

Ballad adopted a single updated policy covering its charity care and financial assistance programs required by Conditions 14 and 15. The policy was submitted to VDH and TDH for approval on April 15, 2019. It was revised on May 9, 2019 and adopted by Ballad on May 15, 2019. The uninsured discount from charges at Ballad hospitals is a minimum of 77 percent, meaning the most any patient will be expected to pay out of pocket is 23 percent of charges.

Once the maximum out of pocket amount is determined, Ballad determines if the patient qualifies for free care, which is available to patients whose income is up to 225 percent of the federal poverty level; additionally, reduced pricing is available on a sliding scale for those between 225 percent and 400 percent of the federal poverty level.

Condition 16 requires notice of material default on loan obligations,

Ballad did not default on any loans during the eight-month period under review in FY 2020.

Condition 17 requires Ballad to report material adverse events to the Commissioner.

In March 2020, Ballad reported the effects of the COVID-19 pandemic as a "Force Majeure event resulting in a Material Adverse Event." The Commissioner agreed that the pandemic was a Material Adverse Event and honored Ballad's request to suspend certain requirements of the Virginia Order beginning in March 2020 and continuing until such time as the State of Emergency declared by the Governor ends.

Condition 18 requires Ballad to honor employees' prior service and vesting with the legacy systems.

Ballad complied with the requirements of Condition 18 prior to the start of FY 2020.

Condition 19 requires Ballad to spend a minimum of $70 million over 10 years to eliminate differences in salary/pay rates and employee benefit structures.

Ballad's previous-year efforts, extrapolated over the remaining years of the Cooperative Agreement, will exceed $70 million. Ballad's FY 2020 Amended Annual Report included an update on Pay Equalization. Ballad continued its efforts during FY 2020. Ballad determined that differences in pay rates between the legacy systems was minor. Ballad made market adjustments to several "job codes" during the year, affecting a significant percentage of Ballad's employees.

Ballad's Amended Annual Report provides the following summary:

> *Over the past two fiscal years, Ballad has equalized benefit and retirement contributions, resolved disparate pay practices, standardized job codes, job descriptions and pay ranges. In the future, market increases will continue to be applied utilizing the methodology of reviewing market data, turnover and vacancy rate statistics by job code to determine areas of opportunity.*

Condition 20 requires that Ballad submit a severance policy within two months of the closing date of the merger covering at least the first five years of operation.

Ballad submitted a severance policy to the Commissioner on March 30, 2018 that remained in effect during the reporting period.

Condition 21 consists of two sections related to employee terminations. The first section prohibits termination of hospital employees, except for cause, for the first 24 months following the merger. The second section applies after the first 24 months, and requires notice to the Commissioner of any terminations made without cause; additionally, for reductions of 50 or more employees, advance notice of at least 60-days is required prior to implementing the reduction action.

During the reporting period, Ballad did not notify the Commissioner of any terminations made without cause; and Ballad did not report any reductions of 50 or more employees.

Condition 22 places requirements on Ballad's combined career development program.

The programs were combined shortly after the merger and remain in place. Ballad provided descriptions of the numerous development and educational programs offered to its employees in its Amended Annual Report, beginning on page nine.

Condition 23 requires Ballad to incrementally spend at least $85 million over 10 years on Health Research and Graduate Medical Education benefitting its service area.

For the period under review, Ballad's first three-year Health Research & Graduate Medical Education Plan was in effect. As reported under Condition 3 above, Ballad's annual spending commitment for FY2020 was $5 million. Prorated for the eight-month review period, Ballad's commitment was $3,333,333. Ballad spent $3,590,697 in new incremental costs in support of the plan during the period, an excess of $257,364.

Ballad reported some of its achievements during the period on pages 41 and 42 of its Amended Annual Report, including the following:

- Established the Tennessee Virginia Regional Health Sciences Consortium (TVRHSC) and its subcommittees, and defined the areas of focus for the subcommittees.
- Began collaborating with regional academic partners to identify hiring needs to build research capacity and academic program growth.
- Designed Ballad's research infrastructure plan. Identified priority research areas. Initiated communication with ETSU, Humana, Harvard University, Vanderbilt University and Ballad providers on possible research projects.

Condition 24 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a three-year plan for post-graduate training of various provider categories in Virginia.

Ballad's first three-year Health Research & Graduate Medical Education Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

According to information provided on pages 23 to 24 of Ballad's Amended Annual Report, Ballad has maintained and expanded their own residency programs, and supported other programs. The new Advanced Education in General Dentistry (AEGD) program in Abingdon, Virginia, has cared for "hundreds of patients… in its clinic and in a mini-MOM (Mission of Mercy) event" in its first year. Additionally, "Ballad has invested in the development of a new Fellowship in Addiction Medicine housed within the Department of Family Medicine at [Eastern Tennessee State University]." Ballad also has continued to support other regional healthcare training programs at the collegiate and post-graduate levels.

Condition 25 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a plan for investment in its research enterprise in Virginia.

Ballad's first three-year Health Research & Graduate Medical Education Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

Ballad provided evidence of its efforts in supporting research efforts on pages 29 to 33 of its Amended Annual Report, including issuing various grants to support research, and research partnerships with academic and non-academic partners.

Condition 26 requires Ballad to adopt a common clinical IT platform and make it reasonably available to area physicians.

Ballad has chosen the Epic information technology system for use throughout the system. According to Ballad's Amended Annual Report filed on May 19, 2021, Ballad has spent more than $200 million implementing the Epic system at its facilities. Epic allows direct access for patients to their own medical information. Epic offers optional add-on features, including at least one that will allow Ballad to share patient data with area providers who choose to participate.

Ballad's Amended Annual Report states on page 38 that the "conversion to the Epic electronic health record in legacy Mountain States Health Alliance" medical practices was completed in June 2020.

Condition 27 includes several requirements governing continued provision of services in the Virginia Ballad service area. All hospitals must remain operational as health care institutions for five years; allowances are provided for adjustments of services and service lines. Ballad also must provide access to healthcare services for the life of the cooperative agreement. Condition 27 defines the terms "service line" and "essential services" used in the Virginia Order. Finally, Condition 27 lists specific requirements for provision of services in Lee County.

During the first eight months of FY 2020, Ballad's Virginia hospitals remained operational as health care institutions. Additionally, a new Ballad Urgent Care Center (UCC) was opened in Pennington Gap in Lee County, Virginia. The services offered by the UCC were agreed to by Ballad and the Lee County Hospital Authority, as essential services required by Condition 27. Ballad plans to provide services through the UCC until renovations are completed on the former Lee County Hospital and the hospital is reopened by Ballad.

Condition 28 requires Ballad to maintain three full-service tertiary referral hospitals located in Johnson City, Kingsport, and Bristol.

Ballad continues to operate the following three full-service tertiary referral hospitals (Bristol Regional Medical Center in Bristol, Tennessee; Holston Valley Medical Center in Kingsport, Tennessee; and Johnson City Medical Center in Johnson City, Tennessee). Although these hospitals are located in Tennessee, VDH recognizes that it is critical to maintain access to these three facilities as citizens throughout Ballad's Virginia service area rely on these hospitals for tertiary care services. Additionally, these are the primary hospitals for many Virginians in the area.

Condition 29 requires Ballad to maintain open medical staffs at all facilities, with limited exceptions.

Ballad has maintained compliance with Condition 29 during the review period. All facilities have open medical staffs.

Condition 30 prohibits Ballad from requiring independent physicians to practice exclusively at its facilities.

Ballad has maintained compliance with Condition 30 during the review period. Ballad does not require any independent physicians to practice solely at its facilities.

Condition 31 prohibits Ballad from prohibiting independent physicians from participating in health plans and health networks.

Ballad has maintained compliance with Condition 31 during the review period. Ballad has not prohibited any independent physicians from participating in any health plans or health networks.

Condition 32 requires Ballad to complete a comprehensive physician/physician extender needs assessment and recruitment plan every three years, and includes some specific recruiting targets.

Ballad previously completed a comprehensive physician/physician extender needs assessment and recruitment plan, satisfying the condition for the period under review. Ballad shared with VDH that its recruitment plan has specific recruiting targets supported by the needs assessment.

Condition 33 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a rural health services plan; and requires Ballad to spend a minimum of $28,000,000 in new, incremental, plan-related costs over 10 years.

Ballad's first three-year Rural Health Services Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

Ballad provided an update on its rural health plan initiatives on pages 45 and 46 of its Amended Annual Report.

- In Virginia, Ballad recruited two new primary care physicians, including one in Lee County and another in Big Stone Gap, (Wise County).
- Ballad recruited a pulmonologist to Norton and assisted in the recruitment of a pediatric hospitalist in Abingdon.
- VisuWell, a virtual health platform, was implemented across Ballad Health Medical Associates offices.
- Ballad instituted a pilot program of a team-based care model in select locations, and added three new team members.

- Ballad began several tele-health initiatives, including pilot programs in several school systems (one for urgent care in Lee County Public Schools). Ballad purchased and began the rollout of virtual health carts across all of its emergency rooms.

Condition 34 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a behavioral health services plan; and requires Ballad to spend a minimum of $85,000,000 in new, incremental, plan-related costs over 10 years.

Ballad's first three-year Behavioral Health Services Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

Ballad filled several executive and management positions within the Behavioral Health Division, expanded Screening, Brief Intervention and Referral to Treatment (SBIRT) screening, and developed and deployed trauma informed care education curriculum to front line team members during FY2020, according to Ballad's Amended Annual Report on pages 43 and 44.

Condition 35 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a children's health services plan; and requires Ballad to spend a minimum of $27,000,000 in new, incremental, plan-related costs over 10 years.

Ballad's first three-year Children's Health Services Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

Some accomplishments noted on pages 44 and 45 of Ballad's Amended Annual Report:

- Developed a pediatric visioning committee whose input contributed to substantial progress of potential plan modifications.
- Completed neonatal intensive care unit (NICU) consolidation, and continued work on construction of pediatric emergency department at Bristol Regional Medical Center.
- Established telehealth for neonatology in Kingsport and Bristol, and school-based telemedicine urgent care services in Lee County, Virginia.
- Several Subspecialists were hired in Tennessee, and Ballad provided assistance in the recruitment of one pediatric hospitalist to Abingdon, Virginia.

Condition 36 sets forth requirements for Ballad to develop, and submit to the Commissioner for review every three years, a population health improvement plan; and requires Ballad to spend a minimum of $75,000,000 in new, incremental, plan-related costs over 10 years. It also requires Ballad to take the lead in establishing a regional accountable care community.

Ballad's first three-year Population Health Improvement Plan was submitted for review under the terms of Condition 4 and approved by the Commissioner prior to the beginning of fiscal year 2020. The plan expires June 30, 2021, and a draft replacement plan is due for submission by April 1, 2021.

Pages 38 to 40 of Ballad's Amended Annual Report provides examples of population health efforts during FY 2020. Ballad expanded membership in the Accountable Care Community (ACC) to over 290 organizational members, thereby growing its population health infrastructure. Ballad hosted training events spanning 75 agencies and hired a director of marketing to support its community engagement specialists. Additionally, Ballad's Medicare Shared Savings Program (AnewCare) was expanded, and Ballad "invested in ten pilot programs with community organizations focused on children and family well-being to test organizational capacity and affirm best practices."

Condition 37 requires Ballad to reimburse the Southwest Virginia Health Authority up to $75,000 annually (with adjustments) for costs associated with its regional health planning efforts. Members of the Authority's Board or Directors cannot be paid from these funds.

There is not an active memorandum of understanding between the Department and the Southwest Virginia Health Authority (SWVHA). The Department has not been involved in any financial transactions between the SWVHA and Ballad. SWVHA and Ballad representatives have assured the Department that Ballad is up to date in its payments to the SWVHA.

Condition 38 places requirements on the minimum representation of Virginia residents on Ballad's Board of Directors and numerous committees.

Ballad indicated in its Amended Annual Report that there were no changes in the makeup of Ballad's Board of Directors. VDH reviewed and verified the residency of each member of the Ballad Board and listed committees, determining that Ballad complied with the requirements of this condition during FY 2020.

Condition 39 requires that the Ballad CEO or Board Chair provide a signed verification of the accuracy and completeness of submissions to the Commissioner.

Ballad's CEO/Board Chairman provided the required signed verification of accuracy and completeness for Ballad's submissions to the Commissioner.

Condition 40 requires Ballad to provide certain financial information quarterly.

Ballad provided the quarterly financial information, as required, for review by VDH.

Condition 41 requires Ballad to adhere to its Alignment Policy if a facility must close.

Ballad did not close a facility during the review period.

Condition 42 prohibits Ballad from engaging in "most favored nation" pricing with any health plan.

There is no indication that Ballad has engaged in "most favored nation" pricing with any health plan.

Condition 43 prohibits Ballad from entering into exclusive physician service contracts, with exceptions including hospital-based staff.

There is no indication that Ballad has entered into exclusive physician service contracts outside of hospital-based staff.

Condition 44 requires that Ballad participate in the Virginia DMAS ARTS Program.

Ballad continued its participation in the Virginia DMAS Addiction and Recovery Treatment Services (ARTS) Program during the review period.

Condition 45 requires that Ballad establish a system-wide, physician-led "Clinical Council." It sets forth member requirements and certain responsibilities of the Council.

Ballad established the Clinical Council prior to the reporting period. It remained very active throughout FY 2020, with 32 physician members including 14 non-employed physicians. Ballad's Amended Annual Report contains an extensive collection of efforts of the Council and its eight (8) sub-committees, beginning on page 12.

Condition 46 requires that Ballad continue to participate in certain Virginia Medicaid programs with certain price limits and requirements, treat Virginia Medicaid beneficiaries in all of its facilities, and perform pre-admission screening to determine if an individual qualifies for Medicaid-funded long term services.

All Ballad facilities participate in the required Virginia Medicaid programs.

The revised Ballad Health Annual Report:

Ballad Health spent just more than $60 million in FY20 for Charity and Unreimbursed TennCare & Medicaid. While below the projected baseline from FY17, this significant spending was impacted by the material decline in volumes tied to efforts by Ballad and area physicians related to improving value, an increase in Medicaid reimbursement from TennCare and Virginia Medicaid, and the ongoing expansion of Medicaid in Virginia.

The volume declines have been further accelerated by the global pandemic, which as with all payor categories, resulted in fewer charity patients in FY20. However, total charity awarded per patient exceeded the FY17 adjusted baseline. Also, Ballad continues to comply with its charity policy, which itself represented an expansion of access for the low-income patient population.

Continued efforts by Ballad to improve the management of chronically ill patients will result in less cost of charity care, as additional efforts to reduce ER utilization and medical admissions benefits patients. This is a benefit of the efforts by Ballad to initiate value based initiatives, such as the recently announced Appalachian Highlands Care Network. Properly deployed, this effort will hopefully result in even more reduction in the cost of charity care – which benefits the taxpayers, the patients and the hospitals. Ballad continues discussion with the states related to the policy objectives of these initiatives.

Condition 47 requires that Ballad participate in quarterly teleconferences with DMAS to address targets of certain Medicaid programs.

During the period, Ballad and DMAS made efforts to improve the scheduling of the required teleconferences. Staff turnover at DMAS, and therefore task assignment, have been problematic in arranging the calls. VDH staff worked directly with DMAS and Ballad through February 2020 to get the calls scheduled. However, the timing of the COVID pandemic interrupted these efforts. VDH anticipates resumption of the quarterly calls in the near future.

Ballad also continued its participation in the Medicaid Transformation Project (MTP). The MTP "project is a national effort to transform healthcare and address social determinants of health for the nearly 75 million Americans who rely on Medicaid. The work focused on four keys areas of opportunity: Behavioral health, child and maternal health, substance use disorder and avoidable emergency department visits." More information about Ballad's involvement in the program can be found online at https://www.balladhealth.org/news/vulnerable-populations-medicaid-transformation-project.

Condition 48 requires Ballad to adopt an allocation methodology for spending that takes into account the differences in compliance requirements between the State of Tennessee and the Commonwealth of Virginia.

Ballad has not provided VDH a formal allocation methodology for spending between the states. However, there is no indication that Ballad favors one state to the detriment of the other in funding initiatives related to the Virginia Order or COPA. The re-opening of the hospital in Lee County represents a significant expense to Ballad that does not directly benefit Tennessee residents. Similarly, the Behavioral Health Women's Addiction Treatment Center in Greeneville, Tennessee is not available to residents of Virginia. Ballad generally appears to be investing, as necessary across the region, in services and facilities that will allow Ballad to provide care locally when appropriate. However, Ballad halted almost all capital spending due to the COVID-19 pandemic beginning in early 2020. VDH continues to work closely with the TDH to minimize differences in required plan and spending requirements between the states.

Condition 49 states that the Virginia Order conditions are intended to remain effective for the life of the cooperative agreement. It contains a provision allowing Ballad to request that the Commissioner amend a condition for certain reasons.

During FY 2020, the conditions of the Order remained in effect for the first eight months. However, due to the COVID-19 pandemic, on March 13, 2020, the Governor issued a state of emergency. Ballad requested relief from many of the requirements of the Order and Virginia Administrative Code during the state of emergency. The Commissioner determined that the pandemic is a "Material Adverse Event" as defined in the Virginia Order, and temporarily suspended certain Conditions and provisions of the Order and Administrative Code of Virginia until the emergency declaration ends, as permitted by Condition 49 of the Order.

Ballad did not submit a formal request to the Commissioner to amend conditions of the Virginia Order. However, VDH has maintained ongoing dialogue with Ballad and the TDH about possible future changes to the Virginia Order and the Tennessee Terms of Certification.

Review of Cooperative Agreement Complaints

The Department receives Cooperative Agreement-related complaints by phone, email, or through the Department's online feedback form. VDH Cooperative Agreement staff reviews all Cooperative Agreement complaints to determine if Ballad's actions are in violation of the Conditions of the Virginia Order, associated rules or regulations. VDH received ten complaints during the review period, with one being a message with no associated complaint. In the first eight months of Fiscal Year 2020, no complaints asserting a violation of the Conditions of the Virginia Order were substantiated. The Department values the information and insights gained from conversations with complainants, many of whom are Ballad patients.

The Benefits of the Cooperative Agreement Continue to Outweigh the Disadvantages Attributable to a Reduction in Competition Resulting from the Cooperative Agreement

Pursuant to Virginia Code § 15.2-5384.1 and Virginia's *Regulations Governing Cooperative Agreements* (12VAC5-221-10 *et seq.*), the Commissioner is required to make an annual decision whether the benefits of the Cooperative Agreement continue to outweigh the disadvantages attributable to a reduction in competition resulting from the Cooperative Agreement. Based on the information set forth in this report, the Commissioner makes the following findings:

Although it is impossible to determine what would have resulted if the merger of Wellmont and Mountain States had not occurred, the environment that existed prior to the Cooperative Agreement that resulted in the formation of Ballad included hospitals in jeopardy of closure, service lines with small volumes, declining inpatient census, and duplicative services that were unsustainable long-term. It is unlikely that the financial conditions of either system or the quality of services provided would have improved.

The Cooperative Agreement allowed for the consolidation of duplicative executive and management services, creating opportunities for short-term financial improvements for Ballad and residents of the region. The highest levels of NICU and trauma services were consolidated during fiscal year 2019, increasing volume for the remaining program with the goal of increasing quality and profitability. In the Wise County/City of Norton market, Ballad has been able to consolidate certain duplicative inpatient, ancillary, and support services. Ballad plans further consolidation in that local area, including consolidation, reallocation, and new service development.

Based on information gleaned from the active supervision process during the period, the majority of quality measures reported to the states have shown very modest improvement, though some have declined. Overall access to care has not suffered, and charges remain within what is allowed by Condition 5. Ballad opened an urgent care center in Pennington Gap, adjacent to the shuttered Lee County Hospital, during fiscal year 2019. Ballad began renovation work on the Lee County Hospital building during the reporting period, but temporarily halted construction due to changing priorities related to the COVID-19 pandemic. Ballad still intends to reopen the hospital by the end of December 2020, if possible, at a cost of approximately $15 million. It is not likely that either Wellmont or Mountain States would have independently chosen to re-open this hospital due to resource constraints that were alleviated by the Cooperative Agreement.

Condition 19 requires Ballad to create and begin work on a plan to spend at least $70 million over 10 years on salary and wage increases. During FY 2019, Ballad increased nursing salaries by approximately $10 million per year, which is a continuing additional operating cost each year. Since this commitment is ongoing, Ballad should meet the $70 million commitment by FY 2026.

Ballad has continued its implementation of its six comprehensive plans related to improving population health, health research and graduate medical education, health information exchange, access to clinical services for adults and children, and access to behavioral health services. Ballad is scheduled to update these plans by the end of the third year, with input from both TDH and VDH. Ballad has taken over the lead role in the area-wide ACC that currently has over 250 member organizations and has chosen to focus on STRONG Children and Families in order to improve population health across the region. Ballad's new behavioral health services division is making strides toward increasing access and accessibility to services throughout the region, and will open a residential center in Tennessee for pregnant women experiencing homelessness and/or substance abuse in the near future.

Ballad has continued to improve on its efforts to increase access to care through changes to its billing practices. Ballad has implemented a new presumptive eligibility program for reduced or free care, and plans further efforts to lessen the burden of proof for low-income patients. Ballad has changed its policies to reduce the burden of health care costs to the region's residents and engaged in value-based contracts, as required by the Virginia Order, to further incentivize lower costs and higher quality.

Unfortunately, recruitment of rural and pediatric providers to counter the loss of existing providers has failed to meet the expectations of many in the region. Ballad continues to recruit providers according to its recruitment plan, and has increased the number of primary care residency slots available in its programs. Additionally, Ballad did not meet spending commitments on four of the six required categories during FY 2020. The total of the four shortfalls was $3,130,373, which is the dollar amount Ballad will place into the previously created Board-designated fund.

The review of Ballad's efforts related to the 49 Conditions of the Virginia Order shows that Ballad has maintained reasonable compliance with the Conditions, or has developed a plan to correct any deficiency, during the first eight months of FY 2020. Additionally, the fourteen reasons given for the original approval of the Cooperative Agreement remain valid.

Based on these findings, the Commissioner determines that the benefits of the Cooperative Agreement to-date, and likely to result in the future, continue to outweigh the disadvantages attributable to a reduction in competition that have resulted from the Cooperative Agreement.